

2ESSB 6143 - H AMD 1720

By Representative Hunter

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** In order to preserve funding for education,
4 public safety, health care, environmental protection, and safety net
5 services for children, elderly, disabled, and vulnerable people, it is
6 the intent of the legislature to close obsolete tax preferences,
7 clarify the legislature's intent regarding existing tax policy, and to
8 ensure balanced tax policy while bolstering emerging industries.

9 **PART I**

10 **Minimum Nexus Standards**

11 NEW SECTION. **Sec. 101.** (1) The legislature finds that out-of-
12 state businesses that do not have a physical presence in Washington
13 earn significant income from Washington residents from providing
14 services or collecting royalties on the use of intangible property in
15 this state. The legislature further finds that these businesses
16 receive significant benefits and opportunities provided by the state,
17 such as: Laws providing protection of business interests or regulating
18 consumer credit; access to courts and judicial process to enforce
19 business rights, including debt collection and intellectual property
20 rights; an orderly and regulated marketplace; and police and fire
21 protection and a transportation system benefiting in-state agents and
22 other representatives of out-of-state businesses. Therefore, the
23 legislature intends to extend the state's business and occupation tax
24 to these companies to ensure that they pay their fair share of the cost
25 of services that this state renders and the infrastructure it provides.

26 (2)(a) The legislature also finds that the current cost
27 apportionment method in RCW 82.04.460(1) for apportioning most service
28 income has been difficult for both taxpayers and the department to
29 apply due in large part (i) to the difficulty in assigning certain

1 costs of doing business inside or outside of this state, and (ii) to
2 its dissimilarity with the apportionment methods used in other states
3 for their business activity taxes.

4 (b) The legislature further finds that there is a trend among
5 states to adopt a single factor apportionment formula based on sales.
6 The legislature recognizes that adoption of a sales factor only
7 apportionment method has the advantages of simplifying apportionment
8 and making Washington a more attractive place for businesses to expand
9 their property and payroll. For these reasons, the legislature adopts
10 single factor sales apportionment for purposes of apportioning royalty
11 income and certain service income for state business and occupation tax
12 purposes.

13 (c) Nothing in this act may be construed, however, to authorize
14 apportionment of the gross income or value of products taxable under
15 the following business and occupation tax classifications: Retailing,
16 wholesaling, manufacturing, processing for hire, extracting, extracting
17 for hire, printing, government contracting, public road construction,
18 the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any
19 other activity not specifically included in the definition of
20 apportionable activities in RCW 82.04.460.

21 (d) Nothing in this part is intended to modify the nexus and
22 apportionment requirements for local gross receipts business and
23 occupation taxes.

24 **Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended
25 to read as follows:

26 (1) There is levied and (~~shall be~~) collected from every person
27 that has a substantial nexus with this state a tax for the act or
28 privilege of engaging in business activities. (~~Such~~) The tax (~~shall~~
29 be) is measured by the application of rates against value of products,

30 gross proceeds of sales, or gross income of the business, as the case
31 may be.

32 (2) A person who has a substantial nexus with this state in any tax
33 year will be deemed to have a substantial nexus with this state for the
34 following tax year.

35 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.04
36 RCW to read as follows:

1 "Engaging within this state" and "engaging within the state," when
2 used in connection with any apportionable activity as defined in RCW
3 82.04.460, means that a person generates gross income of the business
4 from sources within this state, such as customers or intangible
5 property located in this state, regardless of whether the person is
6 physically present in this state.

7 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.04
8 RCW to read as follows:

9 (1) A person engaging in business is deemed to have substantial
10 nexus with this state if the person is:

11 (a) An individual and is a resident or domiciliary of this state;

12 (b) A business entity and is organized or commercially domiciled in
13 this state; or

14 (c) A nonresident individual or a business entity that is organized
15 or commercially domiciled outside this state, and in any tax year the
16 person has:

17 (i) More than fifty thousand dollars of property in this state;

18 (ii) More than fifty thousand dollars of payroll in this state;

19 (iii) More than two hundred fifty thousand dollars of receipts from
20 this state; or

21 (iv) At least twenty-five percent of the person's total property,
22 total payroll, or total receipts in this state.

23 (2)(a) Property counting toward the thresholds in subsection
24 (1)(c)(i) and (iv) of this section is the average value of the
25 taxpayer's property, including intangible property, owned or rented and
26 used in this state during the tax year.

27 (b)(i) Property owned by the taxpayer, other than loans and credit
28 card receivables owned by the taxpayer, is valued at its original cost
29 basis. Loans and credit card receivables owned by the taxpayer are
30 valued at their outstanding principal balance, without regard to any
31 reserve for bad debts. However, if a loan or credit card receivable is
32 charged off in whole or in part for federal income tax purposes, the
33 portion of the loan or credit card receivable charged off is deducted
34 from the outstanding principal balance.

35 (ii) Property rented by the taxpayer is valued at eight times the
36 net annual rental rate. For purposes of this subsection, "net annual

1 rental rate" means the annual rental rate paid by the taxpayer less any
2 annual rental rate received by the taxpayer from subrentals.

3 (c) The average value of property must be determined by averaging
4 the values at the beginning and ending of the tax year; but the
5 department may require the averaging of monthly values during the tax
6 year if reasonably required to properly reflect the average value of
7 the taxpayer's property.

8 (d)(i) For purposes of this subsection (2), loans and credit card
9 receivables are deemed owned and used in this state as follows:

10 (A) Loans secured by real property, personal property, or both real
11 and personal property, are deemed owned and used in the state if the
12 real property or personal property securing the loan is located within
13 this state. If the property securing the loan is located both within
14 this state and one or more other states, the loan is deemed owned and
15 used in this state if more than fifty percent of the fair market value
16 of the real or personal property is located within this state. If more
17 than fifty percent of the fair market value of the real or personal
18 property is not located within any one state, then the loan is deemed
19 owned and used in this state if the borrower is located in this state.
20 The determination of whether the real or personal property securing a
21 loan is located within this state must be made, as of the time the
22 original agreement was made, and any and all subsequent substitutions
23 of collateral must be disregarded.

24 (B) Loans not secured by real or personal property are deemed owned
25 and used in this state if the borrower is located in this state.

26 (C) Credit card receivables are deemed owned and used in this state
27 if the billing address of the cardholder is in this state.

28 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
29 subsection (2), the definitions in the multistate tax commission's
30 recommended formula for the apportionment and allocation of net income
31 of financial institutions as existing on the effective date of this
32 section or such subsequent date as may be provided by the department by
33 rule, consistent with the purposes of this section, apply to this
34 section.

35 (B) "Credit card" means a card or device existing for the purpose
36 of obtaining money, property, labor, or services on credit.

37 (e) Notwithstanding anything else to the contrary in this
38 subsection, property counting toward the thresholds in subsection

1 (1)(c)(i) and (iv) of this section does not include a person's
2 ownership of, or rights in, computer software as defined in RCW
3 82.04.215, including computer software used in providing a digital
4 automated service; master copies of software; and digital goods and
5 digital codes residing on servers located in this state.

6 (3)(a) Payroll counting toward the thresholds in subsection
7 (1)(c)(ii) and (iv) of this section is the total amount paid by the
8 taxpayer for compensation in this state during the tax year plus
9 nonemployee compensation paid to representative third parties in this
10 state. Nonemployee compensation paid to representative third parties
11 includes the gross amount paid to nonemployees who represent the
12 taxpayer in interactions with the taxpayer's clients and includes sales
13 commissions.

14 (b) Employee compensation is paid in this state if the compensation
15 is properly reportable to this state for unemployment compensation tax
16 purposes, regardless of whether the compensation was actually reported
17 to this state.

18 (c) Nonemployee compensation is paid in this state if the service
19 performed by the representative third party occurs entirely or
20 primarily within this state.

21 (d) For purposes of this subsection, "compensation" means wages,
22 salaries, commissions, and any other form of remuneration paid to
23 employees or nonemployees and defined as gross income under 26 U.S.C.
24 Sec. 61 of the federal internal revenue code of 1986, as existing on
25 the effective date of this section.

26 (4) Receipts counting toward the thresholds in subsection
27 (1)(c)(iii) and (iv) of this section are those amounts included in the
28 numerator of the receipts factor under section 105 of this act and, for
29 financial institutions, those amounts included in the numerator of the
30 receipts factor under the rule adopted by the department as authorized
31 in RCW 82.04.460(2).

32 (5)(a) Each December, the department must review the cumulative
33 percentage change in the consumer price index. The department must
34 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
35 section if the consumer price index has changed by five percent or more
36 since the later of the effective date of this section, or the date that
37 the thresholds were last adjusted under this subsection. For purposes
38 of determining the cumulative percentage change in the consumer price

1 index, the department must compare the consumer price index available
2 as of December 1st of the current year with the consumer price index as
3 of the later of the effective date of this section, or the date that
4 the thresholds were last adjusted under this subsection. The
5 thresholds must be adjusted to reflect that cumulative percentage
6 change in the consumer price index. The adjusted thresholds must be
7 rounded to the nearest one thousand dollars. Any adjustment will apply
8 to tax periods that begin after the adjustment is made.

9 (b) As used in this subsection, "consumer price index" means the
10 consumer price index for all urban consumers (CPI-U) available from the
11 bureau of labor statistics of the United States department of labor.

12 (6) Subsections (1) through (5) of this section only apply with
13 respect to the taxes imposed under this chapter on apportionable
14 activities as defined in RCW 82.04.460. For purposes of the taxes
15 imposed under this chapter on any activity not included in the
16 definition of apportionable activities in RCW 82.04.460, a person is
17 deemed to have a substantial nexus with this state if the person has a
18 physical presence in this state, which need only be demonstrably more
19 than a slightest presence. For purposes of this subsection, a person
20 is physically present in this state if the person has property or
21 employees in this state. A person is also physically present in this
22 state if the person, either directly or through an agent or other
23 representative, engages in activities in this state that are
24 significantly associated with the person's ability to establish or
25 maintain a market for its products in this state.

26 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.04
27 RCW to read as follows:

28 (1) The apportionable income of a person within the scope of RCW
29 82.04.460(1) is apportioned to Washington by multiplying its
30 apportionable income by the receipts factor. Persons who are subject
31 to tax under more than one of the tax classifications enumerated in RCW
32 82.04.460(4)(a) (i) through (ix) must calculate a separate receipts
33 factor for each tax classification that the person is taxable under.

34 (2) For purposes of subsection (1) of this section, the receipts
35 factor is a fraction and is calculated as provided in subsections (3)
36 and (4) of this section and, for financial institutions, as provided in

1 the rule adopted by the department under the authority of RCW
2 82.04.460(2).

3 (3)(a) The numerator of the receipts factor is the total gross
4 income of the business of the taxpayer attributable to this state
5 during the tax year from engaging in an apportionable activity. The
6 denominator of the receipts factor is the total gross income of the
7 business of the taxpayer from engaging in an apportionable activity
8 everywhere in the world during the tax year.

9 (b) Except as otherwise provided in this section, for purposes of
10 computing the receipts factor, gross income of the business generated
11 from each apportionable activity is attributable to the state:

12 (i) Where the customer received the benefit of the taxpayer's
13 service or, in the case of gross income from royalties, where the
14 customer used the taxpayer's intangible property.

15 (ii) If the customer received the benefit of the service or used
16 the intangible property in more than one state, gross income of the
17 business must be attributed to the state in which the benefit of the
18 service was primarily received or in which the intangible property was
19 primarily used.

20 (iii) If the taxpayer is unable to attribute gross income of the
21 business under the provisions of (b)(i) or (ii) of this subsection (3),
22 gross income of the business must be attributed to the state from which
23 the customer ordered the service or, in the case of royalties, the
24 office of the customer from which the royalty agreement with the
25 taxpayer was negotiated.

26 (iv) If the taxpayer is unable to attribute gross income of the
27 business under the provisions of (b)(i), (ii), or (iii) of this
28 subsection (3), gross income of the business must be attributed to the
29 state to which the billing statements or invoices are sent to the
30 customer by the taxpayer.

31 (v) If the taxpayer is unable to attribute gross income of the
32 business under the provisions of (b)(i), (ii), (iii), or (iv) of this
33 subsection (3), gross income of the business must be attributed to the
34 state from which the customer sends payment to the taxpayer.

35 (vi) If the taxpayer is unable to attribute gross income of the
36 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
37 this subsection (3), gross income of the business must be attributed to
38 the state where the customer is located as indicated by the customer's

1 address: (A) Shown in the taxpayer's business records maintained in
2 the regular course of business; or (B) obtained during consummation of
3 the sale or the negotiation of the contract for services or for the use
4 of the taxpayer's intangible property, including any address of a
5 customer's payment instrument when readily available to the taxpayer
6 and no other address is available.

7 (vii) If the taxpayer is unable to attribute gross income of the
8 business under the provisions of (b)(i), (ii), (iii), (iv), (v), or
9 (vi) of this subsection (3), gross income of the business must be
10 attributed to the commercial domicile of the taxpayer.

11 (viii) For purposes of this subsection (3)(b), "customer" means a
12 person or entity to whom the taxpayer makes a sale or renders services
13 or from whom the taxpayer otherwise receives gross income of the
14 business. "Customer" includes anyone who pays royalties or charges in
15 the nature of royalties for the use of the taxpayer's intangible
16 property.

17 (c) Gross income of the business from engaging in an apportionable
18 activity must be excluded from the denominator of the receipts factor
19 if, in respect to such activity, at least some of the activity is
20 performed in this state, and the gross income is attributable under (b)
21 of this subsection (3) to a state in which the taxpayer is not taxable.
22 For purposes of this subsection (3)(c), "not taxable" means that the
23 taxpayer is not subject to a business activities tax by that state,
24 except that a taxpayer is taxable in a state in which it would be
25 deemed to have a substantial nexus with that state under the standards
26 in section 104(1) of this act regardless of whether that state imposes
27 such a tax. "Business activities tax" means a tax measured by the
28 amount of, or economic results of, business activity conducted in a
29 state. The term includes taxes measured in whole or in part on net
30 income or gross income or receipts. "Business activities tax" does not
31 include a sales tax, use tax, or a similar transaction tax, imposed on
32 the sale or acquisition of goods or services, whether or not
33 denominated a gross receipts tax or a tax imposed on the privilege of
34 doing business.

35 (d) This subsection (3) does not apply to financial institutions
36 with respect to apportionable income taxable under RCW 82.04.290.
37 Financial institutions must calculate the receipts factor as provided
38 in subsection (4) of this section and the rule adopted by the

1 department under the authority of RCW 82.04.460(2) with respect to
2 apportionable income taxable under RCW 82.04.290. Financial
3 institutions that are subject to tax under any other tax classification
4 enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x)
5 must calculate a separate receipts factor, as provided in this section,
6 for each of the other tax classifications that the financial
7 institution is taxable under.

8 (4) A taxpayer may calculate the receipts factor for the current
9 tax year based on the most recent calendar year for which information
10 is available for the full calendar year. If a taxpayer does not
11 calculate the receipts factor for the current tax year based on
12 previous calendar year information as authorized in this subsection,
13 the business must use current year information to calculate the
14 receipts factor for the current tax year. In either case, a taxpayer
15 must correct the reporting for the current tax year when complete
16 information is available to calculate the receipts factor for that
17 year, but not later than October 31st of the following tax year.
18 Interest will apply to any additional tax due on a corrected tax
19 return. Interest must be assessed at the rate provided for delinquent
20 excise taxes under chapter 82.32 RCW, retroactively to the date the
21 original return was due, and will accrue until the additional taxes are
22 paid. Penalties as provided in RCW 82.32.090 will apply to any such
23 additional tax due only if the current tax year reporting is not
24 corrected and the additional tax is not paid by October 31st of the
25 following tax year. Interest as provided in RCW 82.32.060 will apply
26 to any tax paid in excess of that properly due on a return as a result
27 of a taxpayer using previous calendar year data or incomplete current-
28 year data to calculate the receipts factor.

29 (5) Unless the context clearly requires otherwise, the definitions
30 in this subsection apply throughout this section.

31 (a) "Apportionable activities" and "apportionable income" have the
32 same meaning as in RCW 82.04.460.

33 (b) "State" means a state of the United States, the District of
34 Columbia, the Commonwealth of Puerto Rico, any territory or possession
35 of the United States, or any foreign country or political subdivision
36 of a foreign country.

1 **Sec. 106.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
2 read as follows:

3 (1) Upon every person engaging within this state in the business of
4 receiving income from royalties (~~(or charges in the nature of royalties~~
5 ~~for the granting of intangible rights, such as copyrights, licenses,~~
6 ~~patents, or franchise fees)), the amount of tax with respect to~~
7 ~~((such)) the business (~~(shall be)) is~~ equal to the gross income from
8 royalties (~~(or charges in the nature of royalties from the business))~~
9 multiplied by the rate of 0.484 percent.~~

10 (2) For the purposes of this section, "gross income from royalties"
11 means compensation for the use of intangible property, (~~(such as))~~
12 including charges in the nature of royalties, regardless of where the
13 intangible property will be used. For purposes of this subsection,
14 "intangible property" includes copyrights, patents, licenses,
15 franchises, trademarks, trade names, and similar items. (~~(It))~~ "Gross
16 income from royalties" does not include compensation for any natural
17 resource, the licensing of prewritten computer software to the end
18 user, or the licensing (~~(or use))~~ of digital goods, digital codes, or
19 digital automated services to the end user as defined in RCW
20 82.04.190(11).

21 **Sec. 107.** RCW 82.04.2907 and 2010 c . . . (SHB 2620) s 302 are
22 each amended to read as follows:

23 (1) Upon every person engaging within this state in the business of
24 receiving income from royalties (~~(or charges in the nature of royalties~~
25 ~~for the granting of intangible rights, such as copyrights, licenses,~~
26 ~~patents, or franchise fees)), the amount of tax with respect to the~~
27 business is equal to the gross income from royalties (~~(or charges in~~
28 ~~the nature of royalties from the business)) multiplied by the rate of~~
29 0.484 percent.

30 (2) For the purposes of this section, "gross income from royalties"
31 means compensation for the use of intangible property, (~~(such as))~~
32 including charges in the nature of royalties, regardless of where the
33 intangible property will be used. For purposes of this subsection,
34 "intangible property" includes copyrights, patents, licenses,
35 franchises, trademarks, trade names, and similar items. (~~(It))~~ "Gross
36 income from royalties" does not include compensation for any natural

1 resource, the licensing of prewritten computer software to the end
2 user, or the licensing of digital goods, digital codes, or digital
3 automated services to the end user as defined in RCW 82.04.190(11).

4 **Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to
5 read as follows:

6 (1) Except as otherwise provided in this section, any person
7 ((rendering services)) earning apportionable income taxable under ((RCW
8 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of
9 business both within and without this state which contribute to the
10 rendition of such services shall)) also taxable in another state, must,
11 for the purpose of computing tax liability under ((RCW 82.04.290 or
12 82.04.2908)) this chapter, apportion to this state, in accordance with
13 section 105 of this act, that portion of the person's ((gross))
14 apportionable income ((which is)) derived from ((services rendered))
15 business activities performed within this state. ((Where such
16 apportionment cannot be accurately made by separate accounting methods,
17 the taxpayer shall apportion to this state that proportion of the
18 taxpayer's total income which the cost of doing business within the
19 state bears to the total cost of doing business both within and without
20 the state.))

21 (2) ((Notwithstanding the provision of subsection (1) of this
22 section, persons doing business both within and without the state who
23 receive gross income from service charges, as defined in RCW 63.14.010
24 (relating to amounts charged for granting the right or privilege to
25 make deferred or installment payments) or who receive gross income from
26 engaging in business as financial institutions within the scope of
27 chapter 82.14A RCW (relating to city taxes on financial institutions)
28 shall apportion or allocate gross income taxable under RCW 82.04.290 to
29 this state pursuant to rules promulgated by the department consistent
30 with uniform rules for apportionment or allocation developed by the
31 states.)) The department must by rule provide a method of apportioning
32 the apportionable income of financial institutions, where such
33 apportionable income is taxable under RCW 82.04.290. The rule adopted
34 by the department must, to the extent feasible, be consistent with the
35 multistate tax commission's recommended formula for the apportionment
36 and allocation of net income of financial institutions as existing on

1 the effective date of this section or such subsequent date as may be
2 provided by the department by rule, consistent with the purposes of
3 this section, except that:

4 (a) The department's rule must provide for a single factor
5 apportionment method based on the receipts factor; and

6 (b) The definition of "financial institution" contained in appendix
7 A to the multistate tax commission's recommended formula for the
8 apportionment and allocation of net income of financial institutions is
9 advisory only.

10 (3) The department (~~(shall)~~) may by rule provide a method or
11 methods of apportioning or allocating gross income derived from sales
12 of telecommunications service and competitive telephone service(~~(s)~~)
13 taxed under this chapter, if the gross proceeds of sales subject to tax
14 under this chapter do not fairly represent the extent of the taxpayer's
15 income attributable to this state. (~~The rules shall be, so far as~~
16 ~~feasible, consistent with the methods of apportionment contained in~~
17 ~~this section and shall require the consideration of those facts,~~
18 ~~circumstances, and apportionment factors as will result in an equitable~~
19 ~~and constitutionally permissible division of the services.)) The rule
20 must provide for an equitable and constitutionally permissible division
21 of the tax base.~~

22 (4) For purposes of this section, the following definitions apply
23 unless the context clearly requires otherwise:

24 (a) "Apportionable income" means gross income of the business
25 generated from engaging in apportionable activities, including income
26 received from apportionable activities performed outside this state if
27 the income would be taxable under this chapter if received from
28 activities in this state, less the exemptions and deductions allowable
29 under this chapter. For purposes of this subsection, "apportionable
30 activities" means only those activities taxed under:

31 (i) RCW 82.04.255;

32 (ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

33 (iii) RCW 82.04.280(5);

34 (iv) RCW 82.04.285;

35 (v) RCW 82.04.286;

36 (vi) RCW 82.04.290;

37 (vii) RCW 82.04.2907;

38 (viii) RCW 82.04.2908;

1 (ix) RCW 82.04.263, but only to the extent of any activity that
2 would be taxable under any of the provisions enumerated under (a)(i)
3 through (viii) of this subsection (4) if the tax classification in RCW
4 82.04.263 did not exist; and

5 (x) RCW 82.04.260(13) and 82.04.280(1), but only with respect to
6 advertising.

7 (b)(i) "Taxable in another state" means that the taxpayer is
8 subject to a business activities tax by another state on its income
9 received from engaging in apportionable activities; or the taxpayer is
10 not subject to a business activities tax by another state on its income
11 received from engaging in apportionable activities, but any other state
12 has jurisdiction to subject the taxpayer to a business activities tax
13 on such income under the substantial nexus standards in section 104(1)
14 of this act.

15 (ii) For purposes of this subsection (4)(b), "business activities
16 tax" and "state" have the same meaning as in section 105 of this act.

17 **Sec. 109.** RCW 82.04.080 and 1961 c 15 s 82.04.080 are each amended
18 to read as follows:

19 (1) "Gross income of the business" means the value proceeding or
20 accruing by reason of the transaction of the business engaged in and
21 includes gross proceeds of sales, compensation for the rendition of
22 services, gains realized from trading in stocks, bonds, or other
23 evidences of indebtedness, interest, discount, rents, royalties, fees,
24 commissions, dividends, and other emoluments however designated, all
25 without any deduction on account of the cost of tangible property sold,
26 the cost of materials used, labor costs, interest, discount, delivery
27 costs, taxes, or any other expense whatsoever paid or accrued and
28 without any deduction on account of losses.

29 (2) Financial institutions must determine gains realized from
30 trading in stocks, bonds, and other evidences of indebtedness on a net
31 annualized basis. For purposes of this subsection, a financial
32 institution means a person within the scope of the rule adopted by the
33 department under the authority of RCW 82.04.460(2).

34 NEW SECTION. **Sec. 110.** A new section is added to chapter 82.04
35 RCW to read as follows:

36 (1) This chapter does not apply to amounts received by a financial

1 institution from an affiliated person if the amounts are received from
2 transactions that are required to be at arm's length under sections 23A
3 or 23B of the federal reserve act as existing on the effective date of
4 this section or such subsequent date as may be provided by the
5 department by rule, consistent with the purposes of this section. For
6 purposes of this subsection, "financial institution" has the same
7 meaning as in RCW 82.04.080.

8 (2) As used in this section, "affiliated" means under common
9 control. "Common control" means the possession, directly or
10 indirectly, of more than fifty percent of the power to direct or cause
11 the direction of the management and policies of a person, whether
12 through the ownership of voting shares, by contract, or otherwise.

13 NEW SECTION. **Sec. 111.** A new section is added to chapter 82.04
14 RCW to read as follows:

15 (1) This chapter does not apply to amounts received by investment
16 conduits or securitization entities from cash and securities.

17 (2) For purposes of this section, the following definitions apply:

18 (a) "Investment conduit" means an entity formed by a financial
19 institution as defined in RCW 82.04.080 for the express purpose of
20 holding or owning cash or securities if the entity formed:

- 21 (i) Has no employees;
- 22 (ii) Has no direct profit-making motive;
- 23 (iii) Owns no tangible assets, other than cash or securities;
- 24 (iv) Holds or owns cash or securities solely as a conduit,
25 allocating its income to holders of its ownership interests; and
- 26 (v) Has, within twelve months of its organization or initial
27 capitalization date, issued ownership interests to other than
28 affiliated persons, equal to or greater than twenty-five percent of its
29 total issued ownership interests.

30 (b) "Securities" has the same meaning as in section 2 of the
31 securities act of 1933 and includes eligible assets as defined by Rule
32 3a-7 of the investment company act, as the law and rule exist on the
33 effective date of this section or such subsequent date as may be
34 provided by the department by rule, consistent with the purposes of
35 this section.

36 (c) "Securitization entity" means an entity created by a bank
37 holding company if the entity created:

- 1 (i) Has no employees;
- 2 (ii) Has no direct profit-making motive;
- 3 (iii) Owns no tangible assets, other than cash, fixed or revolving
- 4 discrete pools of credit or charge card receivables originated by a
- 5 financial institution, or securities;
- 6 (iv) Acts solely as a conduit, allocating its income to holders of
- 7 its ownership interests; and
- 8 (v) Has as its sole business activities the:
- 9 (A) Acquisition of such discrete pools of credit or charge card
- 10 receivables; and
- 11 (B) Issuance or causing the issuance of securities primarily to
- 12 persons not affiliated with the entity.
- 13 (d) "Bank holding company" has the same meaning as provided in the
- 14 bank holding company act of 1956, as existing on the effective date of
- 15 this section or such subsequent date as may be provided by the
- 16 department by rule, consistent with the purposes of this section.
- 17 (e) "No direct profit-making motive" means that all of an entity's
- 18 income, less a reasonable servicing fee, is paid to holders of its
- 19 ownership interests.
- 20 (f) "Ownership interest" means interests categorized as debt or
- 21 equity for purposes of federal tax or generally accepted accounting
- 22 principles.
- 23 (g) "Affiliated" has the same meaning as in section 110 of this
- 24 act.

25 **PART II**

26 **Tax Avoidance Transactions**

27 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32

28 RCW to read as follows:

29 (1)(a) Unless otherwise specifically provided in statute, the

30 department must respect the form of a transaction, except where the

31 form of the transaction or a related series of transactions is adopted

32 for the purpose of:

33 (i) Disguising income received, or otherwise avoiding tax on

34 income, from a person that is not affiliated with the taxpayer;

35 (ii) Disguising the purchase or sale of property or services from

36 or to a person that is not affiliated with the taxpayer; or

1 (iii) Avoiding the tax imposed in RCW 82.12.020 on the use of
2 property in this state that is owned by an entity organized outside of
3 Washington.

4 (b) For purposes of this subsection, "affiliated" means under
5 common control. "Control" means the possession, directly or
6 indirectly, of more than fifty percent of the power to direct or cause
7 the direction of the management and policies of a person, whether
8 through the ownership of voting shares, by contract, or otherwise.

9 (2)(a) The department must, as resources allow, adopt rules to
10 assist in determining when to disregard the form of a transaction or a
11 related series of transactions adopted for the purposes described in
12 subsection (1)(a)(i) through (iii) of this section. In adopting rules,
13 the department may consider the following judicial doctrines, except to
14 the extent such doctrines are inconsistent with express provisions
15 contained in Washington state statutes:

- 16 (i) The sham transaction doctrine;
- 17 (ii) The economic substance doctrine;
- 18 (iii) The business purpose doctrine;
- 19 (iv) The substance over form doctrine;
- 20 (v) The step transaction doctrine; and
- 21 (vi) The assignment of income doctrine.

22 (b) The adoption of a rule as required under this subsection is not
23 a condition precedent for the department to use the authority provided
24 in this section. Any rules adopted under this section must include
25 examples of transactions that the department will disregard for tax
26 purposes.

27 (3) The provisions of this section are cumulative and nonexclusive
28 and do not affect any other remedies provided to the department under
29 statutory or common law.

30 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32
31 RCW to read as follows:

32 (1)(a) The department may not use section 201 of this act to
33 disregard any transaction, plan, or arrangement initiated before April
34 1, 2010, if, in respect to such transaction, plan, or arrangement, the
35 taxpayer had reported its tax liability in conformance with either
36 specific written instructions provided by the department to the

1 taxpayer, a determination published under the authority of RCW
2 82.32.410, or other document published by the department.

3 (b) This section does not apply if the transaction, plan, or
4 arrangement engaged in by the taxpayer differs materially from the
5 transaction, plan, or arrangement that was addressed in the specific
6 written instructions, published determination, or other published
7 document.

8 (2) For purposes of this section, "specific written instructions"
9 means tax reporting instructions provided to a taxpayer and which
10 specifically identifies the taxpayer to whom the instructions apply.
11 Specific written instructions may be provided as part of an audit, tax
12 assessment, determination, closing agreement, or in response to a
13 binding ruling request.

14 **Sec. 203.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to
15 read as follows:

16 (1) If payment of any tax due on a return to be filed by a taxpayer
17 is not received by the department of revenue by the due date, there
18 (~~shall be~~) is assessed a penalty of five percent of the amount of the
19 tax; and if the tax is not received on or before the last day of the
20 month following the due date, there (~~shall be~~) is assessed a total
21 penalty of fifteen percent of the amount of the tax under this
22 subsection; and if the tax is not received on or before the last day of
23 the second month following the due date, there (~~shall be~~) is assessed
24 a total penalty of twenty-five percent of the amount of the tax under
25 this subsection. No penalty so added shall be less than five dollars.

26 (2) If the department of revenue determines that any tax has been
27 substantially underpaid, there (~~shall be~~) is assessed a penalty of
28 five percent of the amount of the tax determined by the department to
29 be due. If payment of any tax determined by the department to be due
30 is not received by the department by the due date specified in the
31 notice, or any extension thereof, there (~~shall be~~) is assessed a
32 total penalty of fifteen percent of the amount of the tax under this
33 subsection; and if payment of any tax determined by the department to
34 be due is not received on or before the thirtieth day following the due
35 date specified in the notice of tax due, or any extension thereof,
36 there (~~shall be~~) is assessed a total penalty of twenty-five percent
37 of the amount of the tax under this subsection. No penalty so added

1 (~~shall~~) may be less than five dollars. As used in this section,
2 "substantially underpaid" means that the taxpayer has paid less than
3 eighty percent of the amount of tax determined by the department to be
4 due for all of the types of taxes included in, and for the entire
5 period of time covered by, the department's examination, and the amount
6 of underpayment is at least one thousand dollars.

7 (3) If a warrant (~~be~~) is issued by the department (~~of revenue~~)
8 for the collection of taxes, increases, and penalties, there (~~shall~~
9 ~~be~~) is added thereto a penalty of ten percent of the amount of the
10 tax, but not less than ten dollars.

11 (4) If the department finds that a person has engaged in any
12 business or performed any act upon which a tax is imposed under this
13 title and that person has not obtained from the department a
14 registration certificate as required by RCW 82.32.030, the department
15 (~~shall~~) must impose a penalty of five percent of the amount of tax
16 due from that person for the period that the person was not registered
17 as required by RCW 82.32.030. The department (~~shall~~) may not impose
18 the penalty under this subsection (4) if a person who has engaged in
19 business taxable under this title without first having registered as
20 required by RCW 82.32.030, prior to any notification by the department
21 of the need to register, obtains a registration certificate from the
22 department.

23 (5) If the department finds that all or any part of a deficiency
24 resulted from the disregard of specific written instructions as to
25 reporting or tax liabilities, the department (~~shall~~) must add a
26 penalty of ten percent of the amount of the additional tax found due
27 because of the failure to follow the instructions. A taxpayer
28 disregards specific written instructions when the department (~~of~~
29 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
30 obligations and the taxpayer fails to act in accordance with those
31 instructions unless the department has not issued final instructions
32 because the matter is under appeal pursuant to this chapter or
33 departmental regulations. The department (~~shall~~) may not assess the
34 penalty under this section upon any taxpayer who has made a good faith
35 effort to comply with the specific written instructions provided by the
36 department to that taxpayer. Specific written instructions may be
37 given as a part of a tax assessment, audit, determination, or closing
38 agreement, provided that such specific written instructions (~~shall~~)

1 apply only to the taxpayer addressed or referenced on such documents.
2 Any specific written instructions by the department (~~(of revenue~~
3 ~~shall)~~) must be clearly identified as such and (~~(shall)~~) must inform
4 the taxpayer that failure to follow the instructions may subject the
5 taxpayer to the penalties imposed by this subsection.

6 (6) If the department finds that all or any part of a deficiency
7 resulted from engaging in a disregarded transaction, as described in
8 section 201(1)(a) (i), (ii), or (iii) of this act, the department must
9 assess a penalty of thirty-five percent of the additional tax found to
10 be due as a result of engaging in a transaction disregarded by the
11 department under section 201(1)(a) (i), (ii), or (iii) of this act.
12 The penalty provided in this subsection may be assessed together with
13 any other applicable penalties provided in this section on the same tax
14 found to be due, except for the evasion penalty provided in subsection
15 (7) of this section. The department may not assess the penalty under
16 this subsection if, before the department discovers the taxpayer's use
17 of a transaction described under section 201(1)(a) (i), (ii), or (iii)
18 of this act, the taxpayer discloses its participation in the
19 transaction to the department.

20 (7) If the department finds that all or any part of the deficiency
21 resulted from an intent to evade the tax payable (~~(hereunder)~~), a
22 further penalty of fifty percent of the additional tax found to be due
23 (~~(shall)~~) must be added.

24 ~~((+7))~~ (8) The penalties imposed under subsections (1) through (4)
25 of this section can each be imposed on the same tax found to be due.
26 This subsection does not prohibit or restrict the application of other
27 penalties authorized by law.

28 ~~((+8))~~ (9) The department (~~(of revenue)~~) may not impose both the
29 evasion penalty and the penalty for disregarding specific written
30 instructions or the penalty provided in subsection (6) of this section
31 on the same tax found to be due.

32 ~~((+9))~~ (10) For the purposes of this section, "return" means any
33 document a person is required by the state of Washington to file to
34 satisfy or establish a tax or fee obligation that is administered or
35 collected by the department (~~(of revenue)~~), and that has a statutorily
36 defined due date.

1 NEW SECTION. **Sec. 204.** (1) The legislature finds that this
2 state's tax policy with respect to the taxation of transactions between
3 affiliated entities and the income derived from such transactions
4 (intercompany transactions) has motivated some taxpayers to engage in
5 transactions designed solely or primarily to minimize the tax effects
6 of intercompany transactions. The legislature further finds that some
7 intercompany transactions result from taxpayers that are required to
8 establish affiliated entities to comply with regulatory mandates and
9 that transactions between such affiliates effectively increases the tax
10 burden in this state on the affiliated group of entities.

11 (2) Therefore, as existing resources allow, the department of
12 revenue is directed to conduct a review of the state's tax policy with
13 respect to the taxation of intercompany transactions. The review must
14 include the impacts of such transactions under the state's business and
15 occupation tax and state and local sales and use taxes. The department
16 may include other taxes in the review as it deems appropriate.

17 (3) In conducting the review, the department must examine how this
18 state's tax policy compares to the tax policy of other states with
19 respect to the taxation of intercompany transactions. The department's
20 review must include an analysis of potential alternatives to the
21 current policy of taxing intercompany transactions, including their
22 estimated revenue impacts if practicable.

23 (4) In conducting this review, the department may seek input from
24 members of the business community and others as it deems appropriate.

25 (5) The department must report its findings to the fiscal
26 committees of the house of representatives and senate by December 1,
27 2010. However, if the department has not completed its review by
28 December 1, 2010, the department must provide the fiscal committees of
29 the legislature with a brief status report by December 1, 2010, and the
30 final report by December 1, 2011.

31 **Sec. 205.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
32 read as follows:

33 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected
34 from every person in this state a tax or excise for the privilege of
35 using within this state as a consumer any:

36 (a) Article of tangible personal property ~~((purchased at retail,~~
37 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~

1 ~~or produced or manufactured by the person so using the same, or~~
2 ~~otherwise furnished to a person engaged in any business taxable under~~
3 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
4 personal property acquired at a casual or isolated sale, and including
5 by-products used by the manufacturer thereof, except as otherwise
6 provided in this chapter, irrespective of whether the article or
7 similar articles are manufactured or are available for purchase within
8 this state;

9 (b) Prewritten computer software, regardless of the method of
10 delivery, but excluding prewritten computer software that is either
11 provided free of charge or is provided for temporary use in viewing
12 information, or both;

13 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
14 (g), (3)(a), or (6)(b), excluding services defined as a retail sale in
15 RCW 82.04.050(6)(b) that are provided free of charge;

16 (d) Extended warranty; or

17 (e)(i) Digital good, digital code, or digital automated service,
18 including the use of any services provided by a seller exclusively in
19 connection with digital goods, digital codes, or digital automated
20 services, whether or not a separate charge is made for such services.

21 (ii) With respect to the use of digital goods, digital automated
22 services, and digital codes acquired by purchase, the tax imposed in
23 this subsection (1)(e) applies in respect to:

24 (A) Sales in which the seller has granted the purchaser the right
25 of permanent use;

26 (B) Sales in which the seller has granted the purchaser a right of
27 use that is less than permanent;

28 (C) Sales in which the purchaser is not obligated to make continued
29 payment as a condition of the sale; and

30 (D) Sales in which the purchaser is obligated to make continued
31 payment as a condition of the sale.

32 (iii) With respect to digital goods, digital automated services,
33 and digital codes acquired other than by purchase, the tax imposed in
34 this subsection (1)(e) applies regardless of whether or not the
35 consumer has a right of permanent use or is obligated to make continued
36 payment as a condition of use.

37 (2) The provisions of this chapter do not apply in respect to the
38 use of any article of tangible personal property, extended warranty,

1 digital good, digital code, digital automated service, or service
2 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b), if the
3 sale to, or the use by, the present user or the present user's bailor
4 or donor has already been subjected to the tax under chapter 82.08 RCW
5 or this chapter and the tax has been paid by the present user or by the
6 present user's bailor or donor.

7 (3)(a) Except as provided in this section, payment of the tax
8 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
9 of tangible personal property, extended warranty, digital good, digital
10 code, digital automated service, or other service does not have the
11 effect of exempting any other purchaser or user of the same property,
12 extended warranty, digital good, digital code, digital automated
13 service, or other service from the taxes imposed by such chapters.

14 (b) The tax imposed by this chapter does not apply:

15 (i) If the sale to, or the use by, the present user or his or her
16 bailor or donor has already been subjected to the tax under chapter
17 82.08 RCW or this chapter and the tax has been paid by the present user
18 or by his or her bailor or donor;

19 (ii) In respect to the use of any article of tangible personal
20 property acquired by bailment and the tax has once been paid based on
21 reasonable rental as determined by RCW 82.12.060 measured by the value
22 of the article at time of first use multiplied by the tax rate imposed
23 by chapter 82.08 RCW or this chapter as of the time of first use;

24 (iii) In respect to the use of any article of tangible personal
25 property acquired by bailment, if the property was acquired by a
26 previous bailee from the same bailor for use in the same general
27 activity and the original bailment was prior to June 9, 1961; or

28 (iv) To the use of digital goods or digital automated services,
29 which were obtained through the use of a digital code, if the sale of
30 the digital code to, or the use of the digital code by, the present
31 user or the present user's bailor or donor has already been subjected
32 to the tax under chapter 82.08 RCW or this chapter and the tax has been
33 paid by the present user or by the present user's bailor or donor.

34 (4)(a) Except as provided in (b) of this subsection (4), the tax is
35 levied and must be collected in an amount equal to the value of the
36 article used, value of the digital good or digital code used, value of
37 the extended warranty used, or value of the service used by the

1 taxpayer, multiplied by the applicable rates in effect for the retail
2 sales tax under RCW 82.08.020.

3 (b) In the case of a seller required to collect use tax from the
4 purchaser, the tax must be collected in an amount equal to the purchase
5 price multiplied by the applicable rate in effect for the retail sales
6 tax under RCW 82.08.020.

7 (5) For purposes of the tax imposed in this section, "person"
8 includes anyone within the definition of "buyer," "purchaser," and
9 "consumer" in RCW 82.08.010.

10 **Sec. 206.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
11 each reenacted and amended to read as follows:

12 (1) As used in this chapter, the term "sale" (~~(shall have)~~) has its
13 ordinary meaning and (~~(shall)~~) includes any conveyance, grant,
14 assignment, quitclaim, or transfer of the ownership of or title to real
15 property, including standing timber, or any estate or interest therein
16 for a valuable consideration, and any contract for such conveyance,
17 grant, assignment, quitclaim, or transfer, and any lease with an option
18 to purchase real property, including standing timber, or any estate or
19 interest therein or other contract under which possession of the
20 property is given to the purchaser, or any other person at the
21 purchaser's direction, and title to the property is retained by the
22 vendor as security for the payment of the purchase price. The term
23 also includes the grant, assignment, quitclaim, sale, or transfer of
24 improvements constructed upon leased land.

25 (2)(a) The term "sale" also includes the transfer or acquisition
26 within any twelve-month period of a controlling interest in any entity
27 with an interest in real property located in this state for a valuable
28 consideration.

29 (b) For the sole purpose of determining whether, pursuant to the
30 exercise of an option, a controlling interest was transferred or
31 acquired within a twelve-month period, the date that the option
32 agreement was executed is the date on which the transfer or acquisition
33 of the controlling interest is deemed to occur. For all other purposes
34 under this chapter, the date upon which the option is exercised is the
35 date of the transfer or acquisition of the controlling interest.

36 (c) For purposes of this subsection, all acquisitions of persons
37 acting in concert (~~(shall)~~) must be aggregated for purposes of

1 determining whether a transfer or acquisition of a controlling interest
2 has taken place. The department (~~(of revenue shall)~~) must adopt
3 standards by rule to determine when persons are acting in concert. In
4 adopting a rule for this purpose, the department (~~(shall)~~) must
5 consider the following:

6 (~~(a)~~) (i) Persons (~~(shall)~~) must be treated as acting in concert
7 when they have a relationship with each other such that one person
8 influences or controls the actions of another through common ownership;
9 and

10 (~~(b)~~) (ii) When persons are not commonly owned or controlled,
11 they (~~(shall)~~) must be treated as acting in concert only when the unity
12 with which the purchasers have negotiated and will consummate the
13 transfer of ownership interests supports a finding that they are acting
14 as a single entity. If the acquisitions are completely independent,
15 with each purchaser buying without regard to the identity of the other
16 purchasers, then the acquisitions (~~(shall be)~~) are considered separate
17 acquisitions.

18 (3) The term "sale" (~~(shall)~~) does not include:

19 (a) A transfer by gift, devise, or inheritance.

20 (b) A transfer of any leasehold interest other than of the type
21 mentioned above.

22 (c) A cancellation or forfeiture of a vendee's interest in a
23 contract for the sale of real property, whether or not such contract
24 contains a forfeiture clause, or deed in lieu of foreclosure of a
25 mortgage.

26 (d) The partition of property by tenants in common by agreement or
27 as the result of a court decree.

28 (e) The assignment of property or interest in property from one
29 spouse or one domestic partner to the other spouse or other domestic
30 partner in accordance with the terms of a decree of dissolution of
31 marriage or state registered domestic partnership or in fulfillment of
32 a property settlement agreement.

33 (f) The assignment or other transfer of a vendor's interest in a
34 contract for the sale of real property, even though accompanied by a
35 conveyance of the vendor's interest in the real property involved.

36 (g) Transfers by appropriation or decree in condemnation
37 proceedings brought by the United States, the state or any political
38 subdivision thereof, or a municipal corporation.

1 (h) A mortgage or other transfer of an interest in real property
2 merely to secure a debt, or the assignment thereof.

3 (i) Any transfer or conveyance made pursuant to a deed of trust or
4 an order of sale by the court in any mortgage, deed of trust, or lien
5 foreclosure proceeding or upon execution of a judgment, or deed in lieu
6 of foreclosure to satisfy a mortgage or deed of trust.

7 (j) A conveyance to the federal housing administration or veterans
8 administration by an authorized mortgagee made pursuant to a contract
9 of insurance or guaranty with the federal housing administration or
10 veterans administration.

11 (k) A transfer in compliance with the terms of any lease or
12 contract upon which the tax as imposed by this chapter has been paid or
13 where the lease or contract was entered into prior to the date this tax
14 was first imposed.

15 (l) The sale of any grave or lot in an established cemetery.

16 (m) A sale by the United States, this state or any political
17 subdivision thereof, or a municipal corporation of this state.

18 (n) A sale to a regional transit authority or public corporation
19 under RCW 81.112.320 under a sale/leaseback agreement under RCW
20 81.112.300.

21 (o) A transfer of real property, however effected, if it consists
22 of a mere change in identity or form of ownership of an entity where
23 there is no change in the beneficial ownership. These include
24 transfers to a corporation or partnership which is wholly owned by the
25 transferor and/or the transferor's spouse or domestic partner or
26 children of the transferor or the transferor's spouse or domestic
27 partner(~~(+1)~~ ~~PROVIDED, That~~). However, if thereafter such transferee
28 corporation or partnership voluntarily transfers such real property, or
29 such transferor, spouse or domestic partner, or children of the
30 transferor or the transferor's spouse or domestic partner voluntarily
31 transfer stock in the transferee corporation or interest in the
32 transferee partnership capital, as the case may be, to other than
33 ~~((+1))~~ (i) the transferor and/or the transferor's spouse or domestic
34 partner or children of the transferor or the transferor's spouse or
35 domestic partner, ~~((+2))~~ (ii) a trust having the transferor and/or the
36 transferor's spouse or domestic partner or children of the transferor
37 or the transferor's spouse or domestic partner as the only
38 beneficiaries at the time of the transfer to the trust, or ~~((+3))~~

1 (iii) a corporation or partnership wholly owned by the original
2 transferor and/or the transferor's spouse or domestic partner or
3 children of the transferor or the transferor's spouse or domestic
4 partner, within three years of the original transfer to which this
5 exemption applies, and the tax on the subsequent transfer has not been
6 paid within sixty days of becoming due, excise taxes (~~(shall)~~) become
7 due and payable on the original transfer as otherwise provided by law.

8 (p)(i) A transfer that for federal income tax purposes does not
9 involve the recognition of gain or loss for entity formation,
10 liquidation or dissolution, and reorganization, including but not
11 limited to nonrecognition of gain or loss because of application of
12 (~~(section)~~) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the
13 internal revenue code of 1986, as amended.

14 (ii) However, the transfer described in (p)(i) of this subsection
15 cannot be preceded or followed within a twelve-month period by another
16 transfer or series of transfers, that, when combined with the otherwise
17 exempt transfer or transfers described in (p)(i) of this subsection,
18 results in the transfer of a controlling interest in the entity for
19 valuable consideration, and in which one or more persons previously
20 holding a controlling interest in the entity receive cash or property
21 in exchange for any interest the person or persons acting in concert
22 hold in the entity. This subsection (3)(p)(ii) does not apply to that
23 part of the transfer involving property received that is the real
24 property interest that the person or persons originally contributed to
25 the entity or when one or more persons who did not contribute real
26 property or belong to the entity at a time when real property was
27 purchased receive cash or personal property in exchange for that person
28 or persons' interest in the entity. The real estate excise tax under
29 this subsection (3)(p)(ii) is imposed upon the person or persons who
30 previously held a controlling interest in the entity.

31 (q) A qualified sale of a manufactured/mobile home community, as
32 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
33 but before December 31, 2018.

34 **Sec. 207.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
35 to read as follows:

36 (1) As used in this chapter, the term "controlling interest" has
37 the following meaning:

1 ~~((1))~~ (a) In the case of a corporation, either fifty percent or
2 more of the total combined voting power of all classes of stock of the
3 corporation entitled to vote, or fifty percent of the capital, profits,
4 or beneficial interest in the voting stock of the corporation; and

5 ~~((2))~~ (b) In the case of a partnership, association, trust, or
6 other entity, fifty percent or more of the capital, profits, or
7 beneficial interest in such partnership, association, trust, or other
8 entity.

9 (2) The department may, at the department's option, enforce the
10 obligation of the seller under this chapter as provided in this
11 subsection (2):

12 (a) In the transfer or acquisition of a controlling interest as
13 defined in subsection (1)(a) of this section, either against the
14 corporation in which a controlling interest is transferred or acquired,
15 against the person or persons who acquired the controlling interest in
16 the corporation or, when the corporation is not a publicly traded
17 company, against the person or persons who transferred the controlling
18 interest in the corporation; and

19 (b) In the transfer or acquisition of a controlling interest as
20 defined in subsection (1)(b) of this section, either against the entity
21 in which a controlling interest is transferred or acquired or against
22 the person or persons who transferred or acquired the controlling
23 interest in the entity.

24 **Sec. 208.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
25 amended to read as follows:

26 The tax ~~((herein))~~ provided for in this chapter and any interest or
27 penalties thereon ~~((shall be))~~ is a specific lien upon each ~~((piece))~~
28 parcel of real property located in this state that is either sold or
29 that is owned by an entity in which a controlling interest has been
30 transferred or acquired. The lien attaches from the time of sale until
31 the tax ~~((shall have been))~~ is paid, which lien may be enforced in the
32 manner prescribed for the foreclosure of mortgages.

33 **Sec. 209.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
34 read as follows:

35 (1) The tax levied under this chapter ~~((shall be))~~ is the
36 obligation of the seller and the department ~~((of revenue))~~ may, at the

1 department's option, enforce the obligation through an action of debt
2 against the seller or the department may proceed in the manner
3 prescribed for the foreclosure of mortgages (~~and resort to~~). The
4 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
5 an election not to pursue the other.

6 (2) For purposes of this section and notwithstanding any other
7 provisions of law, the seller is the parent corporation of a wholly
8 owned subsidiary, when such subsidiary is the transferor to a third-
9 party transferee and the subsidiary is dissolved before paying the tax
10 imposed under this chapter.

11 **Sec. 210.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to
12 read as follows:

13 (1) Payment of the tax imposed under this chapter is due and
14 payable immediately at the time of sale, and if not paid within one
15 month thereafter (~~shall~~) will bear interest from the time of sale
16 until the date of payment.

17 (a) Interest imposed before January 1, 1999, (~~shall-be~~) is
18 computed at the rate of one percent per month.

19 (b) Interest imposed after December 31, 1998, (~~shall-be~~) is
20 computed on a monthly basis at the rate as computed under RCW
21 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
22 first day of January of each year for use in computing interest for
23 that calendar year. The department (~~of-revenue shall~~) must provide
24 written notification to the county treasurers of the variable rate on
25 or before December 1st of the year preceding the calendar year in which
26 the rate applies.

27 (2) In addition to the interest described in subsection (1) of this
28 section, if the payment of any tax is not received by the county
29 treasurer or the department of revenue, as the case may be, within one
30 month of the date due, there (~~shall-be~~) is assessed a penalty of five
31 percent of the amount of the tax; if the tax is not received within two
32 months of the date due, there (~~shall~~) will be assessed a total
33 penalty of ten percent of the amount of the tax; and if the tax is not
34 received within three months of the date due, there (~~shall~~) will be
35 assessed a total penalty of twenty percent of the amount of the tax.
36 The payment of the penalty described in this subsection (~~shall-be~~) is

1 collectible from the seller only, and RCW 82.45.070 does not apply to
2 the penalties described in this subsection.

3 (3) If the tax imposed under this chapter is not received by the
4 due date, the transferee (~~(shall be)~~) is personally liable for the tax,
5 along with any interest as provided in subsection (1) of this section,
6 unless(~~(÷~~

7 ~~(a))~~) an instrument evidencing the sale is recorded in the official
8 real property records of the county in which the property conveyed is
9 located(~~(÷ or~~

10 ~~(b) Either the transferor or transferee notifies the department of~~
11 ~~revenue in writing of the occurrence of the sale within thirty days~~
12 ~~following the date of the sale)).~~

13 (4) If upon examination of any affidavits or from other information
14 obtained by the department or its agents it appears that all or a
15 portion of the tax is unpaid, the department (~~(shall)~~) must assess
16 against the taxpayer the additional amount found to be due plus
17 interest and penalties as provided in subsections (1) and (2) of this
18 section. The department (~~(shall)~~) must notify the taxpayer by mail, or
19 electronically as provided in RCW 82.32.135, of the additional amount
20 and the same (~~(shall)~~) becomes due and (~~(shall)~~) must be paid within
21 thirty days from the date of the notice, or within such further time as
22 the department may provide.

23 (5) No assessment or refund may be made by the department more than
24 four years after the date of sale except upon a showing of:

25 (a) Fraud or misrepresentation of a material fact by the taxpayer;

26 (b) A failure by the taxpayer to record documentation of a sale or
27 otherwise report the sale to the county treasurer; or

28 (c) A failure of the transferor or transferee to report the sale
29 under RCW 82.45.090(2).

30 (6) Penalties collected on taxes due under this chapter under
31 subsection (2) of this section and RCW 82.32.090 (2) through (7)
32 (~~(shall)~~) must be deposited in the housing trust fund as described in
33 chapter 43.185 RCW.

34 **Sec. 211.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
35 read as follows:

36 (1) An organization that fails to report a transfer of the
37 controlling interest in the organization under RCW 43.07.390 to the

1 secretary of state and is later determined to be subject to real estate
2 excise taxes due to the transfer, (~~shall be~~) is subject to the
3 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
4 82.32.090(~~(+6)~~) (7).

5 (2) Subsection (1) of this section also applies to the failure to
6 report to the secretary of state the granting of an option to acquire
7 an interest in the organization if the exercise of the option would
8 result in a sale as defined in RCW 82.45.010(2).

9 **Sec. 212.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
10 read as follows:

11 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
12 any entity that is required to file an annual report with the secretary
13 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
14 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
15 in the entity (~~and any interest in real property~~); and (ii) the
16 granting of any option to acquire an interest in the entity if the
17 exercise of the option would result in a sale as defined in RCW
18 82.45.010(2).

19 (b) The disclosure requirement in this subsection only applies to
20 entities owning an interest in real property located in this state.

21 (2) This information (~~shall~~) must be made available to the
22 department of revenue upon request for the purposes of tracking the
23 transfer of the controlling interest in entities owning real property
24 and to determine when the real estate excise tax is applicable in such
25 cases.

26 (3) For the purposes of this section, "controlling interest" has
27 the same meaning as provided in RCW 82.45.033.

28 **PART III**

29 **Modifying and Placing a Cap on the First Mortgage Deduction**

30 NEW SECTION. **Sec. 301.** In 1980, the legislature adopted a
31 business and occupation tax deduction to financial businesses for
32 amounts derived from interest received on investments or loans
33 primarily secured by first mortgages or trust deeds on nontransient
34 residential properties which was codified in RCW 82.04.4292. However,
35 the Washington state supreme court in *Homestreet, Inc. v. Dep't of*

1 Revenue, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled
2 to a business and occupation tax deduction under RCW 82.04.4292 for the
3 portion of interest it retained for servicing loans and mortgage-backed
4 securities that it sold on a service-retained basis on the secondary
5 market. The legislature finds that inclusion of interest retained for
6 servicing loans and mortgage-backed securities was not within the
7 legislative intent when the deduction provided in 82.04.4292 was
8 adopted in 1980. Therefore, by this act, the legislature declares that
9 the deduction provided by RCW 82.04.4292 does not apply to fees that
10 are received in exchange for services, regardless of whether the source
11 of the fees is or may have been interest when paid by a borrower.

12 **Sec. 302.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to
13 read as follows:

14 (1) In computing tax there may be deducted from the measure of tax
15 by those engaged in banking, loan, security or other financial
16 businesses, amounts derived from interest received on investments or
17 loans primarily secured by first mortgages or trust deeds on
18 nontransient residential properties.

19 (2) Interest deductible under this section includes the portion of
20 fees charged to borrowers, including points and loan origination fees,
21 that is recognized over the life of the loan as an adjustment to yield
22 in the taxpayer's books and records according to generally accepted
23 accounting principles.

24 (3) Subsections (1) and (2) of this section notwithstanding, the
25 following is a nonexclusive list of items that are not deductible under
26 this section:

27 (a) Fees for specific services such as: Document preparation fees;
28 finder fees; brokerage fees; title examination fees; fees for credit
29 checks; notary fees; loan application fees; interest lock-in fees if
30 the loan is not made; servicing fees, including servicing fees received
31 by lenders when they sell loans or mortgage-backed or mortgage-related
32 securities in the secondary market while retaining the right to service
33 the loans or securities and receive a portion of the interest payments
34 as the servicing fee; and similar fees or amounts;

35 (b) Fees received in consideration for an agreement to make funds
36 available for a specific period of time at specified terms, commonly
37 referred to as commitment fees;

1 (c) Any other fees, or portion of a fee, that is not recognized
2 over the life of the loan as an adjustment to yield in the taxpayer's
3 books and records according to generally accepted accounting
4 principles; and

5 (d) Gains on the sale of valuable rights such as:

6 (i) Service release premiums, which are amounts received when
7 servicing rights are sold; and

8 (ii) Gains on the sale of loans.

9 (4) The total amount a person may deduct under this section for any
10 calendar year may not exceed one hundred twenty million dollars.

11 **PART IV**

12 **Repealing the Nonresident Sales Tax Exemption**

13 NEW SECTION. Sec. 401. RCW 82.08.0273 (Exemptions--Sales to
14 nonresidents of tangible personal property, digital goods, and digital
15 codes for use outside the state--Proof of nonresident status--
16 Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993
17 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are
18 each repealed.

19 NEW SECTION. Sec. 402. RCW 82.08.0273 (Exemptions--Sales to
20 nonresidents of tangible personal property, digital goods, and digital
21 codes for use outside the state--Proof of nonresident status--
22 Penalties) and 2010 c . . . (E2SHB 1597) s 215, 2009 c 535 s 512, 2007
23 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st
24 ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

25 **PART V**

26 **Direct Seller Business and Occupation Tax Exemption**

27 NEW SECTION. Sec. 501. (1) A business and occupation tax
28 exemption is provided in RCW 82.04.423 for certain out-of-state sellers
29 that sell consumer products exclusively to or through a direct seller's
30 representative. The intent of the legislature in enacting this
31 exemption was to provide a narrow exemption for out-of-state businesses
32 engaged in direct sales of consumer products, typically accomplished
33 through in-home parties or door-to-door selling.

1 (2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2
2 (September 10, 2009), the Washington supreme court held that the
3 exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold
4 nonconsumer products through its representative in addition to consumer
5 products; and (b) whose consumer products were ultimately sold at
6 retail in permanent retail establishments.

7 (3) The legislature finds that most out-of-state businesses selling
8 consumer products in this state will either be eligible for the
9 exemption under RCW 82.04.423 or could easily restructure their
10 business operations to qualify for the exemption. As a result, the
11 legislature expects that the broadened interpretation of the direct
12 sellers' exemption will lead to large and devastating revenue losses.
13 This comes at a time when the state's existing budget is facing a two
14 billion six hundred million dollar shortfall, which could grow, while
15 at the same time the demand for state and state-funded services is also
16 growing. Moreover, the legislature further finds that RCW 82.04.423
17 provides preferential tax treatment for out-of-state businesses over
18 their in-state competitors and now creates a strong incentive for in-
19 state businesses to move their operations outside Washington.

20 (4) Therefore, the legislature finds that it is necessary to
21 reaffirm the legislature's intent in establishing the direct sellers'
22 exemption and prevent the loss of revenues resulting from the expanded
23 interpretation of the exemption by amending RCW 82.04.423 retroactively
24 to conform the exemption to the original intent of the legislature and
25 by prospectively ending the direct sellers' exemption as of the
26 effective date of this section.

27 **Sec. 502.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
28 amended to read as follows:

29 (1) Prior to April 1, 2010, this chapter ((shall)) does not apply
30 to any person in respect to gross income derived from the business of
31 making sales at wholesale or retail if such person:

32 (a) Does not own or lease real property within this state; and

33 (b) Does not regularly maintain a stock of tangible personal
34 property in this state for sale in the ordinary course of business; and

35 (c) Is not a corporation incorporated under the laws of this state;

36 and

1 (d) Makes sales in this state exclusively to or through a direct
2 seller's representative.

3 (2) For purposes of this section, the term "direct seller's
4 representative" means a person who buys only consumer products on a
5 buy-sell basis or a deposit-commission basis for resale, by the buyer
6 or any other person, in the home or otherwise than in a permanent
7 retail establishment, or who sells at retail, or solicits the sale at
8 retail of, only consumer products in the home or otherwise than in a
9 permanent retail establishment; and

10 (a) Substantially all of the remuneration paid to such person,
11 whether or not paid in cash, for the performance of services described
12 in this subsection is directly related to sales or other output,
13 including the performance of services, rather than the number of hours
14 worked; and

15 (b) The services performed by the person are performed pursuant to
16 a written contract between such person and the person for whom the
17 services are performed and such contract provides that the person will
18 not be treated as an employee with respect to such purposes for federal
19 tax purposes.

20 (3) Nothing in this section (~~shall~~) may be construed to imply
21 that a person exempt from tax under this section was engaged in a
22 business activity taxable under this chapter prior to (~~the enactment~~
23 ~~of this section~~) August 23, 1983.

24 PART VI

25 Business and Occupation Tax Preferences for Manufacturers of Products 26 Derived from Certain Agricultural Products

27 NEW SECTION. Sec. 601. (1)(a) In 1967, the legislature amended
28 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
29 preferential business and occupation tax rate for slaughtering,
30 breaking, and/or processing perishable meat products and/or selling the
31 same at wholesale. The legislature finds that RCW 82.04.260(4) was
32 interpreted by the state supreme court on January 13, 2005, in *AgriLink*
33 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
34 supreme court held that the preferential business and occupation tax
35 rate on the slaughtering, breaking, and/or processing of perishable

1 meat products applied to the processing of perishable meat products
2 into nonperishable finished products, such as canned food.

3 (b) The legislature intends to narrow the exemption provided for
4 slaughtering, breaking, and/or processing perishable meat products
5 and/or selling such products at wholesale by requiring that the end
6 product be a perishable meat product; a nonperishable meat product that
7 is comprised primarily of animal carcass by weight or volume, other
8 than a canned meat product; or a meat by-product.

9 (2)(a) A business and occupation tax exemption is provided for (i)
10 manufacturing by canning, preserving, freezing, processing, or
11 dehydrating fresh fruits or vegetables, and (ii) selling such products
12 at wholesale by the manufacturer to purchasers who transport the goods
13 out of state in the ordinary course of business. This exemption
14 expires July 1, 2012, and is replaced by a preferential business and
15 occupation tax rate.

16 (b) The legislature finds that the rationale of the *AgriLink*
17 decision, if applied to these tax preferences, could result in
18 preferential tax treatment for any processed food product that
19 contained any fresh fruit or vegetable as an ingredient, however small
20 the amount.

21 (c) The legislature intends to narrow the tax preference provided
22 to fruit and vegetable manufacturers by requiring that the end product
23 be comprised either (i) exclusively of fruits and/or vegetables, or
24 (ii) of any combination of fruits, vegetables, and certain other
25 substances that, cumulatively, may not exceed the amount of fruits and
26 vegetables contained in the product measured by weight or volume.

27 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.04
28 RCW to read as follows:

29 (1) Upon every person engaging within this state in the business of
30 manufacturing:

31 (a) Perishable meat products, by slaughtering, breaking, or
32 processing, if the finished product is a perishable meat product; as to
33 such persons the tax imposed is equal to the value of the perishable
34 meat products manufactured, or, in the case of a processor for hire,
35 the gross income of the business, multiplied by the rate of 0.138
36 percent;

1 (b) Meat products, by dehydration, curing, smoking, or any
2 combination of these activities, if the finished meat products are not
3 canned; as to such persons the tax imposed is equal to the value of the
4 meat products manufactured, or, in the case of a processor for hire,
5 the gross income of the business, multiplied by the rate of 0.138
6 percent;

7 (c) Hides, tallow, meat meal, and other similar meat by-products,
8 if such products are derived in part from animals and manufactured in
9 a rendering plant licensed under chapter 16.68 RCW; as to such persons
10 the tax imposed is equal to the value of the products manufactured, or,
11 in the case of a processor for hire, the gross income of the business,
12 multiplied by the rate of 0.138 percent.

13 (2) Upon every person engaging within this state in the business of
14 selling at wholesale:

15 (a) Perishable meat products; as to such persons the tax imposed is
16 equal to the gross proceeds derived from such sales multiplied by the
17 rate of 0.138 percent;

18 (b) Meat products that have been manufactured by the seller by
19 dehydration, curing, smoking, or any combination of such activities, if
20 the finished meat products are not canned; as to such persons the tax
21 imposed is equal to the gross proceeds derived from such sales
22 multiplied by the rate of 0.138 percent;

23 (c) Hides, tallow, meat meal, and other similar meat by-products,
24 if such products are derived in part from animals and manufactured by
25 the seller in a rendering plant; as to such persons the tax imposed is
26 equal to the gross proceeds derived from such sales multiplied by the
27 rate of 0.138 percent.

28 (3) The definitions in this subsection apply throughout this
29 section unless the context clearly requires otherwise.

30 (a) "Animal" means all members of the animal kingdom except humans,
31 fish, and insects.

32 (b) "Carcass" means all or any parts, including viscera, of a
33 slaughtered animal.

34 (c) "Fish" means any water-breathing animal, including shellfish.

35 (d) "Hide" means any unprocessed animal pelt or skin.

36 (e)(i) "Meat products" means:

37 (A) Products comprised exclusively of animal carcass; and

1 (B) Products, such as jerky, sausage, and other cured meat
2 products, that are comprised primarily of animal carcass by weight or
3 volume and may also contain water; nitrates; nitrites; acids; binders
4 and extenders; natural or synthetic casings; colorings; flavorings such
5 as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses,
6 corn syrup, and vinegar; and similar substances.

7 (ii) Except as provided in (e)(i) of this subsection (3), "meat
8 products" does not include products containing any cereal grains or
9 cereal-grain products, dairy products, legumes and legume products,
10 fruit or vegetable products as defined in RCW 82.04.260, and similar
11 ingredients, unless the ingredient is used as a flavoring. For
12 purposes of this subsection, "flavoring" means a substance that
13 contains the flavoring constituents derived from a spice, fruit or
14 fruit juice, vegetable or vegetable juice, edible yeast, herb, bark,
15 bud, root, leaf, or any other edible substance of plant origin, whose
16 primary function in food is flavoring or seasoning rather than
17 nutritional, and which may legally appear as "natural flavor,"
18 "flavor," or "flavorings" in the ingredient statement on the label of
19 the meat product.

20 (iii) "Meat products" includes only products that are intended for
21 human consumption as food or animal consumption as feed.

22 (f) "Perishable" means having a high risk of spoilage within thirty
23 days of manufacture without any refrigeration or freezing.

24 (g) "Rendering plant" means any place of business or location where
25 dead animals or any part or portion thereof, or packing house refuse,
26 are processed for the purpose of obtaining the hide, skin, grease
27 residue, or any other by-product whatsoever.

28 **Sec. 603.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
29 read as follows:

30 (1) This chapter (~~shall~~) does not apply to the value of products
31 or the gross proceeds of sales derived from:

32 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
33 preserving, freezing, processing, or dehydrating fresh fruits or
34 vegetables; or

35 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
36 manufactured by the seller by canning, preserving, freezing,
37 processing, or dehydrating fresh fruits or vegetables and sold to

1 purchasers who transport in the ordinary course of business the goods
2 out of this state. A person taking an exemption under this subsection
3 (1)(b) must keep and preserve records for the period required by RCW
4 82.32.070 establishing that the goods were transported by the purchaser
5 in the ordinary course of business out of this state.

6 (2)(a) "Fruit or vegetable products" means:

7 (i) Products comprised exclusively of fruits, vegetables, or both;
8 and

9 (ii) Products comprised of fruits, vegetables, or both, and which
10 may also contain water, sugar, salt, seasonings, preservatives,
11 binders, stabilizers, flavorings, yeast, and similar substances.
12 However, the amount of all ingredients contained in the product, other
13 than fruits, vegetables, and water, may not exceed the amount of fruits
14 and vegetables contained in the product measured by weight or volume.

15 (b) "Fruit or vegetable products" includes only products that are
16 intended for human consumption as food or animal consumption as feed.

17 (3) This section expires July 1, 2012.

18 **Sec. 604.** RCW 82.04.4266 and 2010 c . . . (SHB 3066) s 111 are
19 each amended to read as follows:

20 (1) This chapter does not apply to the value of products or the
21 gross proceeds of sales derived from:

22 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
23 preserving, freezing, processing, or dehydrating fresh fruits or
24 vegetables; or

25 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
26 manufactured by the seller by canning, preserving, freezing,
27 processing, or dehydrating fresh fruits or vegetables and sold to
28 purchasers who transport in the ordinary course of business the goods
29 out of this state. A person taking an exemption under this subsection
30 (1)(b) must keep and preserve records for the period required by RCW
31 82.32.070 establishing that the goods were transported by the purchaser
32 in the ordinary course of business out of this state.

33 (2)(a) "Fruit or vegetable products" means:

34 (i) Products comprised exclusively of fruits, vegetables, or both;
35 and

36 (ii) Products comprised of fruits, vegetables, or both, and which
37 may also contain water, sugar, salt, seasonings, preservatives,

1 binders, stabilizers, flavorings, yeast, and similar substances.
2 However, the amount of all ingredients contained in the product, other
3 than fruits, vegetables, and water, may not exceed the amount of fruits
4 and vegetables contained in the product measured by weight or volume.

5 (b) "Fruit or vegetable products" includes only products that are
6 intended for human consumption as food or animal consumption as feed.

7 (3) A person claiming the exemption provided in this section must
8 file a complete annual survey with the department under RCW 82.32.---
9 (section 102, chapter . . . (SHB 3066), Laws of 2010).

10 ~~((+3))~~ (4) This section expires July 1, 2012.

11 **Sec. 605.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
12 2009 c 162 s 34 are each reenacted and amended to read as follows:

13 (1) Upon every person engaging within this state in the business of
14 manufacturing:

15 (a) Wheat into flour, barley into pearl barley, soybeans into
16 soybean oil, canola into canola oil, canola meal, or canola by-
17 products, or sunflower seeds into sunflower oil; as to such persons the
18 amount of tax with respect to such business (~~shall be~~) is equal to
19 the value of the flour, pearl barley, oil, canola meal, or canola by-
20 product manufactured, multiplied by the rate of 0.138 percent;

21 (b) Beginning July 1, 2012, seafood products that remain in a raw,
22 raw frozen, or raw salted state at the completion of the manufacturing
23 by that person; or selling manufactured seafood products that remain in
24 a raw, raw frozen, or raw salted state at the completion of the
25 manufacturing, to purchasers who transport in the ordinary course of
26 business the goods out of this state; as to such persons the amount of
27 tax with respect to such business (~~shall be~~) is equal to the value of
28 the products manufactured or the gross proceeds derived from such
29 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
30 preserve records for the period required by RCW 82.32.070 establishing
31 that the goods were transported by the purchaser in the ordinary course
32 of business out of this state;

33 (c) Beginning July 1, 2012, dairy products that as of September 20,
34 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
35 including by-products from the manufacturing of the dairy products such
36 as whey and casein; or selling the same to purchasers who transport in
37 the ordinary course of business the goods out of state; as to such

1 persons the tax imposed (~~shall be~~) is equal to the value of the
2 products manufactured or the gross proceeds derived from such sales
3 multiplied by the rate of 0.138 percent. Sellers must keep and
4 preserve records for the period required by RCW 82.32.070 establishing
5 that the goods were transported by the purchaser in the ordinary course
6 of business out of this state;

7 (d)(i) Beginning July 1, 2012, fruit(~~s~~) or vegetable(~~s~~)
8 products by canning, preserving, freezing, processing, or dehydrating
9 fresh fruits or vegetables, or selling at wholesale fruit(~~s~~) or
10 vegetable(~~s~~) products manufactured by the seller by canning,
11 preserving, freezing, processing, or dehydrating fresh fruits or
12 vegetables and sold to purchasers who transport in the ordinary course
13 of business the goods out of this state; as to such persons the amount
14 of tax with respect to such business (~~shall be~~) is equal to the value
15 of the products manufactured or the gross proceeds derived from such
16 sales multiplied by the rate of 0.138 percent. Sellers must keep and
17 preserve records for the period required by RCW 82.32.070 establishing
18 that the goods were transported by the purchaser in the ordinary course
19 of business out of this state;

20 (ii) For purposes of this subsection, "fruit or vegetable products"
21 means:

22 (A) Products comprised exclusively of fruits, vegetables, or both;
23 or

24 (B) Products comprised of fruits, vegetables, or both, and which
25 may also contain water, sugar, salt, seasonings, preservatives,
26 binders, stabilizers, flavorings, yeast, and similar substances.
27 However, the amount of all ingredients contained in the product, other
28 than fruits, vegetables, and water, may not exceed the amount of fruits
29 and vegetables contained in the product measured by weight or volume;

30 (iii) "Fruit and vegetable products" includes only products that
31 are intended for human consumption as food or animal consumption as
32 feed;

33 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
34 feedstock, as those terms are defined in RCW 82.29A.135; as to such
35 persons the amount of tax with respect to the business (~~shall be~~) is
36 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
37 feedstock manufactured, multiplied by the rate of 0.138 percent; and

1 (f) Alcohol fuel or wood biomass fuel, as those terms are defined
2 in RCW 82.29A.135; as to such persons the amount of tax with respect to
3 the business (~~(shall be)~~) is equal to the value of alcohol fuel or wood
4 biomass fuel manufactured, multiplied by the rate of 0.138 percent.

5 (2) Upon every person engaging within this state in the business of
6 splitting or processing dried peas; as to such persons the amount of
7 tax with respect to such business (~~(shall be)~~) is equal to the value of
8 the peas split or processed, multiplied by the rate of 0.138 percent.

9 (3) Upon every nonprofit corporation and nonprofit association
10 engaging within this state in research and development, as to such
11 corporations and associations, the amount of tax with respect to such
12 activities (~~(shall be)~~) is equal to the gross income derived from such
13 activities multiplied by the rate of 0.484 percent.

14 (~~(4) (Upon every person engaging within this state in the business
15 of slaughtering, breaking and/or processing perishable meat products
16 and/or selling the same at wholesale only and not at retail; as to such
17 persons the tax imposed shall be equal to the gross proceeds derived
18 from such sales multiplied by the rate of 0.138 percent.~~

19 ~~(5))~~ Upon every person engaging within this state in the business
20 of acting as a travel agent or tour operator; as to such persons the
21 amount of the tax with respect to such activities (~~(shall be)~~) is equal
22 to the gross income derived from such activities multiplied by the rate
23 of 0.275 percent.

24 ~~((6))~~ (5) Upon every person engaging within this state in
25 business as an international steamship agent, international customs
26 house broker, international freight forwarder, vessel and/or cargo
27 charter broker in foreign commerce, and/or international air cargo
28 agent; as to such persons the amount of the tax with respect to only
29 international activities (~~(shall be)~~) is equal to the gross income
30 derived from such activities multiplied by the rate of 0.275 percent.

31 ~~((7))~~ (6) Upon every person engaging within this state in the
32 business of stevedoring and associated activities pertinent to the
33 movement of goods and commodities in waterborne interstate or foreign
34 commerce; as to such persons the amount of tax with respect to such
35 business (~~(shall be)~~) is equal to the gross proceeds derived from such
36 activities multiplied by the rate of 0.275 percent. Persons subject to
37 taxation under this subsection (~~(shall be)~~) are exempt from payment of
38 taxes imposed by chapter 82.16 RCW for that portion of their business

1 subject to taxation under this subsection. Stevedoring and associated
2 activities pertinent to the conduct of goods and commodities in
3 waterborne interstate or foreign commerce are defined as all activities
4 of a labor, service or transportation nature whereby cargo may be
5 loaded or unloaded to or from vessels or barges, passing over, onto or
6 under a wharf, pier, or similar structure; cargo may be moved to a
7 warehouse or similar holding or storage yard or area to await further
8 movement in import or export or may move to a consolidation freight
9 station and be stuffed, unstuffed, containerized, separated or
10 otherwise segregated or aggregated for delivery or loaded on any mode
11 of transportation for delivery to its consignee. Specific activities
12 included in this definition are: Wharfage, handling, loading,
13 unloading, moving of cargo to a convenient place of delivery to the
14 consignee or a convenient place for further movement to export mode;
15 documentation services in connection with the receipt, delivery,
16 checking, care, custody and control of cargo required in the transfer
17 of cargo; imported automobile handling prior to delivery to consignee;
18 terminal stevedoring and incidental vessel services, including but not
19 limited to plugging and unplugging refrigerator service to containers,
20 trailers, and other refrigerated cargo receptacles, and securing ship
21 hatch covers.

22 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
23 business of disposing of low-level waste, as defined in RCW 43.145.010;
24 as to such persons the amount of the tax with respect to such business
25 ~~((shall be))~~ is equal to the gross income of the business, excluding
26 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
27 3.3 percent.

28 (b) If the gross income of the taxpayer is attributable to
29 activities both within and without this state, the gross income
30 attributable to this state ~~((shall))~~ must be determined in accordance
31 with the methods of apportionment required under RCW 82.04.460.

32 ~~((+9))~~ (8) Upon every person engaging within this state as an
33 insurance producer or title insurance agent licensed under chapter
34 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
35 to such persons, the amount of the tax with respect to such licensed
36 activities ~~((shall be))~~ is equal to the gross income of such business
37 multiplied by the rate of 0.484 percent.

1 (~~(+10+)~~) (9) Upon every person engaging within this state in
2 business as a hospital, as defined in chapter 70.41 RCW, that is
3 operated as a nonprofit corporation or by the state or any of its
4 political subdivisions, as to such persons, the amount of tax with
5 respect to such activities (~~(shall be)~~) is equal to the gross income of
6 the business multiplied by the rate of 0.75 percent through June 30,
7 1995, and 1.5 percent thereafter.

8 (~~(+11+)~~) (10)(a) Beginning October 1, 2005, upon every person
9 engaging within this state in the business of manufacturing commercial
10 airplanes, or components of such airplanes, or making sales, at retail
11 or wholesale, of commercial airplanes or components of such airplanes,
12 manufactured by the seller, as to such persons the amount of tax with
13 respect to such business (~~(shall)~~), in the case of manufacturers,
14 (~~(be)~~) is equal to the value of the product manufactured and the gross
15 proceeds of sales of the product manufactured, or in the case of
16 processors for hire, (~~(be)~~) is equal to the gross income of the
17 business, multiplied by the rate of:

18 (i) 0.4235 percent from October 1, 2005, through (~~(the later of)~~)
19 June 30, 2007; and

20 (ii) 0.2904 percent beginning July 1, 2007.

21 (b) Beginning July 1, 2008, upon every person who is not eligible
22 to report under the provisions of (a) of this subsection (~~(+11+)~~) (10)
23 and is engaging within this state in the business of manufacturing
24 tooling specifically designed for use in manufacturing commercial
25 airplanes or components of such airplanes, or making sales, at retail
26 or wholesale, of such tooling manufactured by the seller, as to such
27 persons the amount of tax with respect to such business (~~(shall)~~), in
28 the case of manufacturers, (~~(be)~~) is equal to the value of the product
29 manufactured and the gross proceeds of sales of the product
30 manufactured, or in the case of processors for hire, (~~(be)~~) is equal to
31 the gross income of the business, multiplied by the rate of 0.2904
32 percent.

33 (c) For the purposes of this subsection (~~(+11+)~~) (10), "commercial
34 airplane" and "component" have the same meanings as provided in RCW
35 82.32.550.

36 (d) In addition to all other requirements under this title, a
37 person eligible for the tax rate under this subsection (~~(+11+)~~) (10)
38 must report as required under RCW 82.32.545.

1 (e) This subsection (~~((+11))~~) (10) does not apply on and after July
2 1, 2024.

3 (~~((+12))~~) (11)(a) Until July 1, 2024, upon every person engaging
4 within this state in the business of extracting timber or extracting
5 for hire timber; as to such persons the amount of tax with respect to
6 the business (~~(shall)~~), in the case of extractors, (~~(be)~~) is equal to
7 the value of products, including by-products, extracted, or in the case
8 of extractors for hire, (~~(be)~~) is equal to the gross income of the
9 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
10 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
11 June 30, 2024.

12 (b) Until July 1, 2024, upon every person engaging within this
13 state in the business of manufacturing or processing for hire: (i)
14 Timber into timber products or wood products; or (ii) timber products
15 into other timber products or wood products; as to such persons the
16 amount of the tax with respect to the business (~~(shall)~~), in the case
17 of manufacturers, (~~(be)~~) is equal to the value of products, including
18 by-products, manufactured, or in the case of processors for hire,
19 (~~(be)~~) is equal to the gross income of the business, multiplied by the
20 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
21 0.2904 percent from July 1, 2007, through June 30, 2024.

22 (c) Until July 1, 2024, upon every person engaging within this
23 state in the business of selling at wholesale: (i) Timber extracted by
24 that person; (ii) timber products manufactured by that person from
25 timber or other timber products; or (iii) wood products manufactured by
26 that person from timber or timber products; as to such persons the
27 amount of the tax with respect to the business (~~(shall-be)~~) is equal to
28 the gross proceeds of sales of the timber, timber products, or wood
29 products multiplied by the rate of 0.4235 percent from July 1, 2006,
30 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
31 June 30, 2024.

32 (d) Until July 1, 2024, upon every person engaging within this
33 state in the business of selling standing timber; as to such persons
34 the amount of the tax with respect to the business (~~(shall-be)~~) is
35 equal to the gross income of the business multiplied by the rate of
36 0.2904 percent. For purposes of this subsection (~~((+12))~~) (11)(d),
37 "selling standing timber" means the sale of timber apart from the land,
38 where the buyer is required to sever the timber within thirty months

1 from the date of the original contract, regardless of the method of
2 payment for the timber and whether title to the timber transfers
3 before, upon, or after severance.

4 (e) For purposes of this subsection, the following definitions
5 apply:

6 (i) "Biocomposite surface products" means surface material products
7 containing, by weight or volume, more than fifty percent recycled paper
8 and that also use nonpetroleum-based phenolic resin as a bonding agent.

9 (ii) "Paper and paper products" means products made of interwoven
10 cellulosic fibers held together largely by hydrogen bonding. "Paper
11 and paper products" includes newsprint; office, printing, fine, and
12 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
13 kraft bag, construction, and other kraft industrial papers; paperboard,
14 liquid packaging containers, containerboard, corrugated, and solid-
15 fiber containers including linerboard and corrugated medium; and
16 related types of cellulosic products containing primarily, by weight or
17 volume, cellulosic materials. "Paper and paper products" does not
18 include books, newspapers, magazines, periodicals, and other printed
19 publications, advertising materials, calendars, and similar types of
20 printed materials.

21 (iii) "Recycled paper" means paper and paper products having fifty
22 percent or more of their fiber content that comes from postconsumer
23 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
24 "postconsumer waste" means a finished material that would normally be
25 disposed of as solid waste, having completed its life cycle as a
26 consumer item.

27 (iv) "Timber" means forest trees, standing or down, on privately or
28 publicly owned land. "Timber" does not include Christmas trees that
29 are cultivated by agricultural methods or short-rotation hardwoods as
30 defined in RCW 84.33.035.

31 (v) "Timber products" means:

32 (A) Logs, wood chips, sawdust, wood waste, and similar products
33 obtained wholly from the processing of timber, short-rotation hardwoods
34 as defined in RCW 84.33.035, or both;

35 (B) Pulp, including market pulp and pulp derived from recovered
36 paper or paper products; and

37 (C) Recycled paper, but only when used in the manufacture of
38 biocomposite surface products.

1 (vi) "Wood products" means paper and paper products; dimensional
2 lumber; engineered wood products such as particleboard, oriented strand
3 board, medium density fiberboard, and plywood; wood doors; wood
4 windows; and biocomposite surface products.

5 (~~(13)~~) (12) Upon every person engaging within this state in
6 inspecting, testing, labeling, and storing canned salmon owned by
7 another person, as to such persons, the amount of tax with respect to
8 such activities (~~shall be~~) is equal to the gross income derived from
9 such activities multiplied by the rate of 0.484 percent.

10 (~~(14)~~) (13) Upon every person engaging within this state in the
11 business of printing a newspaper, publishing a newspaper, or both, the
12 amount of tax on such business is equal to the gross income of the
13 business multiplied by the rate of 0.2904 percent.

14 **Sec. 606.** RCW 82.04.260 and 2010 c . . . (SHB 3066) s 107 are each
15 amended to read as follows:

16 (1) Upon every person engaging within this state in the business of
17 manufacturing:

18 (a) Wheat into flour, barley into pearl barley, soybeans into
19 soybean oil, canola into canola oil, canola meal, or canola by-
20 products, or sunflower seeds into sunflower oil; as to such persons the
21 amount of tax with respect to such business is equal to the value of
22 the flour, pearl barley, oil, canola meal, or canola by-product
23 manufactured, multiplied by the rate of 0.138 percent;

24 (b) Beginning July 1, 2012, seafood products that remain in a raw,
25 raw frozen, or raw salted state at the completion of the manufacturing
26 by that person; or selling manufactured seafood products that remain in
27 a raw, raw frozen, or raw salted state at the completion of the
28 manufacturing, to purchasers who transport in the ordinary course of
29 business the goods out of this state; as to such persons the amount of
30 tax with respect to such business is equal to the value of the products
31 manufactured or the gross proceeds derived from such sales, multiplied
32 by the rate of 0.138 percent. Sellers must keep and preserve records
33 for the period required by RCW 82.32.070 establishing that the goods
34 were transported by the purchaser in the ordinary course of business
35 out of this state;

36 (c) Beginning July 1, 2012, dairy products that as of September 20,
37 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,

1 including by-products from the manufacturing of the dairy products such
2 as whey and casein; or selling the same to purchasers who transport in
3 the ordinary course of business the goods out of state; as to such
4 persons the tax imposed is equal to the value of the products
5 manufactured or the gross proceeds derived from such sales multiplied
6 by the rate of 0.138 percent. Sellers must keep and preserve records
7 for the period required by RCW 82.32.070 establishing that the goods
8 were transported by the purchaser in the ordinary course of business
9 out of this state;

10 (d)(i) Beginning July 1, 2012, fruit((s)) or vegetable((s))
11 products by canning, preserving, freezing, processing, or dehydrating
12 fresh fruits or vegetables, or selling at wholesale fruit((s)) or
13 vegetable((s)) products manufactured by the seller by canning,
14 preserving, freezing, processing, or dehydrating fresh fruits or
15 vegetables and sold to purchasers who transport in the ordinary course
16 of business the goods out of this state; as to such persons the amount
17 of tax with respect to such business is equal to the value of the
18 products manufactured or the gross proceeds derived from such sales
19 multiplied by the rate of 0.138 percent. Sellers must keep and
20 preserve records for the period required by RCW 82.32.070 establishing
21 that the goods were transported by the purchaser in the ordinary course
22 of business out of this state;

23 (ii) For purposes of this subsection, "fruit or vegetable products"
24 means:

25 (A) Products comprised exclusively of fruits, vegetables, or both;
26 or

27 (B) Products comprised of fruits, vegetables, or both, and which
28 may also contain water, sugar, salt, seasonings, preservatives,
29 binders, stabilizers, flavorings, yeast, and similar substances.
30 However, the amount of all ingredients contained in the product, other
31 than fruits, vegetables, and water, may not exceed the amount of fruits
32 and vegetables contained in the product measured by weight or volume;

33 (iii) "Fruit and vegetable products" includes only products that
34 are intended for human consumption as food or animal consumption as
35 feed;

36 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
37 feedstock, as those terms are defined in RCW 82.29A.135; as to such

1 persons the amount of tax with respect to the business is equal to the
2 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock
3 manufactured, multiplied by the rate of 0.138 percent; and

4 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such
5 persons the amount of tax with respect to the business is equal to the
6 value of wood biomass fuel manufactured, multiplied by the rate of
7 0.138 percent.

8 (2) Upon every person engaging within this state in the business of
9 splitting or processing dried peas; as to such persons the amount of
10 tax with respect to such business is equal to the value of the peas
11 split or processed, multiplied by the rate of 0.138 percent.

12 (3) Upon every nonprofit corporation and nonprofit association
13 engaging within this state in research and development, as to such
14 corporations and associations, the amount of tax with respect to such
15 activities is equal to the gross income derived from such activities
16 multiplied by the rate of 0.484 percent.

17 ~~(4) ((Upon every person engaging within this state in the business
18 of slaughtering, breaking and/or processing perishable meat products
19 and/or selling the same at wholesale only and not at retail; as to such
20 persons the tax imposed is equal to the gross proceeds derived from
21 such sales multiplied by the rate of 0.138 percent.~~

22 ~~(+5))~~ Upon every person engaging within this state in the business
23 of acting as a travel agent or tour operator; as to such persons the
24 amount of the tax with respect to such activities is equal to the gross
25 income derived from such activities multiplied by the rate of 0.275
26 percent.

27 ~~((+6))~~ (5) Upon every person engaging within this state in
28 business as an international steamship agent, international customs
29 house broker, international freight forwarder, vessel and/or cargo
30 charter broker in foreign commerce, and/or international air cargo
31 agent; as to such persons the amount of the tax with respect to only
32 international activities is equal to the gross income derived from such
33 activities multiplied by the rate of 0.275 percent.

34 ~~((+7))~~ (6) Upon every person engaging within this state in the
35 business of stevedoring and associated activities pertinent to the
36 movement of goods and commodities in waterborne interstate or foreign
37 commerce; as to such persons the amount of tax with respect to such
38 business is equal to the gross proceeds derived from such activities

1 multiplied by the rate of 0.275 percent. Persons subject to taxation
2 under this subsection are exempt from payment of taxes imposed by
3 chapter 82.16 RCW for that portion of their business subject to
4 taxation under this subsection. Stevedoring and associated activities
5 pertinent to the conduct of goods and commodities in waterborne
6 interstate or foreign commerce are defined as all activities of a
7 labor, service or transportation nature whereby cargo may be loaded or
8 unloaded to or from vessels or barges, passing over, onto or under a
9 wharf, pier, or similar structure; cargo may be moved to a warehouse or
10 similar holding or storage yard or area to await further movement in
11 import or export or may move to a consolidation freight station and be
12 stuffed, unstuffed, containerized, separated or otherwise segregated or
13 aggregated for delivery or loaded on any mode of transportation for
14 delivery to its consignee. Specific activities included in this
15 definition are: Wharfage, handling, loading, unloading, moving of
16 cargo to a convenient place of delivery to the consignee or a
17 convenient place for further movement to export mode; documentation
18 services in connection with the receipt, delivery, checking, care,
19 custody and control of cargo required in the transfer of cargo;
20 imported automobile handling prior to delivery to consignee; terminal
21 stevedoring and incidental vessel services, including but not limited
22 to plugging and unplugging refrigerator service to containers,
23 trailers, and other refrigerated cargo receptacles, and securing ship
24 hatch covers.

25 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
26 business of disposing of low-level waste, as defined in RCW 43.145.010;
27 as to such persons the amount of the tax with respect to such business
28 is equal to the gross income of the business, excluding any fees
29 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
30 percent.

31 (b) If the gross income of the taxpayer is attributable to
32 activities both within and without this state, the gross income
33 attributable to this state must be determined in accordance with the
34 methods of apportionment required under RCW 82.04.460.

35 ~~((+9))~~ (8) Upon every person engaging within this state as an
36 insurance producer or title insurance agent licensed under chapter
37 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as

1 to such persons, the amount of the tax with respect to such licensed
2 activities is equal to the gross income of such business multiplied by
3 the rate of 0.484 percent.

4 ~~((+10+))~~ (9) Upon every person engaging within this state in
5 business as a hospital, as defined in chapter 70.41 RCW, that is
6 operated as a nonprofit corporation or by the state or any of its
7 political subdivisions, as to such persons, the amount of tax with
8 respect to such activities is equal to the gross income of the business
9 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
10 percent thereafter.

11 ~~((+11+))~~ (10)(a) Beginning October 1, 2005, upon every person
12 engaging within this state in the business of manufacturing commercial
13 airplanes, or components of such airplanes, or making sales, at retail
14 or wholesale, of commercial airplanes or components of such airplanes,
15 manufactured by the seller, as to such persons the amount of tax with
16 respect to such business is, in the case of manufacturers, equal to the
17 value of the product manufactured and the gross proceeds of sales of
18 the product manufactured, or in the case of processors for hire, equal
19 to the gross income of the business, multiplied by the rate of:

- 20 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
21 (ii) 0.2904 percent beginning July 1, 2007.

22 (b) Beginning July 1, 2008, upon every person who is not eligible
23 to report under the provisions of (a) of this subsection (11) and is
24 engaging within this state in the business of manufacturing tooling
25 specifically designed for use in manufacturing commercial airplanes or
26 components of such airplanes, or making sales, at retail or wholesale,
27 of such tooling manufactured by the seller, as to such persons the
28 amount of tax with respect to such business is, in the case of
29 manufacturers, equal to the value of the product manufactured and the
30 gross proceeds of sales of the product manufactured, or in the case of
31 processors for hire, be equal to the gross income of the business,
32 multiplied by the rate of 0.2904 percent.

33 (c) For the purposes of this subsection ~~((+11+))~~ (10), "commercial
34 airplane" and "component" have the same meanings as provided in RCW
35 82.32.550.

36 (d) In addition to all other requirements under this title, a
37 person reporting under the tax rate provided in this subsection

1 (~~(11)~~) (10) must file a complete annual report with the department
2 under RCW 82.32.--- (section 103, chapter . . . (SHB 3066), Laws of
3 2010).

4 (e) This subsection (~~(11)~~) (10) does not apply on and after July
5 1, 2024.

6 (~~(12)~~) (11)(a) Until July 1, 2024, upon every person engaging
7 within this state in the business of extracting timber or extracting
8 for hire timber; as to such persons the amount of tax with respect to
9 the business is, in the case of extractors, equal to the value of
10 products, including by-products, extracted, or in the case of
11 extractors for hire, equal to the gross income of the business,
12 multiplied by the rate of 0.4235 percent from July 1, 2006, through
13 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
14 2024.

15 (b) Until July 1, 2024, upon every person engaging within this
16 state in the business of manufacturing or processing for hire: (i)
17 Timber into timber products or wood products; or (ii) timber products
18 into other timber products or wood products; as to such persons the
19 amount of the tax with respect to the business is, in the case of
20 manufacturers, equal to the value of products, including by-products,
21 manufactured, or in the case of processors for hire, equal to the gross
22 income of the business, multiplied by the rate of 0.4235 percent from
23 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,
24 2007, through June 30, 2024.

25 (c) Until July 1, 2024, upon every person engaging within this
26 state in the business of selling at wholesale: (i) Timber extracted by
27 that person; (ii) timber products manufactured by that person from
28 timber or other timber products; or (iii) wood products manufactured by
29 that person from timber or timber products; as to such persons the
30 amount of the tax with respect to the business is equal to the gross
31 proceeds of sales of the timber, timber products, or wood products
32 multiplied by the rate of 0.4235 percent from July 1, 2006, through
33 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
34 2024.

35 (d) Until July 1, 2024, upon every person engaging within this
36 state in the business of selling standing timber; as to such persons
37 the amount of the tax with respect to the business is equal to the
38 gross income of the business multiplied by the rate of 0.2904 percent.

1 For purposes of this subsection (~~((+12+))~~) (11)(d), "selling standing
2 timber" means the sale of timber apart from the land, where the buyer
3 is required to sever the timber within thirty months from the date of
4 the original contract, regardless of the method of payment for the
5 timber and whether title to the timber transfers before, upon, or after
6 severance.

7 (e) For purposes of this subsection, the following definitions
8 apply:

9 (i) "Biocomposite surface products" means surface material products
10 containing, by weight or volume, more than fifty percent recycled paper
11 and that also use nonpetroleum-based phenolic resin as a bonding agent.

12 (ii) "Paper and paper products" means products made of interwoven
13 cellulosic fibers held together largely by hydrogen bonding. "Paper
14 and paper products" includes newsprint; office, printing, fine, and
15 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
16 kraft bag, construction, and other kraft industrial papers; paperboard,
17 liquid packaging containers, containerboard, corrugated, and solid-
18 fiber containers including linerboard and corrugated medium; and
19 related types of cellulosic products containing primarily, by weight or
20 volume, cellulosic materials. "Paper and paper products" does not
21 include books, newspapers, magazines, periodicals, and other printed
22 publications, advertising materials, calendars, and similar types of
23 printed materials.

24 (iii) "Recycled paper" means paper and paper products having fifty
25 percent or more of their fiber content that comes from postconsumer
26 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
27 "postconsumer waste" means a finished material that would normally be
28 disposed of as solid waste, having completed its life cycle as a
29 consumer item.

30 (iv) "Timber" means forest trees, standing or down, on privately or
31 publicly owned land. "Timber" does not include Christmas trees that
32 are cultivated by agricultural methods or short-rotation hardwoods as
33 defined in RCW 84.33.035.

34 (v) "Timber products" means:

35 (A) Logs, wood chips, sawdust, wood waste, and similar products
36 obtained wholly from the processing of timber, short-rotation hardwoods
37 as defined in RCW 84.33.035, or both;

1 (B) Pulp, including market pulp and pulp derived from recovered
2 paper or paper products; and

3 (C) Recycled paper, but only when used in the manufacture of
4 biocomposite surface products.

5 (vi) "Wood products" means paper and paper products; dimensional
6 lumber; engineered wood products such as particleboard, oriented strand
7 board, medium density fiberboard, and plywood; wood doors; wood
8 windows; and biocomposite surface products.

9 (f) Except for small harvesters as defined in RCW 84.33.035, a
10 person reporting under the tax rate provided in this subsection
11 (~~((+12))~~) (11) must file a complete annual survey with the department
12 under RCW 82.32.--- (section 102, chapter . . . (SHB 3066), Laws of
13 2010).

14 (~~((+13))~~) (12) Upon every person engaging within this state in
15 inspecting, testing, labeling, and storing canned salmon owned by
16 another person, as to such persons, the amount of tax with respect to
17 such activities is equal to the gross income derived from such
18 activities multiplied by the rate of 0.484 percent.

19 (~~((+14))~~) (13)(a) Upon every person engaging within this state in
20 the business of printing a newspaper, publishing a newspaper, or both,
21 the amount of tax on such business is equal to the gross income of the
22 business multiplied by the rate of 0.2904 percent.

23 (b) A person reporting under the tax rate provided in this
24 subsection (~~((+14))~~) (13) must file a complete annual report with the
25 department under RCW 82.32.--- (section 103, chapter . . . (SHB 3066),
26 Laws of 2010).

27 **Sec. 607.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
28 as follows:

29 (1) Upon every person engaging within this state in the business of
30 making sales at retail, except persons taxable as retailers under other
31 provisions of this chapter, as to such persons, the amount of tax with
32 respect to such business (~~((shall be))~~) is equal to the gross proceeds of
33 sales of the business, multiplied by the rate of 0.471 percent.

34 (2) Upon every person engaging within this state in the business of
35 making sales at retail that are exempt from the tax imposed under
36 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
37 82.08.0263, except persons taxable under RCW 82.04.260(~~((+11))~~) (10) or

1 subsection (3) of this section, as to such persons, the amount of tax
2 with respect to such business (~~(shall be)~~) is equal to the gross
3 proceeds of sales of the business, multiplied by the rate of 0.484
4 percent.

5 (3) Upon every person classified by the federal aviation
6 administration as a federal aviation regulation part 145 certificated
7 repair station and that is engaging within this state in the business
8 of making sales at retail that are exempt from the tax imposed under
9 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
10 82.08.0263, as to such persons, the amount of tax with respect to such
11 business (~~(shall be)~~) is equal to the gross proceeds of sales of the
12 business, multiplied by the rate of .2904 percent.

13 **Sec. 608.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
14 as follows:

15 (1) Upon every person engaging within this state in the business of
16 making sales at retail, except persons taxable as retailers under other
17 provisions of this chapter, as to such persons, the amount of tax with
18 respect to such business (~~(shall be)~~) is equal to the gross proceeds of
19 sales of the business, multiplied by the rate of 0.471 percent.

20 (2) Upon every person engaging within this state in the business of
21 making sales at retail that are exempt from the tax imposed under
22 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
23 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10), as
24 to such persons, the amount of tax with respect to such business
25 (~~(shall be)~~) is equal to the gross proceeds of sales of the business,
26 multiplied by the rate of 0.484 percent.

27 **Sec. 609.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
28 each reenacted and amended to read as follows:

29 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
30 (11), a surcharge is imposed on those persons who are subject to any of
31 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
32 otherwise provided in this section, the surcharge is equal to 0.052
33 percent. The surcharge is added to the rates provided in RCW
34 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
35 section expire July 1, 2024.

1 (2) All receipts from the surcharge imposed under this section
2 (~~shall~~) must be deposited into the forest and fish support account
3 created in RCW 76.09.405.

4 (3)(a) The surcharge imposed under this section (~~shall be~~) is
5 suspended if:

6 (i) Receipts from the surcharge total at least eight million
7 dollars during any fiscal biennium; or

8 (ii) The office of financial management certifies to the department
9 that the federal government has appropriated at least two million
10 dollars for participation in forest and fish report-related activities
11 by federally recognized Indian tribes located within the geographical
12 boundaries of the state of Washington for any federal fiscal year.

13 (b)(i) The suspension of the surcharge under (a)(i) of this
14 subsection (3) (~~shall~~) takes effect on the first day of the calendar
15 month that is at least thirty days after the end of the month during
16 which the department determines that receipts from the surcharge total
17 at least eight million dollars during the fiscal biennium. The
18 surcharge (~~shall be~~) is imposed again at the beginning of the
19 following fiscal biennium.

20 (ii) The suspension of the surcharge under (a)(ii) of this
21 subsection (3) (~~shall~~) takes effect on the later of the first day of
22 October of any federal fiscal year for which the federal government
23 appropriates at least two million dollars for participation in forest
24 and fish report-related activities by federally recognized Indian
25 tribes located within the geographical boundaries of the state of
26 Washington, or the first day of a calendar month that is at least
27 thirty days following the date that the office of financial management
28 makes a certification to the department under subsection (5) of this
29 section. The surcharge (~~shall be~~) is imposed again on the first day
30 of the following July.

31 (4)(a) If, by October 1st of any federal fiscal year, the office of
32 financial management certifies to the department that the federal
33 government has appropriated funds for participation in forest and fish
34 report-related activities by federally recognized Indian tribes located
35 within the geographical boundaries of the state of Washington but the
36 amount of the appropriation is less than two million dollars, the
37 department (~~shall~~) must adjust the surcharge in accordance with this
38 subsection.

1 (b) The department (~~shall~~) must adjust the surcharge by an amount
2 that the department estimates will cause the amount of funds deposited
3 into the forest and fish support account for the state fiscal year that
4 begins July 1st and that includes the beginning of the federal fiscal
5 year for which the federal appropriation is made, to be reduced by
6 twice the amount of the federal appropriation for participation in
7 forest and fish report-related activities by federally recognized
8 Indian tribes located within the geographical boundaries of the state
9 of Washington.

10 (c) Any adjustment in the surcharge (~~shall~~) takes effect at the
11 beginning of a calendar month that is at least thirty days after the
12 date that the office of financial management makes the certification
13 under subsection (5) of this section.

14 (d) The surcharge (~~shall be~~) is imposed again at the rate
15 provided in subsection (1) of this section on the first day of the
16 following state fiscal year unless the surcharge is suspended under
17 subsection (3) of this section or adjusted for that fiscal year under
18 this subsection.

19 (e) Adjustments of the amount of the surcharge by the department
20 are final and (~~shall~~) may not be used to challenge the validity of
21 the surcharge imposed under this section.

22 (f) The department (~~shall~~) must provide timely notice to affected
23 taxpayers of the suspension of the surcharge or an adjustment of the
24 surcharge.

25 (5) The office of financial management (~~shall~~) must make the
26 certification to the department as to the status of federal
27 appropriations for tribal participation in forest and fish report-
28 related activities.

29 **Sec. 610.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
30 as follows:

31 (1) The amount of tax with respect to a qualified grocery
32 distribution cooperative's sales of groceries or related goods for
33 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
34 section 602 of this act, to customer-owners of the grocery distribution
35 cooperative is equal to the gross proceeds of sales of the grocery
36 distribution cooperative multiplied by the rate of one and one-half
37 percent.

1 (2) A qualified grocery distribution cooperative is allowed a
2 deduction from the gross proceeds of sales of groceries or related
3 goods for resale, excluding items subject to tax under ((RCW
4 ~~82.04.260(4)~~) section 602 of this act, to customer-owners of the
5 grocery distribution cooperative that is equal to the portion of the
6 gross proceeds of sales for resale that represents the actual cost of
7 the merchandise sold by the grocery distribution cooperative to
8 customer-owners.

9 (3) The definitions in this subsection apply throughout this
10 section unless the context clearly requires otherwise.

11 (a) "Grocery distribution cooperative" means an entity that sells
12 groceries and related items to customer-owners of the grocery
13 distribution cooperative and has customer-owners, in the aggregate, who
14 own a majority of the outstanding ownership interests of the grocery
15 distribution cooperative or of the entity controlling the grocery
16 distribution cooperative. "Grocery distribution cooperative" includes
17 an entity that controls a grocery distribution cooperative.

18 (b) "Qualified grocery distribution cooperative" means:

19 (i) A grocery distribution cooperative that has been determined by
20 a court of record of the state of Washington to be not engaged in
21 wholesaling or making sales at wholesale, within the meaning of RCW
22 82.04.270 or any similar provision of a municipal ordinance that
23 imposes a tax on gross receipts, gross proceeds of sales, or gross
24 income, with respect to purchases made by customer-owners, and
25 subsequently changes its form of doing business to make sales at
26 wholesale of groceries or related items to its customer-owners; or

27 (ii) A grocery distribution cooperative that has acquired
28 substantially all of the assets of a grocery distribution cooperative
29 described in (b)(i) of this subsection.

30 (c) "Customer-owner" means a person who has an ownership interest
31 in a grocery distribution cooperative and purchases groceries and
32 related items at wholesale from that grocery distribution cooperative.

33 (d) "Controlling" means holding fifty percent or more of the voting
34 interests of an entity and having at least equal power to direct or
35 cause the direction of the management and policies of the entity,
36 whether through the ownership of voting securities, by contract, or
37 otherwise.

1 **Sec. 611.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
2 as follows:

3 This chapter does not apply to any sale of standing timber excluded
4 from the definition of "sale" in RCW 82.45.010(3). The definitions in
5 RCW 82.04.260(~~((+12+))~~) (11) apply to this section.

6 **Sec. 612.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
7 each reenacted and amended to read as follows:

8 (1) Every person engaged in activities that are subject to tax
9 under two or more provisions of RCW 82.04.230 through 82.04.298,
10 inclusive, (~~((shall-be))~~) is taxable under each provision applicable to
11 those activities.

12 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
13 82.04.294(2), or 82.04.260 (1)(b), (c), (~~((+4+))~~) or (d), (10), or (11),
14 or (~~((+12+))~~) section 602(2) of this act with respect to selling products
15 in this state, including those persons who are also taxable under RCW
16 82.04.261, (~~((shall-be))~~) are allowed a credit against those taxes for
17 any (a) manufacturing taxes paid with respect to the manufacturing of
18 products so sold in this state, and/or (b) extracting taxes paid with
19 respect to the extracting of products so sold in this state or
20 ingredients of products so sold in this state. Extracting taxes taken
21 as credit under subsection (3) of this section may also be taken under
22 this subsection, if otherwise allowable under this subsection. The
23 amount of the credit (~~((shall))~~) may not exceed the tax liability arising
24 under this chapter with respect to the sale of those products.

25 (3) Persons taxable as manufacturers under RCW 82.04.240 or
26 82.04.260 (1)(b) or (~~((+12+))~~) (11), including those persons who are also
27 taxable under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against
28 those taxes for any extracting taxes paid with respect to extracting
29 the ingredients of the products so manufactured in this state. The
30 amount of the credit (~~((shall))~~) may not exceed the tax liability arising
31 under this chapter with respect to the manufacturing of those products.

32 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
33 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~((+4+))~~) (10), or
34 (11), or (~~((+12+))~~) section 602(1) of this act, including those persons
35 who are also taxable under RCW 82.04.261, with respect to extracting or
36 manufacturing products in this state (~~((shall-be))~~) are allowed a credit
37 against those taxes for any (i) gross receipts taxes paid to another

1 state with respect to the sales of the products so extracted or
2 manufactured in this state, (ii) manufacturing taxes paid with respect
3 to the manufacturing of products using ingredients so extracted in this
4 state, or (iii) manufacturing taxes paid with respect to manufacturing
5 activities completed in another state for products so manufactured in
6 this state. The amount of the credit (~~shall~~) may not exceed the tax
7 liability arising under this chapter with respect to the extraction or
8 manufacturing of those products.

9 (5) For the purpose of this section:

10 (a) "Gross receipts tax" means a tax:

11 (i) Which is imposed on or measured by the gross volume of
12 business, in terms of gross receipts or in other terms, and in the
13 determination of which the deductions allowed would not constitute the
14 tax an income tax or value added tax; and

15 (ii) Which is also not, pursuant to law or custom, separately
16 stated from the sales price.

17 (b) "State" means (i) the state of Washington, (ii) a state of the
18 United States other than Washington, or any political subdivision of
19 such other state, (iii) the District of Columbia, and (iv) any foreign
20 country or political subdivision thereof.

21 (c) "Manufacturing tax" means a gross receipts tax imposed on the
22 act or privilege of engaging in business as a manufacturer, and
23 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
24 82.04.2909(1), 82.04.260 (1), (2), (~~(4)~~) (10), and (11), (~~and~~
25 ~~(12)~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
26 imposed under RCW 82.04.261 on persons who are engaged in business as
27 a manufacturer; and (iii) similar gross receipts taxes paid to other
28 states.

29 (d) "Extracting tax" means a gross receipts tax imposed on the act
30 or privilege of engaging in business as an extractor, and includes (i)
31 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(12)~~)
32 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
33 engaged in business as an extractor; and (iii) similar gross receipts
34 taxes paid to other states.

35 (e) "Business", "manufacturer", "extractor", and other terms used
36 in this section have the meanings given in RCW 82.04.020 through
37 82.04.212, notwithstanding the use of those terms in the context of
38 describing taxes imposed by other states.

1 **Sec. 613.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
2 read as follows:

3 (1) In computing the tax imposed under this chapter, a credit is
4 allowed for property taxes and leasehold excise taxes paid during the
5 calendar year.

6 (2) The credit is equal to:

7 (a)(i)(A) Property taxes paid on buildings, and land upon which the
8 buildings are located, constructed after December 1, 2003, and used
9 exclusively in manufacturing commercial airplanes or components of such
10 airplanes; and

11 (B) Leasehold excise taxes paid with respect to buildings
12 constructed after January 1, 2006, the land upon which the buildings
13 are located, or both, if the buildings are used exclusively in
14 manufacturing commercial airplanes or components of such airplanes; and

15 (C) Property taxes or leasehold excise taxes paid on, or with
16 respect to, buildings constructed after June 30, 2008, the land upon
17 which the buildings are located, or both, and used exclusively for
18 aerospace product development or in providing aerospace services, by
19 persons not within the scope of (a)(i)(A) and (B) of this subsection

20 (2) and are: (I) Engaged in manufacturing tooling specifically
21 designed for use in manufacturing commercial airplanes or their
22 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

23 (ii) Property taxes attributable to an increase in assessed value
24 due to the renovation or expansion, after: (A) December 1, 2003, of a
25 building used exclusively in manufacturing commercial airplanes or
26 components of such airplanes; and (B) June 30, 2008, of buildings used
27 exclusively for aerospace product development or in providing aerospace

28 services, by persons not within the scope of (a)(ii)(A) of this
29 subsection (2) and are: (I) Engaged in manufacturing tooling
30 specifically designed for use in manufacturing commercial airplanes or
31 their components; or (II) taxable under RCW 82.04.290(3) or
32 82.04.250(3); and

33 (b) An amount equal to:

34 (i)(A) Property taxes paid, by persons taxable under RCW
35 82.04.260(~~(+11)~~) (10)(a), on machinery and equipment exempt under RCW
36 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

37 (B) Property taxes paid, by persons taxable under RCW

1 82.04.260(~~((+11+))~~) (10)(b), on machinery and equipment exempt under RCW
2 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

3 (C) Property taxes paid, by persons taxable under RCW
4 (~~((82.04.0250(3))~~~~[82.04.250(3)]~~)) 82.04.250(3) or 82.04.290(3), on
5 computer hardware, computer peripherals, and software exempt under RCW
6 82.08.975 or 82.12.975 and acquired after June 30, 2008.

7 (ii) For purposes of determining the amount eligible for credit
8 under (i)(A) and (B) of this subsection (2)(b), the amount of property
9 taxes paid is multiplied by a fraction.

10 (~~((+I+))~~) (A) The numerator of the fraction is the total taxable
11 amount subject to the tax imposed under RCW 82.04.260(~~((+11+))~~) (10) (a)
12 or (b) on the applicable business activities of manufacturing
13 commercial airplanes, components of such airplanes, or tooling
14 specifically designed for use in the manufacturing of commercial
15 airplanes or components of such airplanes.

16 (~~((+II+))~~) (B) The denominator of the fraction is the total taxable
17 amount subject to the tax imposed under all manufacturing
18 classifications in chapter 82.04 RCW.

19 (~~((+III+))~~) (C) For purposes of both the numerator and denominator of
20 the fraction, the total taxable amount refers to the total taxable
21 amount required to be reported on the person's returns for the calendar
22 year before the calendar year in which the credit under this section is
23 earned. The department may provide for an alternative method for
24 calculating the numerator in cases where the tax rate provided in RCW
25 82.04.260(~~((+11+))~~) (10) for manufacturing was not in effect during the
26 full calendar year before the calendar year in which the credit under
27 this section is earned.

28 (~~((+IV+))~~) (D) No credit is available under (b)(i)(A) or (B) of this
29 subsection (2) if either the numerator or the denominator of the
30 fraction is zero. If the fraction is greater than or equal to nine-
31 tenths, then the fraction is rounded to one.

32 (~~((+V+))~~) (E) As used in (~~((+III+))~~) (b)(ii)(C) of this subsection
33 (2)(~~((b)(ii)(C))~~), "returns" means the tax returns for which the tax
34 imposed under this chapter is reported to the department.

35 (3) The definitions in this subsection apply throughout this
36 section, unless the context clearly indicates otherwise.

37 (a) "Aerospace product development" has the same meaning as
38 provided in RCW 82.04.4461.

1 (b) "Aerospace services" has the same meaning given in RCW
2 82.08.975.

3 (c) "Commercial airplane" and "component" have the same meanings as
4 provided in RCW 82.32.550.

5 (4) A credit earned during one calendar year may be carried over to
6 be credited against taxes incurred in a subsequent calendar year, but
7 may not be carried over a second year. No refunds may be granted for
8 credits under this section.

9 (5) In addition to all other requirements under this title, a
10 person taking the credit under this section must report as required
11 under RCW 82.32.545.

12 (6) This section expires July 1, 2024.

13 **Sec. 614.** RCW 82.04.4463 and 2010 c . . . (SHB 3066) s 116 are
14 each amended to read as follows:

15 (1) In computing the tax imposed under this chapter, a credit is
16 allowed for property taxes and leasehold excise taxes paid during the
17 calendar year.

18 (2) The credit is equal to:

19 (a)(i)(A) Property taxes paid on buildings, and land upon which the
20 buildings are located, constructed after December 1, 2003, and used
21 exclusively in manufacturing commercial airplanes or components of such
22 airplanes; and

23 (B) Leasehold excise taxes paid with respect to buildings
24 constructed after January 1, 2006, the land upon which the buildings
25 are located, or both, if the buildings are used exclusively in
26 manufacturing commercial airplanes or components of such airplanes; and

27 (C) Property taxes or leasehold excise taxes paid on, or with
28 respect to, buildings constructed after June 30, 2008, the land upon
29 which the buildings are located, or both, and used exclusively for
30 aerospace product development, manufacturing tooling specifically
31 designed for use in manufacturing commercial airplanes or their
32 components, or in providing aerospace services, by persons not within
33 the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable
34 under RCW 82.04.290(3), 82.04.260(~~(+11)~~) (10)(b), or 82.04.250(3); or

35 (ii) Property taxes attributable to an increase in assessed value
36 due to the renovation or expansion, after: (A) December 1, 2003, of a
37 building used exclusively in manufacturing commercial airplanes or

1 components of such airplanes; and (B) June 30, 2008, of buildings used
2 exclusively for aerospace product development, manufacturing tooling
3 specifically designed for use in manufacturing commercial airplanes or
4 their components, or in providing aerospace services, by persons not
5 within the scope of (a)(ii)(A) of this subsection (2) and are taxable
6 under RCW 82.04.290(3), 82.04.260(~~((+11+))~~) (10)(b), or 82.04.250(3); and

7 (b) An amount equal to:

8 (i)(A) Property taxes paid, by persons taxable under RCW
9 82.04.260(~~((+11+))~~) (10)(a), on machinery and equipment exempt under RCW
10 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

11 (B) Property taxes paid, by persons taxable under RCW
12 82.04.260(~~((+11+))~~) (10)(b), on machinery and equipment exempt under RCW
13 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

14 (C) Property taxes paid, by persons taxable under RCW 82.04.250(3)
15 or 82.04.290(3), on computer hardware, computer peripherals, and
16 software exempt under RCW 82.08.975 or 82.12.975 and acquired after
17 June 30, 2008.

18 (ii) For purposes of determining the amount eligible for credit
19 under (i)(A) and (B) of this subsection (2)(b), the amount of property
20 taxes paid is multiplied by a fraction.

21 (A) The numerator of the fraction is the total taxable amount
22 subject to the tax imposed under RCW 82.04.260(~~((+11+))~~) (10) (a) or (b)
23 on the applicable business activities of manufacturing commercial
24 airplanes, components of such airplanes, or tooling specifically
25 designed for use in the manufacturing of commercial airplanes or
26 components of such airplanes.

27 (B) The denominator of the fraction is the total taxable amount
28 subject to the tax imposed under all manufacturing classifications in
29 chapter 82.04 RCW.

30 (C) For purposes of both the numerator and denominator of the
31 fraction, the total taxable amount refers to the total taxable amount
32 required to be reported on the person's returns for the calendar year
33 before the calendar year in which the credit under this section is
34 earned. The department may provide for an alternative method for
35 calculating the numerator in cases where the tax rate provided in RCW
36 82.04.260(~~((+11+))~~) (10) for manufacturing was not in effect during the
37 full calendar year before the calendar year in which the credit under
38 this section is earned.

1 (D) No credit is available under (b)(i)(A) or (B) of this
2 subsection (2) if either the numerator or the denominator of the
3 fraction is zero. If the fraction is greater than or equal to nine-
4 tenths, then the fraction is rounded to one.

5 (E) As used in (b)(ii)(C) of this subsection (2)(~~(b)(ii)~~),
6 "returns" means the tax returns for which the tax imposed under this
7 chapter is reported to the department.

8 (3) The definitions in this subsection apply throughout this
9 section, unless the context clearly indicates otherwise.

10 (a) "Aerospace product development" has the same meaning as
11 provided in RCW 82.04.4461.

12 (b) "Aerospace services" has the same meaning given in RCW
13 82.08.975.

14 (c) "Commercial airplane" and "component" have the same meanings as
15 provided in RCW 82.32.550.

16 (4) A credit earned during one calendar year may be carried over to
17 be credited against taxes incurred in a subsequent calendar year, but
18 may not be carried over a second year. No refunds may be granted for
19 credits under this section.

20 (5) In addition to all other requirements under this title, a
21 person claiming the credit under this section must file a complete
22 annual report with the department under RCW 82.32.--- (section 103,
23 chapter . . . (SHB 3066), Laws of 2010).

24 (6) This section expires July 1, 2024.

25 **Sec. 615.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
26 read as follows:

27 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
28 printer or publisher, of computer equipment, including repair parts and
29 replacement parts for such equipment, when the computer equipment is
30 used primarily in the printing or publishing of any printed material,
31 or to sales of or charges made for labor and services rendered in
32 respect to installing, repairing, cleaning, altering, or improving the
33 computer equipment. This exemption applies only to computer equipment
34 not otherwise exempt under RCW 82.08.02565.

35 (2) A person taking the exemption under this section must keep
36 records necessary for the department to verify eligibility under this
37 section. This exemption is available only when the purchaser provides

1 the seller with an exemption certificate in a form and manner
2 prescribed by the department. The seller (~~shall~~) must retain a copy
3 of the certificate for the seller's files.

4 (3) The definitions in this subsection (3) apply throughout this
5 section, unless the context clearly requires otherwise.

6 (a) "Computer" has the same meaning as in RCW 82.04.215.

7 (b) "Computer equipment" means a computer and the associated
8 physical components that constitute a computer system, including
9 monitors, keyboards, printers, modems, scanners, pointing devices, and
10 other computer peripheral equipment, cables, servers, and routers.
11 "Computer equipment" also includes digital cameras and computer
12 software.

13 (c) "Computer software" has the same meaning as in RCW 82.04.215.

14 (d) "Primarily" means greater than fifty percent as measured by
15 time.

16 (e) "Printer or publisher" means a person, as defined in RCW
17 82.04.030, who is subject to tax under RCW 82.04.260(~~(+14)~~) (13) or
18 82.04.280(1).

19 (4) "Computer equipment" does not include computer equipment that
20 is used primarily for administrative purposes including but not limited
21 to payroll processing, accounting, customer service, telemarketing, and
22 collection. If computer equipment is used simultaneously for
23 administrative and nonadministrative purposes, the administrative use
24 (~~shall~~) must be disregarded during the period of simultaneous use for
25 purposes of determining whether the computer equipment is used
26 primarily for administrative purposes.

27 **Sec. 616.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
28 read as follows:

29 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
30 ~~first day of the month in which the governor and a manufacturer of~~
31 ~~commercial airplanes sign a memorandum of agreement regarding an~~
32 ~~affirmative final decision to site a significant commercial airplane~~
33 ~~final assembly facility in Washington state. The department shall~~
34 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
35 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
36 ~~appropriate by the department.~~

1 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
2 ~~siting of a significant commercial airplane final assembly facility in~~
3 ~~the state of Washington. If a memorandum of agreement under subsection~~
4 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
5 ~~2003 2nd sp. sess. is null and void.~~

6 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
7 ~~2007.~~

8 ~~(ii) If on December 31, 2007, final assembly of a superefficient~~
9 ~~airplane has not begun in Washington state, the department shall~~
10 ~~provide notice of such to affected taxpayers, the legislature, and~~
11 ~~others as deemed appropriate by the department.~~

12 ~~(2) The definitions in this subsection apply throughout this~~
13 ~~section.~~

14 ~~(a))~~ "Commercial airplane" has its ordinary meaning, which is an
15 airplane certified by the federal aviation administration for
16 transporting persons or property, and any military derivative of such
17 an airplane.

18 ~~((b))~~ (2) "Component" means a part or system certified by the
19 federal aviation administration for installation or assembly into a
20 commercial airplane.

21 ~~((c) "Final assembly of a superefficient airplane" means the~~
22 ~~activity of assembling an airplane from components parts necessary for~~
23 ~~its mechanical operation such that the finished commercial airplane is~~
24 ~~ready to deliver to the ultimate consumer.~~

25 ~~(d) "Significant commercial airplane final assembly facility" means~~
26 ~~a location with the capacity to produce at least thirty six~~
27 ~~superefficient airplanes a year.~~

28 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
29 ~~significant commercial airplane final assembly facility in Washington~~
30 ~~state.~~

31 ~~(f))~~ (3) "Superefficient airplane" means a twin aisle airplane
32 that carries between two hundred and three hundred fifty passengers,
33 with a range of more than seven thousand two hundred nautical miles, a
34 cruising speed of approximately mach .85, and that uses fifteen to
35 twenty percent less fuel than other similar airplanes on the market.

36 **Sec. 617.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
37 as follows:

1 A sale of standing timber is exempt from tax under this chapter if
2 the gross income from such sale is taxable under RCW 82.04.260(~~(+12+)~~)
3 (11)(d).

4 **Sec. 618.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
5 read as follows:

6 Notwithstanding RCW 35.102.130, a city that imposes a business and
7 occupation tax must allocate a person's gross income from the
8 activities of printing, and of publishing newspapers, periodicals, or
9 magazines, to the principal place in this state from which the
10 taxpayer's business is directed or managed. As used in this section,
11 the activities of printing, and of publishing newspapers, periodicals,
12 or magazines are those activities to which the tax rates in RCW
13 82.04.260(~~(+14+)~~) (13) and 82.04.280(1) apply.

14 **Sec. 619.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
15 read as follows:

16 (1) As to insurers, other than title insurers and taxpayers under
17 RCW 48.14.0201, the taxes imposed by this title (~~(shall be)~~) are in
18 lieu of all other taxes, except as otherwise provided in this section.

19 (2) Subsection (1) of this section does not apply with respect to:

20 (a) Taxes on real and tangible personal property;

21 (b) Excise taxes on the sale, purchase, use, or possession of (i)
22 real property; (ii) tangible personal property; (iii) extended
23 warranties; (iv) services, including digital automated services as
24 defined in RCW 82.04.192; and (v) digital goods and digital codes as
25 those terms are defined in RCW 82.04.192; and

26 (c) The tax imposed in RCW 82.04.260(~~(+10+)~~) (9), regarding public
27 and nonprofit hospitals.

28 (3) For the purposes of this section, the term "taxes" includes
29 taxes imposed by the state or any county, city, town, municipal
30 corporation, quasi-municipal corporation, or other political
31 subdivision.

32 **PART VII**

33 **Suspending the Sales and Use Tax Exemption for Livestock Nutrient**
34 **Equipment and Facilities**

1 **Sec. 701.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 does not apply to sales to
4 eligible persons of:

5 (a) Qualifying livestock nutrient management equipment;

6 (b) Labor and services rendered in respect to installing,
7 repairing, cleaning, altering, or improving qualifying livestock
8 nutrient management equipment; and

9 (c)(i) Labor and services rendered in respect to repairing,
10 cleaning, altering, or improving of qualifying livestock nutrient
11 management facilities, or to tangible personal property that becomes an
12 ingredient or component of qualifying livestock nutrient management
13 facilities in the course of repairing, cleaning, altering, or improving
14 of such facilities.

15 (ii) The exemption provided in this subsection (1)(c) does not
16 apply to the sale of or charge made for: (A) Labor and services
17 rendered in respect to the constructing of new, or replacing previously
18 existing, qualifying livestock nutrient management facilities; or (B)
19 tangible personal property that becomes an ingredient or component of
20 qualifying livestock nutrient management facilities during the course
21 of constructing new, or replacing previously existing, qualifying
22 livestock nutrient management facilities.

23 (2) The exemption provided in subsection (1) of this section
24 applies to sales made after the livestock nutrient management plan is:
25 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
26 permit issued under chapter 90.48 RCW; or (c) approved as required
27 under subsection (4)(c)(iii) of this section.

28 (3)(a) The department of revenue must provide an exemption
29 certificate to an eligible person upon application by that person. The
30 department of agriculture must provide a list of eligible persons, as
31 defined in subsection (4)(c)(i) and (ii) of this section, to the
32 department of revenue. Conservation districts must maintain lists of
33 eligible persons as defined in subsection (4)(c)(iii) of this section
34 to allow the department of revenue to verify eligibility. The
35 application must be in a form and manner prescribed by the department
36 and must contain information regarding the location of the dairy or
37 animal feeding operation and other information the department may
38 require.

1 (b) A person claiming an exemption under this section must keep
2 records necessary for the department to verify eligibility under this
3 section. The exemption is available only when the buyer provides the
4 seller with an exemption certificate in a form and manner prescribed by
5 the department. The seller must retain a copy of the certificate for
6 the seller's files.

7 (4) The definitions in this subsection apply to this section and
8 RCW 82.12.890 unless the context clearly requires otherwise:

9 (a) "Animal feeding operation" means a lot or facility, other than
10 an aquatic animal production facility, where the following conditions
11 are met:

12 (i) Animals, other than aquatic animals, have been, are, or will be
13 stabled or confined and fed or maintained for a total of forty-five
14 days or more in any twelve-month period; and

15 (ii) Crops, vegetation, forage growth, or postharvest residues are
16 not sustained in the normal growing season over any portion of the lot
17 or facility.

18 (b) "Conservation district" means a subdivision of state government
19 organized under chapter 89.08 RCW.

20 (c) "Eligible person" means a person: (i) Licensed to produce milk
21 under chapter 15.36 RCW who has a certified dairy nutrient management
22 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
23 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
24 owns an animal feeding operation and has a nutrient management plan
25 approved by a conservation district as meeting natural resource
26 conservation service field office technical guide standards and who
27 possesses an exemption certificate under RCW 82.08.855.

28 (d) "Handling and treatment of livestock manure" means the
29 activities of collecting, storing, moving, or transporting livestock
30 manure, separating livestock manure solids from liquids, or applying
31 livestock manure to the agricultural lands of an eligible person other
32 than through the use of pivot or linear type traveling irrigation
33 systems.

34 (e) "Permit" means either a state waste discharge permit or a
35 national pollutant discharge elimination system permit, or both.

36 (f) "Qualifying livestock nutrient management equipment" means the
37 following tangible personal property for exclusive use in the handling
38 and treatment of livestock manure, including repair and replacement

1 parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers;
2 (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler
3 irrigation systems; (vii) lagoon and pond liners and floating covers;
4 (viii) loaders; (ix) manure composting devices; (x) manure spreaders;
5 (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry
6 house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry
7 house washers; (xvi) poultry litter saver machines; (xvii) pipes;
8 (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors
9 and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

10 (g) "Qualifying livestock nutrient management facilities" means the
11 following structures and facilities for exclusive use in the handling
12 and treatment of livestock manure: (i) Flush systems; (ii) lagoons;
13 (iii) liquid livestock manure storage structures, such as concrete
14 tanks or glass-lined steel tanks; and (iv) structures used solely for
15 the dry storage of manure, including roofed stacking facilities.

16 (5) The exemption under this section does not apply to sales made
17 from April 1, 2010, through June 30, 2013.

18 **Sec. 702.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
19 read as follows:

20 (1) The provisions of this chapter do not apply with respect to the
21 use by an eligible person of:

22 (a) Qualifying livestock nutrient management equipment;

23 (b) Labor and services rendered in respect to installing,
24 repairing, cleaning, altering, or improving qualifying livestock
25 nutrient management equipment; and

26 (c)(i) Tangible personal property that becomes an ingredient or
27 component of qualifying livestock nutrient management facilities in the
28 course of repairing, cleaning, altering, or improving of such
29 facilities.

30 (ii) The exemption provided in this subsection (1)(c) does not
31 apply to the use of tangible personal property that becomes an
32 ingredient or component of qualifying livestock nutrient management
33 facilities during the course of constructing new, or replacing
34 previously existing, qualifying livestock nutrient management
35 facilities.

36 (2)(a) To be eligible, the equipment and facilities must be used

1 exclusively for activities necessary to maintain a livestock nutrient
2 management plan.

3 (b) The exemption applies to the use of tangible personal property
4 and labor and services made after the livestock nutrient management
5 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
6 of the permit issued under chapter 90.48 RCW; or (iii) approved as
7 required under RCW 82.08.890(4)(c)(iii).

8 (3) The exemption certificate and recordkeeping requirements of RCW
9 82.08.890 apply to this section. The definitions in RCW 82.08.890
10 apply to this section.

11 (4) The exemption under this section does not apply to the use of
12 tangible personal property and services if first use of the property or
13 services occurs in this state from April 1, 2010, through June 30,
14 2013.

15 **PART VIII**

16 **Ending the Preferential Business and Occupation Tax Treatment Received**
17 **by Directors of Corporations**

18 NEW SECTION. **Sec. 801.** (1) In adopting the state's business and
19 occupation tax, the legislature intended to tax virtually all business
20 activities carried on within the state. See Simpson Inv. Co. v. Dep't
21 of Revenue, 141 Wn.2d 139, 149 (2000). The legislature recognizes that
22 the business and occupation tax applies to all activities engaged in
23 with the object of gain, benefit, or advantage to the taxpayer or to
24 another person or class, directly or indirectly, unless a specific
25 exemption applies.

26 (2) One of the major business and occupation tax exemptions is
27 provided in RCW 82.04.360 for income earned as an employee or servant
28 as distinguished from income earned as an independent contractor. The
29 legislature's intent in providing this exemption was to exempt employee
30 wages from the business and occupation tax but not to exempt income
31 earned as an independent contractor.

32 (3) The legislature finds that corporate directors are not
33 employees or servants of the corporation whose board they serve on and
34 therefore are not entitled to a business and occupation tax exemption
35 under RCW 82.04.360. The legislature further finds that there are no

1 business and occupation tax exemptions for compensation received for
2 serving as a member of a corporation's board of directors.

3 (4) The legislature also finds that there is a widespread
4 misunderstanding among corporate directors that the business and
5 occupation tax does not apply to the compensation they receive for
6 serving as a director of a corporation. It is the legislature's
7 expectation that the department of revenue will take appropriate
8 measures to ensure that corporate directors understand and comply with
9 their business and occupation tax obligations with respect to their
10 director compensation. However, because of the widespread
11 misunderstanding by corporate directors of their liability for business
12 and occupation tax on director compensation, the legislature finds that
13 it is appropriate in this unique situation to provide limited relief
14 against the retroactive assessment of business and occupation taxes on
15 corporate director compensation.

16 (5) The legislature also reaffirms its intent that all income of
17 all independent contractors is subject to business and occupation tax
18 unless specifically exempt under the Constitution or laws of this state
19 or the United States.

20 **Sec. 802.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
21 each reenacted and amended to read as follows:

22 (1) This chapter (~~shall~~) does not apply to any person in respect
23 to his or her employment in the capacity of an employee or servant as
24 distinguished from that of an independent contractor. For the purposes
25 of this section, the definition of employee (~~shall~~) includes those
26 persons that are defined in section 3121(d)(3)(B) of the federal
27 internal revenue code of 1986, as amended through January 1, 1991.

28 (2) (~~A booth renter, as defined by RCW 18.16.020, is an~~
29 ~~independent contractor for purposes of this chapter.~~) Until April 1,
30 2010, this chapter does not apply to amounts received by an individual
31 from a corporation as compensation for serving as a member of that
32 corporation's board of directors. Beginning April 1, 2010, such
33 amounts are taxable under RCW 82.04.290(2).

34 **Sec. 803.** RCW 82.04.360 and 2010 c . . . (E2SHB 1597) s 207 are
35 each amended to read as follows:

36 (1) This chapter does not apply to any person in respect to his or

1 her employment in the capacity of an employee or servant as
2 distinguished from that of an independent contractor. For the purposes
3 of this section, the definition of employee (~~shall~~) includes those
4 persons that are defined in section 3121(d)(3)(B) of the federal
5 internal revenue code of 1986, as amended through January 1, 1991.

6 (2) Until April 1, 2010, this chapter does not apply to amounts
7 received by an individual from a corporation as compensation for
8 serving as a member of that corporation's board of directors.
9 Beginning April 1, 2010, such amounts are taxable under RCW
10 82.04.290(2).

11 (3) A booth renter is an independent contractor for purposes of
12 this chapter. For purposes of this (~~sub~~)section, "booth renter"
13 means any person who:

- 14 (a) Performs cosmetology, barbering, esthetics, or manicuring
15 services for which a license is required under chapter 18.16 RCW; and
- 16 (b) Pays a fee for the use of salon or shop facilities and receives
17 no compensation or other consideration from the owner of the salon or
18 shop for the services performed.

19 **PART IX**

20 **Airplane Excise Tax**

21 **Sec. 901.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
22 amended to read as follows:

23 (1) The amount of the tax imposed by this chapter for each calendar
24 year (~~shall be~~) is as follows:

25 (a) Except as otherwise provided in this subsection, aircraft with
26 a date of manufacture on or before December 31, 1970:

27	Type of aircraft	((Registration
28		fee)) <u>Tax</u>
29	Single engine fixed wing	\$ ((50))
30		<u>100</u>
31	Small multi-engine fixed wing	((65)) <u>130</u>
32	Large multi-engine fixed wing	((80)) <u>160</u>
33	Turboprop multi-engine fixed wing	((100))
34		<u>6,750</u>

1	((Turbojet multi-engine fixed wing	125))
2	Helicopter	((75)) 150
3	Sailplane	((20))40
4	Lighter than air	((20)) 40
5	Home built	((20)) 40

6 (b) Except as otherwise provided in this subsection, aircraft with
7 a date of manufacture after December 31, 1970:

8	<u>Type of aircraft</u>	<u>Tax</u>
9	<u>Single engine fixed wing</u>	\$ 338
10	<u>Small multi-engine fixed wing</u>	439
11	<u>Large multi-engine fixed wing</u>	540
12	<u>Turboprop multi-engine fixed wing</u>	6,750
13	<u>Helicopter</u>	338
14	<u>Sailplane</u>	135
15	<u>Lighter than air</u>	135
16	<u>Home built</u>	135

17 (c) Turbojet multi-engine fixed wing aircraft:

18	<u>Maximum Certificated Takeoff</u>	<u>Tax</u>
19	<u>Weight</u>	
20	<u>Up to 19,999 pounds</u>	\$ 13,500
21	<u>20,000 to 24,999 pounds</u>	18,000
22	<u>25,000 to 44,999 pounds</u>	22,500
23	<u>45,000 to 84,999 pounds</u>	33,750
24	<u>85,000 and over</u>	45,000

25 (2) The amount of tax imposed under subsection (1) of this section
26 for each calendar year (~~((shall))~~) must be divided into twelve parts
27 corresponding to the months of the calendar year and the excise tax
28 upon an aircraft registered for the first time in this state after the
29 last day of any month (~~((shall))~~) may only be levied for the remaining

1 months of the calendar year including the month in which the aircraft
2 is being registered(~~(:—PROVIDED, That)~~). However, the minimum amount
3 payable (~~(shall be)~~) is three dollars.

4 (3) An aircraft (~~(shall be)~~) is deemed registered for the first
5 time in this state when such aircraft was not previously registered by
6 this state for the year immediately preceding the year in which
7 application for registration is made.

8 (4) For the purposes of this section, "maximum certificated takeoff
9 weight" means the maximum takeoff weight authorized by the terms of the
10 aircraft airworthiness certificate.

11 **Sec. 902.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
12 read as follows:

13 The secretary (~~(shall)~~) must regularly pay to the state treasurer
14 the excise taxes collected under this chapter, (~~(which shall be~~
15 ~~credited by the state treasurer as follows:—Ninety percent to the~~
16 ~~general fund and ten percent to the aeronautics account in the~~
17 ~~transportation fund for administrative expenses)~~) for deposit into the
18 general fund.

19 **PART X**
20 **Tax Debts**

21 **Sec. 1001.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
22 read as follows:

23 (1) (~~(Upon termination, dissolution, or abandonment of a corporate~~
24 ~~or limited liability company business, any officer, member, manager, or~~
25 ~~other person having control or supervision of retail sales tax funds~~
26 ~~collected and held in trust under RCW 82.08.050, or who is charged with~~
27 ~~the responsibility for the filing of returns or the payment of retail~~
28 ~~sales tax funds collected and held in trust under RCW 82.08.050, shall~~
29 ~~be personally liable for any unpaid taxes and interest and penalties on~~
30 ~~those taxes, if such officer or other person wilfully fails to pay or~~
31 ~~to cause to be paid any taxes due from the corporation pursuant to~~
32 ~~chapter 82.08 RCW. For the purposes of this section, any retail sales~~
33 ~~taxes that have been paid but not collected shall be deductible from~~
34 ~~the retail sales taxes collected but not paid.~~

1 ~~For purposes of this subsection "wilfully fails to pay or to cause~~
2 ~~to be paid" means that the failure was the result of an intentional,~~
3 ~~conscious, and voluntary course of action.~~

4 ~~(2) The officer, member or manager, or other person shall be liable~~
5 ~~only for taxes collected which)) Whenever the department has issued a~~
6 ~~warrant under RCW 82.32.210 for the collection of unpaid retail sales~~
7 ~~tax funds collected and held in trust under RCW 82.08.050 from a~~
8 ~~limited liability business entity and that business entity has been~~
9 ~~terminated, dissolved, or abandoned, or is insolvent, the department~~
10 ~~may pursue collection of the entity's unpaid sales taxes, including~~
11 ~~penalties and interest on those taxes, against any or all of the~~
12 ~~responsible individuals. For purposes of this subsection, "insolvent"~~
13 ~~means the condition that results when the sum of the entity's debts~~
14 ~~exceeds the fair market value of its assets. The department may~~
15 ~~presume that an entity is insolvent if the entity refuses to disclose~~
16 ~~to the department the nature of its assets and liabilities.~~

17 (2) Personal liability under this section may be imposed for state
18 and local sales taxes.

19 (3)(a) For a responsible individual who is the current or a former
20 chief executive or chief financial officer, liability under this
21 section applies regardless of fault or whether the individual was or
22 should have been aware of the unpaid sales tax liability of the limited
23 liability business entity.

24 (b) For any other responsible individual, liability under this
25 section applies only if he or she willfully fails to pay or to cause to
26 be paid to the department the sales taxes due from the limited
27 liability business entity.

28 (4)(a) Except as provided in this subsection (4)(a), a responsible
29 individual who is the current or a former chief executive or chief
30 financial officer is liable under this section only for sales tax
31 liability accrued during the period that he or she was the chief
32 executive or chief financial officer. However, if the responsible
33 individual had the responsibility or duty to remit payment of the
34 limited liability business entity's sales taxes to the department
35 during any period of time that the person was not the chief executive
36 or chief financial officer, that individual is also liable for sales
37 tax liability that became due during the period that he or she had the

1 duty to remit payment of the limited liability business entity's taxes
2 to the department but was not the chief executive or chief financial
3 officer.

4 (b) All other responsible individuals are liable under this section
5 only for sales tax liability that became due during the period he or
6 she had the ((control, supervision,)) responsibility((,)) or duty to
7 ((act for the corporation described in subsection (1) of this section,
8 plus interest and penalties on those taxes.

9 (+3)) remit payment of the limited liability business entity's
10 taxes to the department.

11 (5) Persons ((liable under)) described in subsection ((+1)) (3)(b)
12 of this section are exempt from liability under this section in
13 situations where nonpayment of the ((retail sales tax funds held in
14 trust)) limited liability business entity's sales taxes is due to
15 reasons beyond their control as determined by the department by rule.

16 ((+4)) (6) Any person having been issued a notice of assessment
17 under this section is entitled to the appeal procedures under RCW
18 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

19 ((+5) This section applies only in situations where the department
20 has determined that there is no reasonable means of collecting the
21 retail sales tax funds held in trust directly from the corporation.

22 (+6)) (7) This section does not relieve the ((corporation or))
23 limited liability ((company)) business entity of ((other tax
24 liabilities)) its sales tax liability or otherwise impair other tax
25 collection remedies afforded by law.

26 ((+7)) (8) Collection authority and procedures prescribed in this
27 chapter apply to collections under this section.

28 (9) The definitions in this subsection apply throughout this
29 section unless the context clearly requires otherwise.

30 (a) "Chief executive" means: The president of a corporation; or
31 for other entities or organizations other than corporations or if the
32 corporation does not have a president as one of its officers, the
33 highest ranking executive manager or administrator in charge of the
34 management of the company or organization.

35 (b) "Chief financial officer" means: The treasurer of a
36 corporation; or for entities or organizations other than corporations
37 or if a corporation does not have a treasurer as one of its officers,

1 the highest senior manager who is responsible for overseeing the
2 financial activities of the entire company or organization.

3 (c) "Limited liability business entity" means a type of business
4 entity that generally shields its owners from personal liability for
5 the debts, obligations, and liabilities of the entity, or a business
6 entity that is managed or owned in whole or in part by an entity that
7 generally shields its owners from personal liability for the debts,
8 obligations, and liabilities of the entity. Limited liability business
9 entities include corporations, limited liability companies, limited
10 liability partnerships, trusts, general partnerships and joint ventures
11 in which one or more of the partners or parties are also limited
12 liability business entities, and limited partnerships in which one or
13 more of the general partners are also limited liability business
14 entities.

15 (d) "Manager" has the same meaning as in RCW 25.15.005.

16 (e) "Member" has the same meaning as in RCW 25.15.005, except that
17 the term only includes members of member-managed limited liability
18 companies.

19 (f) "Officer" means any officer or assistant officer of a
20 corporation, including the president, vice-president, secretary, and
21 treasurer.

22 (g)(i) "Responsible individual" includes any current or former
23 officer, manager, member, partner, or trustee of a limited liability
24 business entity with an unpaid tax warrant issued by the department.

25 (ii) "Responsible individual" also includes any current or former
26 employee or other individual, but only if the individual had the
27 responsibility or duty to remit payment of the limited liability
28 business entity's unpaid sales tax liability reflected in a tax warrant
29 issued by the department.

30 (iii) Whenever any taxpayer has one or more limited liability
31 business entities as a member, manager, or partner, "responsible
32 individual" also includes any current and former officers, members, or
33 managers of the limited liability business entity or entities or of any
34 other limited liability business entity involved directly in the
35 management of the taxpayer. For purposes of this subsection
36 (9)(g)(iii), "taxpayer" means a limited liability business entity with
37 an unpaid tax warrant issued against it by the department.

1 (h) "Willfully fails to pay or to cause to be paid" means that the
2 failure was the result of an intentional, conscious, and voluntary
3 course of action.

4 **PART XI**

5 **Repealing the Sales and Use Tax Exemptions**
6 **for Bottled Water**

7 NEW SECTION. Sec. 1101. In order to preserve funding to protect
8 Washington state's natural resources, it is the legislature's intent to
9 use revenue generated from assessing a sales tax on bottled water on
10 natural resource and environmental protection activities.

11 **Sec. 1102.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
12 read as follows:

13 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
14 sales of food and food ingredients. "Food and food ingredients" means
15 substances, whether in liquid, concentrated, solid, frozen, dried, or
16 dehydrated form, that are sold for ingestion or chewing by humans and
17 are consumed for their taste or nutritional value. "Food and food
18 ingredients" does not include:

19 (a) "Alcoholic beverages," which means beverages that are suitable
20 for human consumption and contain one-half of one percent or more of
21 alcohol by volume; and

22 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
23 tobacco, or any other item that contains tobacco.

24 (2) The exemption of "food and food ingredients" provided for in
25 subsection (1) of this section (~~shall~~) does not apply to prepared
26 food, soft drinks, bottled water, or dietary supplements.

27 (a) "Prepared food" means:

28 (i) Food sold in a heated state or heated by the seller;

29 (ii) Food sold with eating utensils provided by the seller,
30 including plates, knives, forks, spoons, glasses, cups, napkins, or
31 straws. A plate does not include a container or packaging used to
32 transport the food; or

33 (iii) Two or more food ingredients mixed or combined by the seller
34 for sale as a single item, except:

1 (A) Food that is only cut, repackaged, or pasteurized by the
2 seller; or

3 (B) Raw eggs, fish, meat, poultry, and foods containing these raw
4 animal foods requiring cooking by the consumer as recommended by the
5 federal food and drug administration in chapter 3, part 401.11 of The
6 Food Code, published by the food and drug administration, as amended or
7 renumbered as of January 1, 2003, so as to prevent foodborne illness.

8 (b) "Prepared food" does not include the following food or food
9 ingredients, if the food or food ingredients are sold without eating
10 utensils provided by the seller:

11 (i) Food sold by a seller whose proper primary North American
12 industry classification system (NAICS) classification is manufacturing
13 in sector 311, except subsector 3118 (bakeries), as provided in the
14 "North American industry classification system--United States, 2002";

15 (ii) Food sold in an unheated state by weight or volume as a single
16 item; or

17 (iii) Bakery items. The term "bakery items" includes bread, rolls,
18 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
19 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

20 (c) "Soft drinks" means nonalcoholic beverages that contain natural
21 or artificial sweeteners. Soft drinks do not include beverages that
22 contain: Milk or milk products; soy, rice, or similar milk
23 substitutes; or greater than fifty percent of vegetable or fruit juice
24 by volume.

25 (d) "Dietary supplement" means any product, other than tobacco,
26 intended to supplement the diet that:

27 (i) Contains one or more of the following dietary ingredients:

28 (A) A vitamin;

29 (B) A mineral;

30 (C) An herb or other botanical;

31 (D) An amino acid;

32 (E) A dietary substance for use by humans to supplement the diet by
33 increasing the total dietary intake; or

34 (F) A concentrate, metabolite, constituent, extract, or combination
35 of any ingredient described in this subsection;

36 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
37 gelcap, or liquid form, or if not intended for ingestion in such form,

1 is not represented as conventional food and is not represented for use
2 as a sole item of a meal or of the diet; and

3 (iii) Is required to be labeled as a dietary supplement,
4 identifiable by the "supplement facts" box found on the label as
5 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
6 of January 1, 2003.

7 (e) "Bottled water" means water that is placed in a sealed
8 container or package for human consumption or other consumer uses.
9 Bottled water is calorie free and does not contain sweeteners or other
10 additives except that it may contain: (i) Antimicrobial agents; (ii)
11 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
12 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
13 or essences derived from a spice or fruit. "Bottled water" includes
14 water that is delivered to the buyer in a reusable container that is
15 not sold with the water.

16 (3) Notwithstanding anything in this section to the contrary, the
17 exemption of "food and food ingredients" provided in this section
18 (~~shall apply~~) applies to food and food ingredients that are
19 furnished, prepared, or served as meals:

20 (a) Under a state administered nutrition program for the aged as
21 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
22 74.38.040(6);

23 (b) That are provided to senior citizens, individuals with
24 disabilities, or low-income persons by a not-for-profit organization
25 organized under chapter 24.03 or 24.12 RCW; or

26 (c) That are provided to residents, sixty-two years of age or
27 older, of a qualified low-income senior housing facility by the lessor
28 or operator of the facility. The sale of a meal that is billed to both
29 spouses of a marital community or both domestic partners of a domestic
30 partnership meets the age requirement in this subsection (3)(c) if at
31 least one of the spouses or domestic partners is at least sixty-two
32 years of age. For purposes of this subsection, "qualified low-income
33 senior housing facility" means a facility:

34 (i) That meets the definition of a qualified low-income housing
35 project under (~~Title~~) 26 U.S.C. Sec. 42 of the federal internal
36 revenue code, as existing on August 1, 2009;

37 (ii) That has been partially funded under (~~Title~~) 42 U.S.C. Sec.
38 1485 (~~of the federal internal revenue code~~); and

1 (iii) For which the lessor or operator has at any time been
2 entitled to claim a federal income tax credit under ((Title)) 26 U.S.C.
3 Sec. 42 of the federal internal revenue code.

4 (4)(a) Subsection (1) of this section notwithstanding, the retail
5 sale of food and food ingredients is subject to sales tax under RCW
6 82.08.020 if the food and food ingredients are sold through a vending
7 machine, and in this case the selling price for purposes of RCW
8 82.08.020 is fifty-seven percent of the gross receipts.

9 (b) This subsection (4) does not apply to hot prepared food and
10 food ingredients, other than food and food ingredients which are heated
11 after they have been dispensed from the vending machine.

12 (c) For tax collected under this subsection (4), the requirements
13 that the tax be collected from the buyer and that the amount of tax be
14 stated as a separate item are waived.

15 **Sec. 1103.** RCW 82.08.0293 and 2010 c . . . (E2SHB 1597) s 216 are
16 each amended to read as follows:

17 (1) The tax levied by RCW 82.08.020 does not apply to sales of food
18 and food ingredients. "Food and food ingredients" means substances,
19 whether in liquid, concentrated, solid, frozen, dried, or dehydrated
20 form, that are sold for ingestion or chewing by humans and are consumed
21 for their taste or nutritional value. "Food and food ingredients" does
22 not include:

23 (a) "Alcoholic beverages," which means beverages that are suitable
24 for human consumption and contain one-half of one percent or more of
25 alcohol by volume; and

26 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
27 tobacco, or any other item that contains tobacco.

28 (2) The exemption of "food and food ingredients" provided for in
29 subsection (1) of this section does not apply to prepared food, soft
30 drinks, bottled water, or dietary supplements. For purposes of this
31 subsection, the following definitions apply:

32 (a) "Dietary supplement" means any product, other than tobacco,
33 intended to supplement the diet that:

34 (i) Contains one or more of the following dietary ingredients:

35 (A) A vitamin;

36 (B) A mineral;

37 (C) An herb or other botanical;

1 (D) An amino acid;

2 (E) A dietary substance for use by humans to supplement the diet by
3 increasing the total dietary intake; or

4 (F) A concentrate, metabolite, constituent, extract, or combination
5 of any ingredient described in this subsection;

6 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
7 gelcap, or liquid form, or if not intended for ingestion in such form,
8 is not represented as conventional food and is not represented for use
9 as a sole item of a meal or of the diet; and

10 (iii) Is required to be labeled as a dietary supplement,
11 identifiable by the "supplement facts" box found on the label as
12 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
13 of January 1, 2003.

14 (b)(i) "Prepared food" means:

15 (A) Food sold in a heated state or heated by the seller;

16 (B) Food sold with eating utensils provided by the seller,
17 including plates, knives, forks, spoons, glasses, cups, napkins, or
18 straws. A plate does not include a container or packaging used to
19 transport the food; or

20 (C) Two or more food ingredients mixed or combined by the seller
21 for sale as a single item, except:

22 (I) Food that is only cut, repackaged, or pasteurized by the
23 seller; or

24 (II) Raw eggs, fish, meat, poultry, and foods containing these raw
25 animal foods requiring cooking by the consumer as recommended by the
26 federal food and drug administration in chapter 3, part 401.11 of The
27 Food Code, published by the food and drug administration, as amended or
28 renumbered as of January 1, 2003, so as to prevent foodborne illness.

29 (ii) "Prepared food" does not include the following food or food
30 ingredients, if the food or food ingredients are sold without eating
31 utensils provided by the seller:

32 (A) Food sold by a seller whose proper primary North American
33 industry classification system (NAICS) classification is manufacturing
34 in sector 311, except subsector 3118 (bakeries), as provided in the
35 "North American industry classification system--United States, 2002";

36 (B) Food sold in an unheated state by weight or volume as a single
37 item; or

1 (C) Bakery items. The term "bakery items" includes bread, rolls,
2 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
3 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

4 (c) "Soft drinks" means nonalcoholic beverages that contain natural
5 or artificial sweeteners. Soft drinks do not include beverages that
6 contain: Milk or milk products; soy, rice, or similar milk
7 substitutes; or greater than fifty percent of vegetable or fruit juice
8 by volume.

9 (d) "Bottled water" means water that is placed in a sealed
10 container or package for human consumption or other consumer uses.
11 Bottled water is calorie free and does not contain sweeteners or other
12 additives except that it may contain: (i) Antimicrobial agents; (ii)
13 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
14 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
15 or essences derived from a spice or fruit. "Bottled water" includes
16 water that is delivered to the buyer in a reusable container that is
17 not sold with the water.

18 (3) Notwithstanding anything in this section to the contrary, the
19 exemption of "food and food ingredients" provided in this section
20 applies to food and food ingredients that are furnished, prepared, or
21 served as meals:

22 (a) Under a state administered nutrition program for the aged as
23 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
24 74.38.040(6);

25 (b) That are provided to senior citizens, individuals with
26 disabilities, or low-income persons by a not-for-profit organization
27 organized under chapter 24.03 or 24.12 RCW; or

28 (c) That are provided to residents, sixty-two years of age or
29 older, of a qualified low-income senior housing facility by the lessor
30 or operator of the facility. The sale of a meal that is billed to both
31 spouses of a marital community or both domestic partners of a domestic
32 partnership meets the age requirement in this subsection (3)(c) if at
33 least one of the spouses or domestic partners is at least sixty-two
34 years of age. For purposes of this subsection, "qualified low-income
35 senior housing facility" means a facility:

36 (i) That meets the definition of a qualified low-income housing
37 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
38 as existing on August 1, 2009;

1 (ii) That has been partially funded under 42 U.S.C. Sec. 1485 (~~of~~
2 ~~the federal internal revenue code~~)); and

3 (iii) For which the lessor or operator has at any time been
4 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
5 of the federal internal revenue code.

6 (4)(a) Subsection (1) of this section notwithstanding, the retail
7 sale of food and food ingredients is subject to sales tax under RCW
8 82.08.020 if the food and food ingredients are sold through a vending
9 machine. Except as provided in (b) of this subsection, the selling
10 price of food and food ingredients sold through a vending machine for
11 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

12 (b) For soft drinks and hot prepared food and food ingredients,
13 other than food and food ingredients which are heated after they have
14 been dispensed from the vending machine, the selling price is the total
15 gross receipts of such sales divided by the sum of one plus the sales
16 tax rate expressed as a decimal.

17 (c) For tax collected under this subsection (4), the requirements
18 that the tax be collected from the buyer and that the amount of tax be
19 stated as a separate item are waived.

20 **Sec. 1104.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
21 read as follows:

22 (1) The provisions of this chapter (~~shall~~) do not apply in
23 respect to the use of food and food ingredients for human consumption.
24 "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

25 (2) The exemption of "food and food ingredients" provided for in
26 subsection (1) of this section (~~shall~~) does not apply to prepared
27 food, soft drinks, bottled water, or dietary supplements. "Prepared
28 food," "soft drinks," (~~and~~) "dietary supplements," and "bottled
29 water" have the same meanings as in RCW 82.08.0293.

30 (3) Notwithstanding anything in this section to the contrary, the
31 exemption of "food and food ingredients" provided in this section
32 (~~shall~~) apply to food and food ingredients which are furnished,
33 prepared, or served as meals:

34 (a) Under a state administered nutrition program for the aged as
35 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
36 74.38.040(6);

1 (b) Which are provided to senior citizens, individuals with
2 disabilities, or low-income persons by a not-for-profit organization
3 organized under chapter 24.03 or 24.12 RCW; or

4 (c) That are provided to residents, sixty-two years of age or
5 older, of a qualified low-income senior housing facility by the lessor
6 or operator of the facility. The sale of a meal that is billed to both
7 spouses of a marital community or both domestic partners of a domestic
8 partnership meets the age requirement in this subsection (3)(c) if at
9 least one of the spouses or domestic partners is at least sixty-two
10 years of age. For purposes of this subsection, "qualified low-income
11 senior housing facility" has the same meaning as in RCW 82.08.0293.

12 NEW SECTION. **Sec. 1105.** A new section is added to chapter 82.08
13 RCW to read as follows:

14 (1) The tax levied by RCW 82.08.020 does not apply to sales of
15 bottled water for human use dispensed or to be dispensed to patients,
16 pursuant to a prescription for use in the cure, mitigation, treatment,
17 or prevention of disease or medical condition.

18 (2) The definitions in this subsection apply to this section.

19 (a) "Bottled water" has the same meaning as provided in RCW
20 82.08.0293.

21 (b) "Prescription" means an order, formula, or recipe issued in any
22 form of oral, written, electronic, or other means of transmission by a
23 duly licensed practitioner authorized by the laws of this state to
24 prescribe.

25 NEW SECTION. **Sec. 1106.** A new section is added to chapter 82.12
26 RCW to read as follows:

27 The provisions of this chapter do not apply in respect to the use
28 of bottled water for human use dispensed or to be dispensed to
29 patients, pursuant to a prescription for use in the cure, mitigation,
30 treatment, or prevention of disease or medical condition. The
31 definitions in section 1105 of this act apply to this section.

32 NEW SECTION. **Sec. 1107.** A new section is added to chapter 82.08
33 RCW to read as follows:

34 (1) The tax levied by RCW 82.08.020 does not apply to sales of
35 bottled water for human use to persons who do not otherwise have a

1 readily available source of potable water and who provide the seller
2 with an exemption certificate in a form and manner prescribed by the
3 department. The seller must retain a copy of the certificate for the
4 seller's files.

5 (2) The department may waive the requirement for an exemption
6 certificate in the event of disaster or similar circumstance.

7 NEW SECTION. **Sec. 1108.** A new section is added to chapter 82.12
8 RCW to read as follows:

9 The provisions of this chapter do not apply in respect to the use
10 of bottled water for human use by persons who do not otherwise have a
11 readily available source of potable water.

12 **PART XII**

13 **Imposing Sales and Use Tax on Custom Software**

14 NEW SECTION. **Sec. 1201.** In order to preserve funding for higher
15 education, it is the legislature's intent to use revenue generated from
16 assessing a sales and use tax on custom software to support the state's
17 institutions of higher education and financial aid programs including
18 the state need grant.

19 **Sec. 1202.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
20 are each reenacted and amended to read as follows:

21 (1) "Sale at retail" or "retail sale" means every sale of tangible
22 personal property (including articles produced, fabricated, or
23 imprinted) to all persons irrespective of the nature of their business
24 and including, among others, without limiting the scope hereof, persons
25 who install, repair, clean, alter, improve, construct, or decorate real
26 or personal property of or for consumers other than a sale to a person
27 who presents a seller's permit or uniform exemption certificate in
28 conformity with RCW 82.04.470 and who:

29 (a) Purchases for the purpose of resale as tangible personal
30 property in the regular course of business without intervening use by
31 such person, but a purchase for the purpose of resale by a regional
32 transit authority under RCW 81.112.300 is not a sale for resale; or

33 (b) Installs, repairs, cleans, alters, imprints, improves,
34 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (c) Purchases for the purpose of consuming the property purchased
5 in producing for sale a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

10 (d) Purchases for the purpose of consuming the property purchased
11 in producing ferrosilicon which is subsequently used in producing
12 magnesium for sale, if the primary purpose of such property is to
13 create a chemical reaction directly through contact with an ingredient
14 of ferrosilicon; or

15 (e) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065. The term (~~shall~~) includes every sale of tangible personal
18 property which is used or consumed or to be used or consumed in the
19 performance of any activity classified as a "sale at retail" or "retail
20 sale" even though such property is resold or utilized as provided in
21 (a), (b), (c), (d), or (e) of this subsection following such use. The
22 term also means every sale of tangible personal property to persons
23 engaged in any business which is taxable under RCW 82.04.280 (2) and
24 (7), 82.04.290, and 82.04.2908; or

25 (f) Purchases for the purpose of satisfying the person's
26 obligations under an extended warranty as defined in subsection (7) of
27 this section, if such tangible personal property replaces or becomes an
28 ingredient or component of property covered by the extended warranty
29 without intervening use by such person.

30 (2) The term "sale at retail" or "retail sale" includes the sale of
31 or charge made for tangible personal property consumed and/or for labor
32 and services rendered in respect to the following:

33 (a) The installing, repairing, cleaning, altering, imprinting, or
34 improving of tangible personal property of or for consumers, including
35 charges made for the mere use of facilities in respect thereto, but
36 excluding charges made for the use of self-service laundry facilities,
37 and also excluding sales of laundry service to nonprofit health care

1 facilities, and excluding services rendered in respect to live animals,
2 birds and insects;

3 (b) The constructing, repairing, decorating, or improving of new or
4 existing buildings or other structures under, upon, or above real
5 property of or for consumers, including the installing or attaching of
6 any article of tangible personal property therein or thereto, whether
7 or not such personal property becomes a part of the realty by virtue of
8 installation, and (~~shall~~) also includes the sale of services or
9 charges made for the clearing of land and the moving of earth excepting
10 the mere leveling of land used in commercial farming or agriculture;

11 (c) The constructing, repairing, or improving of any structure
12 upon, above, or under any real property owned by an owner who conveys
13 the property by title, possession, or any other means to the person
14 performing such construction, repair, or improvement for the purpose of
15 performing such construction, repair, or improvement and the property
16 is then reconveyed by title, possession, or any other means to the
17 original owner;

18 (d) The cleaning, fumigating, razing, or moving of existing
19 buildings or structures, but may not include the charge made for
20 janitorial services; and for purposes of this section the term
21 "janitorial services" shall mean those cleaning and caretaking services
22 ordinarily performed by commercial janitor service businesses
23 including, but not limited to, wall and window washing, floor cleaning
24 and waxing, and the cleaning in place of rugs, drapes and upholstery.
25 The term "janitorial services" does not include painting, papering,
26 repairing, furnace or septic tank cleaning, snow removal or
27 sandblasting;

28 (e) Automobile towing and similar automotive transportation
29 services, but not in respect to those required to report and pay taxes
30 under chapter 82.16 RCW;

31 (f) The furnishing of lodging and all other services by a hotel,
32 rooming house, tourist court, motel, trailer camp, and the granting of
33 any similar license to use real property, as distinguished from the
34 renting or leasing of real property, and it is presumed that the
35 occupancy of real property for a continuous period of one month or more
36 constitutes a rental or lease of real property and not a mere license
37 to use or enjoy the same. For the purposes of this subsection, it
38 (~~shall be~~) is presumed that the sale of and charge made for the

1 furnishing of lodging for a continuous period of one month or more to
2 a person is a rental or lease of real property and not a mere license
3 to enjoy the same;

4 (g) The installing, repairing, altering, or improving of digital
5 goods for consumers;

6 (h) Persons taxable under (a) (~~(b), (c), (d), (e), (f), and~~)
7 through (g) of this subsection when such sales or charges are for
8 property, labor and services which are used or consumed in whole or in
9 part by such persons in the performance of any activity defined as a
10 "sale at retail" or "retail sale" even though such property, labor and
11 services may be resold after such use or consumption. Nothing
12 contained in this subsection (~~(shall)~~) may be construed to modify
13 subsection (1) of this section and nothing contained in subsection (1)
14 of this section may be construed to modify this subsection.

15 (3) The term "sale at retail" or "retail sale" includes the sale of
16 or charge made for personal, business, or professional services
17 including amounts designated as interest, rents, fees, admission, and
18 other service emoluments however designated, received by persons
19 engaging in the following business activities:

20 (a) Amusement and recreation services including but not limited to
21 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
22 for sightseeing purposes, and others, when provided to consumers;

23 (b) Abstract, title insurance, and escrow services;

24 (c) Credit bureau services;

25 (d) Automobile parking and storage garage services;

26 (e) Landscape maintenance and horticultural services but excluding
27 (i) horticultural services provided to farmers and (ii) pruning,
28 trimming, repairing, removing, and clearing of trees and brush near
29 electric transmission or distribution lines or equipment, if performed
30 by or at the direction of an electric utility;

31 (f) Service charges associated with tickets to professional
32 sporting events; and

33 (g) The following personal services: Physical fitness services,
34 tanning salon services, tattoo parlor services, steam bath services,
35 turkish bath services, escort services, and dating services.

36 (4)(a) The term also includes:

37 (i) The renting or leasing of tangible personal property to
38 consumers; and

1 (ii) Providing tangible personal property along with an operator
2 for a fixed or indeterminate period of time. A consideration of this
3 is that the operator is necessary for the tangible personal property to
4 perform as designed. For the purpose of this subsection (4)(a)(ii), an
5 operator must do more than maintain, inspect, or set up the tangible
6 personal property.

7 (b) The term does not include the renting or leasing of tangible
8 personal property where the lease or rental is for the purpose of
9 sublease or subrent.

10 (5) The term also includes the providing of "competitive telephone
11 service," "telecommunications service," or "ancillary services," as
12 those terms are defined in RCW 82.04.065, to consumers.

13 (6)(a) The term also includes the sale of prewritten computer
14 software other than a sale to a person who presents a seller's permit
15 or uniform exemption certificate in conformity with RCW 82.04.470,
16 regardless of the method of delivery to the end user. For purposes of
17 this subsection (6)(a), the sale of prewritten computer software
18 includes the sale of or charge made for a key or an enabling or
19 activation code, where the key or code is required to activate
20 prewritten computer software and put the software into use. There is
21 no separate sale of the key or code from the prewritten computer
22 software, regardless of how the sale may be characterized by the vendor
23 or by the purchaser.

24 (~~The term "retail sale" does not include the sale of or charge~~
25 ~~made for:~~

26 ~~(i) Custom software; or~~

27 ~~(ii) The customization of prewritten computer software.))~~

28 (b) The term also includes the charge made to consumers for the
29 right to access and use prewritten computer software, where possession
30 of the software is maintained by the seller or a third party,
31 regardless of whether the charge for the service is on a per use, per
32 user, per license, subscription, or some other basis.

33 (7)(a) The term also includes the sale of or charge made for
34 custom software and the customization of prewritten computer software
35 to a consumer, regardless of the method of delivery to the consumer.

36 (b) The term also includes the charge made to consumers for the
37 right to access and use custom software and customized prewritten

1 computer software, where possession of the software is maintained by
2 the seller or a third party.

3 (8) The term also includes the sale of or charge made for an
4 extended warranty to a consumer. For purposes of this subsection,
5 "extended warranty" means an agreement for a specified duration to
6 perform the replacement or repair of tangible personal property at no
7 additional charge or a reduced charge for tangible personal property,
8 labor, or both, or to provide indemnification for the replacement or
9 repair of tangible personal property, based on the occurrence of
10 specified events. The term "extended warranty" does not include an
11 agreement, otherwise meeting the definition of extended warranty in
12 this subsection, if no separate charge is made for the agreement and
13 the value of the agreement is included in the sales price of the
14 tangible personal property covered by the agreement. For purposes of
15 this subsection, "sales price" has the same meaning as in RCW
16 82.08.010.

17 ((+8)) (9)(a) The term also includes the following sales to
18 consumers of digital goods, digital codes, and digital automated
19 services:

20 (i) Sales in which the seller has granted the purchaser the right
21 of permanent use;

22 (ii) Sales in which the seller has granted the purchaser a right of
23 use that is less than permanent;

24 (iii) Sales in which the purchaser is not obligated to make
25 continued payment as a condition of the sale; and

26 (iv) Sales in which the purchaser is obligated to make continued
27 payment as a condition of the sale.

28 (b) A retail sale of digital goods, digital codes, or digital
29 automated services under this subsection ((+8)) (9) includes any
30 services provided by the seller exclusively in connection with the
31 digital goods, digital codes, or digital automated services, whether or
32 not a separate charge is made for such services.

33 (c) For purposes of this subsection, "permanent" means perpetual or
34 for an indefinite or unspecified length of time. A right of permanent
35 use is presumed to have been granted unless the agreement between the
36 seller and the purchaser specifies or the circumstances surrounding the
37 transaction suggest or indicate that the right to use terminates on the
38 occurrence of a condition subsequent.

1 (~~(+9)~~) (10) The term does not include the sale of or charge made
2 for labor and services rendered in respect to the building, repairing,
3 or improving of any street, place, road, highway, easement, right-of-
4 way, mass public transportation terminal or parking facility, bridge,
5 tunnel, or trestle which is owned by a municipal corporation or
6 political subdivision of the state or by the United States and which is
7 used or to be used primarily for foot or vehicular traffic including
8 mass transportation vehicles of any kind.

9 (~~(+10)~~) (11) The term also does not include sales of chemical
10 sprays or washes to persons for the purpose of postharvest treatment of
11 fruit for the prevention of scald, fungus, mold, or decay, nor does it
12 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
13 pollination including insects such as bees, and spray materials to:
14 (a) Persons who participate in the federal conservation reserve
15 program, the environmental quality incentives program, the wetlands
16 reserve program, and the wildlife habitat incentives program, or their
17 successors administered by the United States department of agriculture;
18 (b) farmers for the purpose of producing for sale any agricultural
19 product; and (c) farmers acting under cooperative habitat development
20 or access contracts with an organization exempt from federal income tax
21 under (~~(Title)~~) 26 U.S.C. Sec. 501(c)(3) of the federal internal
22 revenue code or the Washington state department of fish and wildlife to
23 produce or improve wildlife habitat on land that the farmer owns or
24 leases.

25 (~~(+11)~~) (12) The term does not include the sale of or charge made
26 for labor and services rendered in respect to the constructing,
27 repairing, decorating, or improving of new or existing buildings or
28 other structures under, upon, or above real property of or for the
29 United States, any instrumentality thereof, or a county or city housing
30 authority created pursuant to chapter 35.82 RCW, including the
31 installing, or attaching of any article of tangible personal property
32 therein or thereto, whether or not such personal property becomes a
33 part of the realty by virtue of installation. Nor does the term
34 include the sale of services or charges made for the clearing of land
35 and the moving of earth of or for the United States, any
36 instrumentality thereof, or a county or city housing authority. Nor
37 does the term include the sale of services or charges made for cleaning

1 up for the United States, or its instrumentalities, radioactive waste
2 and other by-products of weapons production and nuclear research and
3 development.

4 ~~((+12+))~~ (13) The term does not include the sale of or charge made
5 for labor, services, or tangible personal property pursuant to
6 agreements providing maintenance services for bus, rail, or rail fixed
7 guideway equipment when a regional transit authority is the recipient
8 of the labor, services, or tangible personal property, and a transit
9 agency, as defined in RCW 81.104.015, performs the labor or services.

10 **Sec. 1203.** RCW 82.04.050 and 2010 c . . . (SHB 2758) s 14 are each
11 amended to read as follows:

12 (1) "Sale at retail" or "retail sale" means every sale of tangible
13 personal property (including articles produced, fabricated, or
14 imprinted) to all persons irrespective of the nature of their business
15 and including, among others, without limiting the scope hereof, persons
16 who install, repair, clean, alter, improve, construct, or decorate real
17 or personal property of or for consumers other than a sale to a person
18 who:

19 (a) Purchases for the purpose of resale as tangible personal
20 property in the regular course of business without intervening use by
21 such person, but a purchase for the purpose of resale by a regional
22 transit authority under RCW 81.112.300 is not a sale for resale; or

23 (b) Installs, repairs, cleans, alters, imprints, improves,
24 constructs, or decorates real or personal property of or for consumers,
25 if such tangible personal property becomes an ingredient or component
26 of such real or personal property without intervening use by such
27 person; or

28 (c) Purchases for the purpose of consuming the property purchased
29 in producing for sale a new article of tangible personal property or
30 substance, of which such property becomes an ingredient or component or
31 is a chemical used in processing, when the primary purpose of such
32 chemical is to create a chemical reaction directly through contact with
33 an ingredient of a new article being produced for sale; or

34 (d) Purchases for the purpose of consuming the property purchased
35 in producing ferrosilicon which is subsequently used in producing
36 magnesium for sale, if the primary purpose of such property is to

1 create a chemical reaction directly through contact with an ingredient
2 of ferrosilicon; or

3 (e) Purchases for the purpose of providing the property to
4 consumers as part of competitive telephone service, as defined in RCW
5 82.04.065. The term includes every sale of tangible personal property
6 which is used or consumed or to be used or consumed in the performance
7 of any activity classified as a "sale at retail" or "retail sale" even
8 though such property is resold or utilized as provided in (a), (b),
9 (c), (d), or (e) of this subsection following such use. The term also
10 means every sale of tangible personal property to persons engaged in
11 any business which is taxable under RCW 82.04.280 (2) and (7),
12 82.04.290, and 82.04.2908; or

13 (f) Purchases for the purpose of satisfying the person's
14 obligations under an extended warranty as defined in subsection (7) of
15 this section, if such tangible personal property replaces or becomes an
16 ingredient or component of property covered by the extended warranty
17 without intervening use by such person.

18 (2) The term "sale at retail" or "retail sale" includes the sale of
19 or charge made for tangible personal property consumed and/or for labor
20 and services rendered in respect to the following:

21 (a) The installing, repairing, cleaning, altering, imprinting, or
22 improving of tangible personal property of or for consumers, including
23 charges made for the mere use of facilities in respect thereto, but
24 excluding charges made for the use of self-service laundry facilities,
25 and also excluding sales of laundry service to nonprofit health care
26 facilities, and excluding services rendered in respect to live animals,
27 birds and insects;

28 (b) The constructing, repairing, decorating, or improving of new or
29 existing buildings or other structures under, upon, or above real
30 property of or for consumers, including the installing or attaching of
31 any article of tangible personal property therein or thereto, whether
32 or not such personal property becomes a part of the realty by virtue of
33 installation, and also includes the sale of services or charges made
34 for the clearing of land and the moving of earth excepting the mere
35 leveling of land used in commercial farming or agriculture;

36 (c) The constructing, repairing, or improving of any structure
37 upon, above, or under any real property owned by an owner who conveys
38 the property by title, possession, or any other means to the person

1 performing such construction, repair, or improvement for the purpose of
2 performing such construction, repair, or improvement and the property
3 is then reconveyed by title, possession, or any other means to the
4 original owner;

5 (d) The cleaning, fumigating, razing, or moving of existing
6 buildings or structures, but does not include the charge made for
7 janitorial services; and for purposes of this section the term
8 "janitorial services" means those cleaning and caretaking services
9 ordinarily performed by commercial janitor service businesses
10 including, but not limited to, wall and window washing, floor cleaning
11 and waxing, and the cleaning in place of rugs, drapes and upholstery.
12 The term "janitorial services" does not include painting, papering,
13 repairing, furnace or septic tank cleaning, snow removal or
14 sandblasting;

15 (e) Automobile towing and similar automotive transportation
16 services, but not in respect to those required to report and pay taxes
17 under chapter 82.16 RCW;

18 (f) The furnishing of lodging and all other services by a hotel,
19 rooming house, tourist court, motel, trailer camp, and the granting of
20 any similar license to use real property, as distinguished from the
21 renting or leasing of real property, and it is presumed that the
22 occupancy of real property for a continuous period of one month or more
23 constitutes a rental or lease of real property and not a mere license
24 to use or enjoy the same. For the purposes of this subsection, it is
25 presumed that the sale of and charge made for the furnishing of lodging
26 for a continuous period of one month or more to a person is a rental or
27 lease of real property and not a mere license to enjoy the same;

28 (g) The installing, repairing, altering, or improving of digital
29 goods for consumers;

30 (h) Persons taxable under (a), (~~(b), (c), (d), (e), (f), and~~)
31 through (g) of this subsection when such sales or charges are for
32 property, labor and services which are used or consumed in whole or in
33 part by such persons in the performance of any activity defined as a
34 "sale at retail" or "retail sale" even though such property, labor and
35 services may be resold after such use or consumption. Nothing
36 contained in this subsection may be construed to modify subsection (1)
37 of this section and nothing contained in subsection (1) of this section
38 may be construed to modify this subsection.

1 (3) The term "sale at retail" or "retail sale" includes the sale of
2 or charge made for personal, business, or professional services
3 including amounts designated as interest, rents, fees, admission, and
4 other service emoluments however designated, received by persons
5 engaging in the following business activities:

6 (a) Amusement and recreation services including but not limited to
7 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
8 for sightseeing purposes, and others, when provided to consumers;

9 (b) Abstract, title insurance, and escrow services;

10 (c) Credit bureau services;

11 (d) Automobile parking and storage garage services;

12 (e) Landscape maintenance and horticultural services but excluding
13 (i) horticultural services provided to farmers and (ii) pruning,
14 trimming, repairing, removing, and clearing of trees and brush near
15 electric transmission or distribution lines or equipment, if performed
16 by or at the direction of an electric utility;

17 (f) Service charges associated with tickets to professional
18 sporting events; and

19 (g) The following personal services: Physical fitness services,
20 tanning salon services, tattoo parlor services, steam bath services,
21 turkish bath services, escort services, and dating services.

22 (4)(a) The term also includes:

23 (i) The renting or leasing of tangible personal property to
24 consumers; and

25 (ii) Providing tangible personal property along with an operator
26 for a fixed or indeterminate period of time. A consideration of this
27 is that the operator is necessary for the tangible personal property to
28 perform as designed. For the purpose of this subsection (4)(a)(ii), an
29 operator must do more than maintain, inspect, or set up the tangible
30 personal property.

31 (b) The term does not include the renting or leasing of tangible
32 personal property where the lease or rental is for the purpose of
33 sublease or subrent.

34 (5) The term also includes the providing of "competitive telephone
35 service," "telecommunications service," or "ancillary services," as
36 those terms are defined in RCW 82.04.065, to consumers.

37 (6)(a) The term also includes the sale of prewritten computer
38 software to a consumer, regardless of the method of delivery to the end

1 user. For purposes of this subsection (6)(a), the sale of prewritten
2 computer software includes the sale of or charge made for a key or an
3 enabling or activation code, where the key or code is required to
4 activate prewritten computer software and put the software into use.
5 There is no separate sale of the key or code from the prewritten
6 computer software, regardless of how the sale may be characterized by
7 the vendor or by the purchaser.

8 ~~((The term "retail sale" does not include the sale of or charge
9 made for:~~

10 ~~(i) Custom software; or~~

11 ~~(ii) The customization of prewritten computer software.))~~

12 (b) The term also includes the charge made to consumers for the
13 right to access and use prewritten computer software, where possession
14 of the software is maintained by the seller or a third party,
15 regardless of whether the charge for the service is on a per use, per
16 user, per license, subscription, or some other basis.

17 (7)(a) The term also includes the sale of or charge made for
18 custom software and the customization of prewritten computer software
19 to a consumer, regardless of the method of delivery to the consumer.

20 (b) The term also includes the charge made to consumers for the
21 right to access and use custom software and customized prewritten
22 computer software, where possession of the software is maintained by
23 the seller or a third party.

24 (8) The term also includes the sale of or charge made for an
25 extended warranty to a consumer. For purposes of this subsection,
26 "extended warranty" means an agreement for a specified duration to
27 perform the replacement or repair of tangible personal property at no
28 additional charge or a reduced charge for tangible personal property,
29 labor, or both, or to provide indemnification for the replacement or
30 repair of tangible personal property, based on the occurrence of
31 specified events. The term "extended warranty" does not include an
32 agreement, otherwise meeting the definition of extended warranty in
33 this subsection, if no separate charge is made for the agreement and
34 the value of the agreement is included in the sales price of the
35 tangible personal property covered by the agreement. For purposes of
36 this subsection, "sales price" has the same meaning as in RCW
37 82.08.010.

1 (~~(+8)~~) (9)(a) The term also includes the following sales to
2 consumers of digital goods, digital codes, and digital automated
3 services:

4 (i) Sales in which the seller has granted the purchaser the right
5 of permanent use;

6 (ii) Sales in which the seller has granted the purchaser a right of
7 use that is less than permanent;

8 (iii) Sales in which the purchaser is not obligated to make
9 continued payment as a condition of the sale; and

10 (iv) Sales in which the purchaser is obligated to make continued
11 payment as a condition of the sale.

12 (b) A retail sale of digital goods, digital codes, or digital
13 automated services under this subsection (~~(+8)~~) (9) includes any
14 services provided by the seller exclusively in connection with the
15 digital goods, digital codes, or digital automated services, whether or
16 not a separate charge is made for such services.

17 (c) For purposes of this subsection, "permanent" means perpetual or
18 for an indefinite or unspecified length of time. A right of permanent
19 use is presumed to have been granted unless the agreement between the
20 seller and the purchaser specifies or the circumstances surrounding the
21 transaction suggest or indicate that the right to use terminates on the
22 occurrence of a condition subsequent.

23 (~~(+9)~~) (10) The term does not include the sale of or charge made
24 for labor and services rendered in respect to the building, repairing,
25 or improving of any street, place, road, highway, easement, right-of-
26 way, mass public transportation terminal or parking facility, bridge,
27 tunnel, or trestle which is owned by a municipal corporation or
28 political subdivision of the state or by the United States and which is
29 used or to be used primarily for foot or vehicular traffic including
30 mass transportation vehicles of any kind.

31 (~~(+10)~~) (11) The term also does not include sales of chemical
32 sprays or washes to persons for the purpose of postharvest treatment of
33 fruit for the prevention of scald, fungus, mold, or decay, nor does it
34 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
35 pollination including insects such as bees, and spray materials to:

36 (a) Persons who participate in the federal conservation reserve
37 program, the environmental quality incentives program, the wetlands
38 reserve program, and the wildlife habitat incentives program, or their

1 successors administered by the United States department of agriculture;
2 (b) farmers for the purpose of producing for sale any agricultural
3 product; and (c) farmers acting under cooperative habitat development
4 or access contracts with an organization exempt from federal income tax
5 under (~~(Title)~~) 26 U.S.C. Sec. 501(c)(3) of the federal internal
6 revenue code or the Washington state department of fish and wildlife to
7 produce or improve wildlife habitat on land that the farmer owns or
8 leases.

9 (~~((+11))~~) (12) The term does not include the sale of or charge made
10 for labor and services rendered in respect to the constructing,
11 repairing, decorating, or improving of new or existing buildings or
12 other structures under, upon, or above real property of or for the
13 United States, any instrumentality thereof, or a county or city housing
14 authority created pursuant to chapter 35.82 RCW, including the
15 installing, or attaching of any article of tangible personal property
16 therein or thereto, whether or not such personal property becomes a
17 part of the realty by virtue of installation. Nor does the term
18 include the sale of services or charges made for the clearing of land
19 and the moving of earth of or for the United States, any
20 instrumentality thereof, or a county or city housing authority. Nor
21 does the term include the sale of services or charges made for cleaning
22 up for the United States, or its instrumentalities, radioactive waste
23 and other byproducts of weapons production and nuclear research and
24 development.

25 (~~((+12))~~) (13) The term does not include the sale of or charge made
26 for labor, services, or tangible personal property pursuant to
27 agreements providing maintenance services for bus, rail, or rail fixed
28 guideway equipment when a regional transit authority is the recipient
29 of the labor, services, or tangible personal property, and a transit
30 agency, as defined in RCW 81.104.015, performs the labor or services.

31 **Sec. 1204.** RCW 82.04.050 and 2010 c . . . (SHB 2620) s 201 and
32 2010 c . . . (E2SHB 1597) s 202 are each reenacted and amended to read
33 as follows:

34 (1)(a) "Sale at retail" or "retail sale" means every sale of
35 tangible personal property (including articles produced, fabricated, or
36 imprinted) to all persons irrespective of the nature of their business
37 and including, among others, without limiting the scope hereof, persons

1 who install, repair, clean, alter, improve, construct, or decorate real
2 or personal property of or for consumers other than a sale to a person
3 who:

4 (i) Purchases for the purpose of resale as tangible personal
5 property in the regular course of business without intervening use by
6 such person, but a purchase for the purpose of resale by a regional
7 transit authority under RCW 81.112.300 is not a sale for resale; or

8 (ii) Installs, repairs, cleans, alters, imprints, improves,
9 constructs, or decorates real or personal property of or for consumers,
10 if such tangible personal property becomes an ingredient or component
11 of such real or personal property without intervening use by such
12 person; or

13 (iii) Purchases for the purpose of consuming the property purchased
14 in producing for sale a new article of tangible personal property or
15 substance, of which such property becomes an ingredient or component or
16 is a chemical used in processing, when the primary purpose of such
17 chemical is to create a chemical reaction directly through contact with
18 an ingredient of a new article being produced for sale; or

19 (iv) Purchases for the purpose of consuming the property purchased
20 in producing ferrosilicon which is subsequently used in producing
21 magnesium for sale, if the primary purpose of such property is to
22 create a chemical reaction directly through contact with an ingredient
23 of ferrosilicon; or

24 (v) Purchases for the purpose of providing the property to
25 consumers as part of competitive telephone service, as defined in RCW
26 82.04.065; or

27 (vi) Purchases for the purpose of satisfying the person's
28 obligations under an extended warranty as defined in subsection (7) of
29 this section, if such tangible personal property replaces or becomes an
30 ingredient or component of property covered by the extended warranty
31 without intervening use by such person.

32 (b) The term includes every sale of tangible personal property that
33 is used or consumed or to be used or consumed in the performance of any
34 activity defined as a "sale at retail" or "retail sale" even though
35 such property is resold or used as provided in (a)(i) through (vi) of
36 this subsection following such use.

37 (c) The term also means every sale of tangible personal property to

1 persons engaged in any business that is taxable under RCW 82.04.280
2 (1), (2), and (7), 82.04.290, and 82.04.2908.

3 (2) The term "sale at retail" or "retail sale" includes the sale of
4 or charge made for tangible personal property consumed and/or for labor
5 and services rendered in respect to the following:

6 (a) The installing, repairing, cleaning, altering, imprinting, or
7 improving of tangible personal property of or for consumers, including
8 charges made for the mere use of facilities in respect thereto, but
9 excluding charges made for the use of self-service laundry facilities,
10 and also excluding sales of laundry service to nonprofit health care
11 facilities, and excluding services rendered in respect to live animals,
12 birds and insects;

13 (b) The constructing, repairing, decorating, or improving of new or
14 existing buildings or other structures under, upon, or above real
15 property of or for consumers, including the installing or attaching of
16 any article of tangible personal property therein or thereto, whether
17 or not such personal property becomes a part of the realty by virtue of
18 installation, and shall also include the sale of services or charges
19 made for the clearing of land and the moving of earth excepting the
20 mere leveling of land used in commercial farming or agriculture;

21 (c) The constructing, repairing, or improving of any structure
22 upon, above, or under any real property owned by an owner who conveys
23 the property by title, possession, or any other means to the person
24 performing such construction, repair, or improvement for the purpose of
25 performing such construction, repair, or improvement and the property
26 is then reconveyed by title, possession, or any other means to the
27 original owner;

28 (d) The cleaning, fumigating, razing, or moving of existing
29 buildings or structures, but does not include the charge made for
30 janitorial services; and for purposes of this section the term
31 "janitorial services" means those cleaning and caretaking services
32 ordinarily performed by commercial janitor service businesses
33 including, but not limited to, wall and window washing, floor cleaning
34 and waxing, and the cleaning in place of rugs, drapes and upholstery.
35 The term "janitorial services" does not include painting, papering,
36 repairing, furnace or septic tank cleaning, snow removal or
37 sandblasting;

1 (e) Automobile towing and similar automotive transportation
2 services, but not in respect to those required to report and pay taxes
3 under chapter 82.16 RCW;

4 (f) The furnishing of lodging and all other services by a hotel,
5 rooming house, tourist court, motel, trailer camp, and the granting of
6 any similar license to use real property, as distinguished from the
7 renting or leasing of real property, and it is presumed that the
8 occupancy of real property for a continuous period of one month or more
9 constitutes a rental or lease of real property and not a mere license
10 to use or enjoy the same. For the purposes of this subsection, it is
11 presumed that the sale of and charge made for the furnishing of lodging
12 for a continuous period of one month or more to a person is a rental or
13 lease of real property and not a mere license to enjoy the same;

14 (g) The installing, repairing, altering, or improving of digital
15 goods for consumers;

16 (h) Persons taxable under (a) (~~(b), (c), (d), (e), (f), and~~)
17 through (g) of this subsection when such sales or charges are for
18 property, labor and services which are used or consumed in whole or in
19 part by such persons in the performance of any activity defined as a
20 "sale at retail" or "retail sale" even though such property, labor and
21 services may be resold after such use or consumption. Nothing
22 contained in this subsection may be construed to modify subsection (1)
23 of this section and nothing contained in subsection (1) of this section
24 may be construed to modify this subsection.

25 (3) The term "sale at retail" or "retail sale" includes the sale of
26 or charge made for personal, business, or professional services
27 including amounts designated as interest, rents, fees, admission, and
28 other service emoluments however designated, received by persons
29 engaging in the following business activities:

30 (a) Amusement and recreation services including but not limited to
31 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
32 for sightseeing purposes, and others, when provided to consumers;

33 (b) Abstract, title insurance, and escrow services;

34 (c) Credit bureau services;

35 (d) Automobile parking and storage garage services;

36 (e) Landscape maintenance and horticultural services but excluding

37 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional
5 sporting events; and

6 (g) The following personal services: Physical fitness services,
7 tanning salon services, tattoo parlor services, steam bath services,
8 turkish bath services, escort services, and dating services.

9 (4)(a) The term also includes the renting or leasing of tangible
10 personal property to consumers.

11 (b) The term does not include the renting or leasing of tangible
12 personal property where the lease or rental is for the purpose of
13 sublease or subrent.

14 (5) The term also includes the providing of "competitive telephone
15 service," "telecommunications service," or "ancillary services," as
16 those terms are defined in RCW 82.04.065, to consumers.

17 (6)(a) The term also includes the sale of prewritten computer
18 software to a consumer, regardless of the method of delivery to the end
19 user. For purposes of this subsection (6)(a), the sale of prewritten
20 computer software includes the sale of or charge made for a key or an
21 enabling or activation code, where the key or code is required to
22 activate prewritten computer software and put the software into use.
23 There is no separate sale of the key or code from the prewritten
24 computer software, regardless of how the sale may be characterized by
25 the vendor or by the purchaser.

26 (~~The term "retail sale" does not include the sale of or charge~~
27 ~~made for:~~

28 ~~(i) Custom software; or~~

29 ~~(ii) The customization of prewritten computer software.)~~

30 (b)(i) The term also includes the charge made to consumers for the
31 right to access and use prewritten computer software, where possession
32 of the software is maintained by the seller or a third party,
33 regardless of whether the charge for the service is on a per use, per
34 user, per license, subscription, or some other basis.

35 (ii)(A) The service described in (b)(i) of this subsection (6)
36 includes the right to access and use prewritten computer software to
37 perform data processing.

1 (B) For purposes of this subsection (6)(b)(ii), "data processing"
2 means the systematic performance of operations on data to extract the
3 required information in an appropriate form or to convert the data to
4 usable information. Data processing includes check processing, image
5 processing, form processing, survey processing, payroll processing,
6 claim processing, and similar activities.

7 (7)(a) The term also includes the sale of or charge made for
8 custom software and the customization of prewritten computer software
9 to a consumer, regardless of the method of delivery to the consumer.

10 (b) The term also includes the charge made to consumers for the
11 right to access and use custom software and customized prewritten
12 computer software, where possession of the software is maintained by
13 the seller or a third party.

14 (8) The term also includes the sale of or charge made for an
15 extended warranty to a consumer. For purposes of this subsection,
16 "extended warranty" means an agreement for a specified duration to
17 perform the replacement or repair of tangible personal property at no
18 additional charge or a reduced charge for tangible personal property,
19 labor, or both, or to provide indemnification for the replacement or
20 repair of tangible personal property, based on the occurrence of
21 specified events. The term "extended warranty" does not include an
22 agreement, otherwise meeting the definition of extended warranty in
23 this subsection, if no separate charge is made for the agreement and
24 the value of the agreement is included in the sales price of the
25 tangible personal property covered by the agreement. For purposes of
26 this subsection, "sales price" has the same meaning as in RCW
27 82.08.010.

28 ~~((+8))~~ (9)(a) The term also includes the following sales to
29 consumers of digital goods, digital codes, and digital automated
30 services:

31 (i) Sales in which the seller has granted the purchaser the right
32 of permanent use;

33 (ii) Sales in which the seller has granted the purchaser a right of
34 use that is less than permanent;

35 (iii) Sales in which the purchaser is not obligated to make
36 continued payment as a condition of the sale; and

37 (iv) Sales in which the purchaser is obligated to make continued
38 payment as a condition of the sale.

1 (b) A retail sale of digital goods, digital codes, or digital
2 automated services under this subsection (~~(+8+)~~) (9) includes any
3 services provided by the seller exclusively in connection with the
4 digital goods, digital codes, or digital automated services, whether or
5 not a separate charge is made for such services.

6 (c) For purposes of this subsection, "permanent" means perpetual or
7 for an indefinite or unspecified length of time. A right of permanent
8 use is presumed to have been granted unless the agreement between the
9 seller and the purchaser specifies or the circumstances surrounding the
10 transaction suggest or indicate that the right to use terminates on the
11 occurrence of a condition subsequent.

12 (~~(+9+)~~) (10) The term also includes the charge made for providing
13 tangible personal property along with an operator for a fixed or
14 indeterminate period of time. A consideration of this is that the
15 operator is necessary for the tangible personal property to perform as
16 designed. For the purpose of this subsection (~~(+9+)~~) (10), an operator
17 must do more than maintain, inspect, or set up the tangible personal
18 property.

19 (11) The term does not include the sale of or charge made for labor
20 and services rendered in respect to the building, repairing, or
21 improving of any street, place, road, highway, easement, right-of-way,
22 mass public transportation terminal or parking facility, bridge,
23 tunnel, or trestle which is owned by a municipal corporation or
24 political subdivision of the state or by the United States and which is
25 used or to be used primarily for foot or vehicular traffic including
26 mass transportation vehicles of any kind.

27 (~~(+10+)~~) (12) The term also does not include sales of chemical
28 sprays or washes to persons for the purpose of postharvest treatment of
29 fruit for the prevention of scald, fungus, mold, or decay, nor does it
30 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
31 pollination including insects such as bees, and spray materials to:
32 (a) Persons who participate in the federal conservation reserve
33 program, the environmental quality incentives program, the wetlands
34 reserve program, and the wildlife habitat incentives program, or their
35 successors administered by the United States department of agriculture;
36 (b) farmers for the purpose of producing for sale any agricultural
37 product; and (c) farmers acting under cooperative habitat development
38 or access contracts with an organization exempt from federal income tax

1 under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue
2 code or the Washington state department of fish and wildlife to produce
3 or improve wildlife habitat on land that the farmer owns or leases.

4 ~~((+11+))~~ (13) The term does not include the sale of or charge made
5 for labor and services rendered in respect to the constructing,
6 repairing, decorating, or improving of new or existing buildings or
7 other structures under, upon, or above real property of or for the
8 United States, any instrumentality thereof, or a county or city housing
9 authority created pursuant to chapter 35.82 RCW, including the
10 installing, or attaching of any article of tangible personal property
11 therein or thereto, whether or not such personal property becomes a
12 part of the realty by virtue of installation. Nor does the term
13 include the sale of services or charges made for the clearing of land
14 and the moving of earth of or for the United States, any
15 instrumentality thereof, or a county or city housing authority. Nor
16 does the term include the sale of services or charges made for cleaning
17 up for the United States, or its instrumentalities, radioactive waste
18 and other by-products of weapons production and nuclear research and
19 development.

20 ~~((+12+))~~ (14) The term does not include the sale of or charge made
21 for labor, services, or tangible personal property pursuant to
22 agreements providing maintenance services for bus, rail, or rail fixed
23 guideway equipment when a regional transit authority is the recipient
24 of the labor, services, or tangible personal property, and a transit
25 agency, as defined in RCW 81.104.015, performs the labor or services.

26 (15) The term does not include the sale for resale of any service
27 described in this section if the sale would otherwise constitute a
28 "sale at retail" and "retail sale" under this section.

29 **Sec. 1205.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to
30 read as follows:

31 "Sale at wholesale" or "wholesale sale" means:

32 (1) Any sale, which is not a sale at retail, of:

33 (a) Tangible personal property;

34 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
35 (g);

36 (c) Amusement or recreation services as defined in RCW
37 82.04.050(3)(a);

- 1 (d) Prewritten computer software;
- 2 (e) Services described in RCW 82.04.050 (6)(b) or (7);
- 3 (f) Extended warranties as defined in RCW 82.04.050(7);
- 4 (g) Competitive telephone service, ancillary services, or
- 5 telecommunications service as those terms are defined in RCW 82.04.065;
- 6 or
- 7 (h) Digital goods, digital codes, or digital automated services;
- 8 and

9 (2) Any charge made for labor and services rendered for persons who
10 are not consumers, in respect to real or personal property, if such
11 charge is expressly defined as a retail sale by RCW 82.04.050 when
12 rendered to or for consumers. For the purposes of this subsection (2),
13 "real or personal property" does not include any natural products named
14 in RCW 82.04.100.

15 **Sec. 1206.** RCW 82.04.060 and 2010 c . . . (E2SHB 1597) s 203 are
16 each amended to read as follows:

17 "Sale at wholesale" or "wholesale sale" means:

18 (1) Any sale, which is not a sale at retail, of:

- 19 (a) Tangible personal property;
- 20 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
- 21 (g);

22 (c) Amusement or recreation services as defined in RCW
23 82.04.050(3)(a);

- 24 (d) Prewritten computer software;
- 25 (e) Services described in RCW 82.04.050 (6)(b) or (7);
- 26 (f) Extended warranties as defined in RCW 82.04.050(7);
- 27 (g) Competitive telephone service, ancillary services, or
- 28 telecommunications service as those terms are defined in RCW 82.04.065;
- 29 or
- 30 (h) Digital goods, digital codes, or digital automated services;

31 (2) Any charge made for labor and services rendered for persons who
32 are not consumers, in respect to real or personal property, if such
33 charge is expressly defined as a retail sale by RCW 82.04.050 when
34 rendered to or for consumers. For the purposes of this subsection (2),
35 "real or personal property" does not include any natural products named
36 in RCW 82.04.100; and

1 (3) The sale of any service for resale, if the sale is excluded
2 from the definition of "sale at retail" and "retail sale" in RCW
3 82.04.050(14).

4 **Sec. 1207.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
5 read as follows:

6 "Consumer" means the following:

7 (1) Any person who purchases, acquires, owns, holds, or uses any
8 article of tangible personal property irrespective of the nature of the
9 person's business and including, among others, without limiting the
10 scope hereof, persons who install, repair, clean, alter, improve,
11 construct, or decorate real or personal property of or for consumers
12 other than for the purpose (a) of resale as tangible personal property
13 in the regular course of business or (b) of incorporating such property
14 as an ingredient or component of real or personal property when
15 installing, repairing, cleaning, altering, imprinting, improving,
16 constructing, or decorating such real or personal property of or for
17 consumers or (c) of consuming such property in producing for sale a new
18 article of tangible personal property or a new substance, of which such
19 property becomes an ingredient or component or as a chemical used in
20 processing, when the primary purpose of such chemical is to create a
21 chemical reaction directly through contact with an ingredient of a new
22 article being produced for sale or (d) of consuming the property
23 purchased in producing ferrosilicon which is subsequently used in
24 producing magnesium for sale, if the primary purpose of such property
25 is to create a chemical reaction directly through contact with an
26 ingredient of ferrosilicon or (e) of satisfying the person's
27 obligations under an extended warranty as defined in RCW 82.04.050(7),
28 if such tangible personal property replaces or becomes an ingredient or
29 component of property covered by the extended warranty without
30 intervening use by such person;

31 (2)(a) Any person engaged in any business activity taxable under
32 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
33 uses any competitive telephone service, ancillary services, or
34 telecommunications service as those terms are defined in RCW 82.04.065,
35 other than for resale in the regular course of business; (c) any person
36 who purchases, acquires, or uses any service defined in RCW
37 82.04.050(2) (a) or (g), other than for resale in the regular course of

1 business or for the purpose of satisfying the person's obligations
2 under an extended warranty as defined in RCW 82.04.050(7); (d) any
3 person who purchases, acquires, or uses any amusement and recreation
4 service defined in RCW 82.04.050(3)(a), other than for resale in the
5 regular course of business; (e) any person who purchases or acquires an
6 extended warranty as defined in RCW 82.04.050(7) other than for resale
7 in the regular course of business; and (f) any person who is an end
8 user of software. For purposes of this subsection (2)(f) and RCW
9 82.04.050(6), a person who purchases or otherwise acquires prewritten
10 computer software, who provides services described in RCW
11 82.04.050(6)(b) and who will charge consumers for the right to access
12 and use the prewritten computer software, is not an end user of the
13 prewritten computer software;

14 (3) Any person engaged in the business of contracting for the
15 building, repairing or improving of any street, place, road, highway,
16 easement, right-of-way, mass public transportation terminal or parking
17 facility, bridge, tunnel, or trestle which is owned by a municipal
18 corporation or political subdivision of the state of Washington or by
19 the United States and which is used or to be used primarily for foot or
20 vehicular traffic including mass transportation vehicles of any kind as
21 defined in RCW 82.04.280, in respect to tangible personal property when
22 such person incorporates such property as an ingredient or component of
23 such publicly owned street, place, road, highway, easement,
24 right-of-way, mass public transportation terminal or parking facility,
25 bridge, tunnel, or trestle by installing, placing or spreading the
26 property in or upon the right-of-way of such street, place, road,
27 highway, easement, bridge, tunnel, or trestle or in or upon the site of
28 such mass public transportation terminal or parking facility;

29 (4) Any person who is an owner, lessee or has the right of
30 possession to or an easement in real property which is being
31 constructed, repaired, decorated, improved, or otherwise altered by a
32 person engaged in business, excluding only (a) municipal corporations
33 or political subdivisions of the state in respect to labor and services
34 rendered to their real property which is used or held for public road
35 purposes, and (b) the United States, instrumentalities thereof, and
36 county and city housing authorities created pursuant to chapter 35.82
37 RCW in respect to labor and services rendered to their real property.

1 Nothing contained in this or any other subsection of this definition
2 shall be construed to modify any other definition of "consumer";

3 (5) Any person who is an owner, lessee, or has the right of
4 possession to personal property which is being constructed, repaired,
5 improved, cleaned, imprinted, or otherwise altered by a person engaged
6 in business;

7 (6) Any person engaged in the business of constructing, repairing,
8 decorating, or improving new or existing buildings or other structures
9 under, upon, or above real property of or for the United States, any
10 instrumentality thereof, or a county or city housing authority created
11 pursuant to chapter 35.82 RCW, including the installing or attaching of
12 any article of tangible personal property therein or thereto, whether
13 or not such personal property becomes a part of the realty by virtue of
14 installation; also, any person engaged in the business of clearing land
15 and moving earth of or for the United States, any instrumentality
16 thereof, or a county or city housing authority created pursuant to
17 chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within
18 the meaning of this subsection in respect to tangible personal property
19 incorporated into, installed in, or attached to such building or other
20 structure by such person, except that consumer does not include any
21 person engaged in the business of constructing, repairing, decorating,
22 or improving new or existing buildings or other structures under, upon,
23 or above real property of or for the United States, or any
24 instrumentality thereof, if the investment project would qualify for
25 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
26 private entity;

27 (7) Any person who is a lessor of machinery and equipment, the
28 rental of which is exempt from the tax imposed by RCW 82.08.020 under
29 RCW 82.08.02565, with respect to the sale of or charge made for
30 tangible personal property consumed in respect to repairing the
31 machinery and equipment, if the tangible personal property has a useful
32 life of less than one year. Nothing contained in this or any other
33 subsection of this section (~~shall~~) may be construed to modify any
34 other definition of "consumer";

35 (8) Any person engaged in the business of cleaning up for the
36 United States, or its instrumentalities, radioactive waste and other
37 by-products of weapons production and nuclear research and development;

1 (9) Any person who is an owner, lessee, or has the right of
2 possession of tangible personal property that, under the terms of an
3 extended warranty as defined in RCW 82.04.050(7), has been repaired or
4 is replacement property, but only with respect to the sale of or charge
5 made for the repairing of the tangible personal property or the
6 replacement property;

7 (10) Any person who purchases, acquires, or uses services described
8 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
9 course of business; and

10 (11)(a) Any end user of a digital product or digital code.

11 (b)(i) For purposes of this subsection, "end user" means any
12 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
13 by contract a digital product for further commercial broadcast,
14 rebroadcast, transmission, retransmission, licensing, relicensing,
15 distribution, redistribution or exhibition of the product, in whole or
16 in part, to others. A person that purchases digital products or
17 digital codes for the purpose of giving away such products or codes
18 will not be considered to have engaged in the distribution or
19 redistribution of such products or codes and will be treated as an end
20 user;

21 (ii) If a purchaser of a digital code does not receive the
22 contractual right to further redistribute, after the digital code is
23 redeemed, the underlying digital product to which the digital code
24 relates, then the purchaser of the digital code is an end user. If the
25 purchaser of the digital code receives the contractual right to further
26 redistribute, after the digital code is redeemed, the underlying
27 digital product to which the digital code relates, then the purchaser
28 of the digital code is not an end user. A purchaser of a digital code
29 who has the contractual right to further redistribute the digital code
30 is an end user if that purchaser does not have the right to further
31 redistribute, after the digital code is redeemed, the underlying
32 digital product to which the digital code relates.

33 **Sec. 1208.** RCW 82.04.190 and 2010 c . . . (E2SHB 1597) s 204 are
34 each amended to read as follows:

35 "Consumer" means the following:

36 (1) Any person who purchases, acquires, owns, holds, or uses any
37 article of tangible personal property irrespective of the nature of the

1 person's business and including, among others, without limiting the
2 scope hereof, persons who install, repair, clean, alter, improve,
3 construct, or decorate real or personal property of or for consumers
4 other than for the purpose of:

5 (a) Resale as tangible personal property in the regular course of
6 business;

7 (b) Incorporating such property as an ingredient or component of
8 real or personal property when installing, repairing, cleaning,
9 altering, imprinting, improving, constructing, or decorating such real
10 or personal property of or for consumers;

11 (c) Consuming such property in producing for sale as a new article
12 of tangible personal property or a new substance, of which such
13 property becomes an ingredient or component or as a chemical used in
14 processing, when the primary purpose of such chemical is to create a
15 chemical reaction directly through contact with an ingredient of a new
16 article being produced for sale;

17 (d) Consuming the property purchased in producing ferrosilicon
18 which is subsequently used in producing magnesium for sale, if the
19 primary purpose of such property is to create a chemical reaction
20 directly through contact with an ingredient of ferrosilicon; or

21 (e) Satisfying the person's obligations under an extended warranty
22 as defined in RCW 82.04.050(7), if such tangible personal property
23 replaces or becomes an ingredient or component of property covered by
24 the extended warranty without intervening use by such person;

25 (2)(a) Any person engaged in any business activity taxable under
26 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
27 uses any competitive telephone service, ancillary services, or
28 telecommunications service as those terms are defined in RCW 82.04.065,
29 other than for resale in the regular course of business; (c) any person
30 who purchases, acquires, or uses any service defined in RCW
31 82.04.050(2) (a) or (g), other than for resale in the regular course of
32 business or for the purpose of satisfying the person's obligations
33 under an extended warranty as defined in RCW 82.04.050(7); (d) any
34 person who purchases, acquires, or uses any amusement and recreation
35 service defined in RCW 82.04.050(3)(a), other than for resale in the
36 regular course of business; (e) any person who purchases or acquires an
37 extended warranty as defined in RCW 82.04.050(7) other than for resale
38 in the regular course of business; and (f) any person who is an end

1 user of software. For purposes of this subsection (2)(f) and RCW
2 82.04.050(6), a person who purchases or otherwise acquires prewritten
3 computer software, who provides services described in RCW
4 82.04.050(6)(b) and who will charge consumers for the right to access
5 and use the prewritten computer software, is not an end user of the
6 prewritten computer software;

7 (3) Any person engaged in the business of contracting for the
8 building, repairing or improving of any street, place, road, highway,
9 easement, right-of-way, mass public transportation terminal or parking
10 facility, bridge, tunnel, or trestle which is owned by a municipal
11 corporation or political subdivision of the state of Washington or by
12 the United States and which is used or to be used primarily for foot or
13 vehicular traffic including mass transportation vehicles of any kind as
14 defined in RCW 82.04.280, in respect to tangible personal property when
15 such person incorporates such property as an ingredient or component of
16 such publicly owned street, place, road, highway, easement,
17 right-of-way, mass public transportation terminal or parking facility,
18 bridge, tunnel, or trestle by installing, placing or spreading the
19 property in or upon the right-of-way of such street, place, road,
20 highway, easement, bridge, tunnel, or trestle or in or upon the site of
21 such mass public transportation terminal or parking facility;

22 (4) Any person who is an owner, lessee or has the right of
23 possession to or an easement in real property which is being
24 constructed, repaired, decorated, improved, or otherwise altered by a
25 person engaged in business, excluding only (a) municipal corporations
26 or political subdivisions of the state in respect to labor and services
27 rendered to their real property which is used or held for public road
28 purposes, and (b) the United States, instrumentalities thereof, and
29 county and city housing authorities created pursuant to chapter 35.82
30 RCW in respect to labor and services rendered to their real property.
31 Nothing contained in this or any other subsection of this definition
32 shall be construed to modify any other definition of "consumer";

33 (5) Any person who is an owner, lessee, or has the right of
34 possession to personal property which is being constructed, repaired,
35 improved, cleaned, imprinted, or otherwise altered by a person engaged
36 in business;

37 (6) Any person engaged in the business of constructing, repairing,
38 decorating, or improving new or existing buildings or other structures

1 under, upon, or above real property of or for the United States, any
2 instrumentality thereof, or a county or city housing authority created
3 pursuant to chapter 35.82 RCW, including the installing or attaching of
4 any article of tangible personal property therein or thereto, whether
5 or not such personal property becomes a part of the realty by virtue of
6 installation; also, any person engaged in the business of clearing land
7 and moving earth of or for the United States, any instrumentality
8 thereof, or a county or city housing authority created pursuant to
9 chapter 35.82 RCW. Any such person is a consumer within the meaning of
10 this subsection in respect to tangible personal property incorporated
11 into, installed in, or attached to such building or other structure by
12 such person, except that consumer does not include any person engaged
13 in the business of constructing, repairing, decorating, or improving
14 new or existing buildings or other structures under, upon, or above
15 real property of or for the United States, or any instrumentality
16 thereof, if the investment project would qualify for sales and use tax
17 deferral under chapter 82.63 RCW if undertaken by a private entity;

18 (7) Any person who is a lessor of machinery and equipment, the
19 rental of which is exempt from the tax imposed by RCW 82.08.020 under
20 RCW 82.08.02565, with respect to the sale of or charge made for
21 tangible personal property consumed in respect to repairing the
22 machinery and equipment, if the tangible personal property has a useful
23 life of less than one year. Nothing contained in this or any other
24 subsection of this section may be construed to modify any other
25 definition of "consumer";

26 (8) Any person engaged in the business of cleaning up for the
27 United States, or its instrumentalities, radioactive waste and other
28 by-products of weapons production and nuclear research and development;

29 (9) Any person who is an owner, lessee, or has the right of
30 possession of tangible personal property that, under the terms of an
31 extended warranty as defined in RCW 82.04.050(7), has been repaired or
32 is replacement property, but only with respect to the sale of or charge
33 made for the repairing of the tangible personal property or the
34 replacement property;

35 (10) Any person who purchases, acquires, or uses services described
36 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
37 course of business;

38 (11)(a) Any end user of a digital product or digital code.

1 (b)(i) For purposes of this subsection, "end user" means any
2 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
3 by contract a digital product for further commercial broadcast,
4 rebroadcast, transmission, retransmission, licensing, relicensing,
5 distribution, redistribution or exhibition of the product, in whole or
6 in part, to others. A person that purchases digital products or
7 digital codes for the purpose of giving away such products or codes
8 will not be considered to have engaged in the distribution or
9 redistribution of such products or codes and will be treated as an end
10 user;

11 (ii) If a purchaser of a digital code does not receive the
12 contractual right to further redistribute, after the digital code is
13 redeemed, the underlying digital product to which the digital code
14 relates, then the purchaser of the digital code is an end user. If the
15 purchaser of the digital code receives the contractual right to further
16 redistribute, after the digital code is redeemed, the underlying
17 digital product to which the digital code relates, then the purchaser
18 of the digital code is not an end user. A purchaser of a digital code
19 who has the contractual right to further redistribute the digital code
20 is an end user if that purchaser does not have the right to further
21 redistribute, after the digital code is redeemed, the underlying
22 digital product to which the digital code relates; and

23 (12) Any person who provides services described in RCW
24 82.04.050(9). Any such person is a consumer with respect to the
25 purchase, acquisition, or use of the tangible personal property that
26 the person provides along with an operator in rendering services
27 defined as a retail sale in RCW 82.04.050(9). Any such person may also
28 be a consumer under other provisions of this section.

29 **Sec. 1209.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to
30 read as follows:

31 (1) "Computer" means an electronic device that accepts information
32 in digital or similar form and manipulates it for a result based on a
33 sequence of instructions.

34 (2) "Computer software" means a set of coded instructions designed
35 to cause a computer or automatic data processing equipment to perform
36 a task. All software is classified as either prewritten or custom.
37 Consistent with this definition "computer software" includes only those

1 sets of coded instructions intended for use by an end user and
2 specifically excludes retained rights in software and master copies of
3 software.

4 (3) "Custom software" means computer software created for a single
5 person.

6 (4) "Customization of prewritten computer software" means any
7 alteration, modification, or development of applications using or
8 incorporating prewritten computer software for a specific person.
9 "Customization of prewritten computer software" includes individualized
10 configuration of software to work with other software and computer
11 hardware but does not include routine installation. Customization of
12 prewritten computer software does not change the underlying character
13 or taxability of the original prewritten computer software.

14 (5) "Master copies" of software means copies of software from which
15 a software developer, author, inventor, publisher, licensor,
16 sublicensor, or distributor makes copies for sale or license.

17 (6) "Prewritten computer software" means computer software,
18 including prewritten upgrades, that is not designed and developed by
19 the author or other creator to the specifications of a specific
20 purchaser. The combining of two or more prewritten computer software
21 programs or prewritten portions thereof does not cause the combination
22 to be other than prewritten computer software. Prewritten computer
23 software includes software designed and developed by the author or
24 other creator to the specifications of a specific purchaser when it is
25 sold to a person other than such purchaser. Where a person modifies or
26 enhances computer software of which such persons is not the author or
27 creator, the person (~~shall be~~) is deemed to be the author or creator
28 only of the person's modifications or enhancements. Prewritten
29 computer software or a prewritten portion thereof that is modified or
30 enhanced to any degree, where such modification or enhancement is
31 designed and developed to the specifications of a specific purchaser,
32 remains prewritten computer software; however where there is a
33 reasonable, separately stated charge or an invoice or other statement
34 of the price given to the purchaser for the modification or
35 enhancement, the modification or enhancement (~~shall~~) does not
36 constitute prewritten computer software.

37 (7) "Retained rights" means any and all rights, including
38 intellectual property rights such as those rights arising from

1 copyrights, patents, and trade secret laws, that are owned or are held
2 under contract or license by a software developer, author, inventor,
3 publisher, licensor, sublicensor, or distributor.

4 NEW SECTION. **Sec. 1210.** RCW 82.04.29001 (Creation and
5 distribution of custom software--Customization of prewritten computer
6 software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are
7 each repealed.

8 **Sec. 1211.** RCW 82.08.02088 and 2009 c 535 s 701 are each amended
9 to read as follows:

10 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
11 digital goods, digital codes, digital automated services, prewritten
12 computer software, or services defined as a retail sale in RCW
13 82.04.050 (6)(b) or (7) to a buyer that provides the seller with an
14 exemption certificate claiming multiple points of use. An exemption
15 certificate claiming multiple points of use must be in a form and
16 contain such information as required by the department.

17 (2) A buyer is entitled to use an exemption certificate claiming
18 multiple points of use only if the buyer is a business or other
19 organization and the digital goods or digital automated services
20 purchased, or the digital goods or digital automated services to be
21 obtained by the digital code purchased, or the prewritten computer
22 software or services defined as a retail sale in RCW 82.04.050 (6)(b)
23 or (7) purchased will be concurrently available for use within and
24 outside this state. A buyer is not entitled to use an exemption
25 certificate claiming multiple points of use for digital goods, digital
26 codes, digital automated services, prewritten computer software, or
27 services defined as a retail sale in RCW 82.04.050(6)(b) purchased for
28 personal use.

29 (3) A buyer claiming an exemption under this section must report
30 and pay the tax imposed in RCW 82.12.020 and any local use taxes
31 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
32 directly to the department in accordance with RCW 82.12.02088 and
33 82.14.457.

34 (4) For purposes of this section, "concurrently available for use
35 within and outside this state" means that employees or other agents of
36 the buyer may use the digital goods, digital automated services,

1 prewritten computer software, or services defined as a retail sale in
2 RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations
3 within this state and one or more locations outside this state. A
4 digital code is concurrently available for use within and outside this
5 state if employees or other agents of the buyer may use the digital
6 goods or digital automated services to be obtained by the code
7 simultaneously at one or more locations within this state and one or
8 more locations outside this state.

9 **Sec. 1212.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
10 read as follows:

11 For the purposes of this chapter:

12 (1) "Purchase price" means the same as sales price as defined in
13 RCW 82.08.010;

14 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
15 price for the article of tangible personal property, the use of which
16 is taxable under this chapter. The term also includes, in addition to
17 the purchase price, the amount of any tariff or duty paid with respect
18 to the importation of the article used. In case the article used is
19 acquired by lease or by gift or is extracted, produced, or manufactured
20 by the person using the same or is sold under conditions wherein the
21 purchase price does not represent the true value thereof, the value of
22 the article used (~~shall~~) must be determined as nearly as possible
23 according to the retail selling price at place of use of similar
24 products of like quality and character under such rules as the
25 department may prescribe.

26 (b) In case the articles used are acquired by bailment, the value
27 of the use of the articles so used (~~shall~~) must be in an amount
28 representing a reasonable rental for the use of the articles so bailed,
29 determined as nearly as possible according to the value of such use at
30 the places of use of similar products of like quality and character
31 under such rules as the department of revenue may prescribe. In case
32 any such articles of tangible personal property are used in respect to
33 the construction, repairing, decorating, or improving of, and which
34 become or are to become an ingredient or component of, new or existing
35 buildings or other structures under, upon, or above real property of or
36 for the United States, any instrumentality thereof, or a county or city
37 housing authority created pursuant to chapter 35.82 RCW, including the

1 installing or attaching of any such articles therein or thereto,
2 whether or not such personal property becomes a part of the realty by
3 virtue of installation, then the value of the use of such articles so
4 used (~~(shall)~~) must be determined according to the retail selling price
5 of such articles, or in the absence of such a selling price, as nearly
6 as possible according to the retail selling price at place of use of
7 similar products of like quality and character or, in the absence of
8 either of these selling price measures, such value may be determined
9 upon a cost basis, in any event under such rules as the department of
10 revenue may prescribe.

11 (c) In the case of articles owned by a user engaged in business
12 outside the state which are brought into the state for no more than one
13 hundred eighty days in any period of three hundred sixty-five
14 consecutive days and which are temporarily used for business purposes
15 by the person in this state, the value of the article used (~~(shall)~~)
16 must be an amount representing a reasonable rental for the use of the
17 articles, unless the person has paid tax under this chapter or chapter
18 82.08 RCW upon the full value of the article used, as defined in (a) of
19 this subsection.

20 (d) In the case of articles manufactured or produced by the user
21 and used in the manufacture or production of products sold or to be
22 sold to the department of defense of the United States, the value of
23 the articles used (~~(shall)~~) must be determined according to the value
24 of the ingredients of such articles.

25 (e) In the case of an article manufactured or produced for purposes
26 of serving as a prototype for the development of a new or improved
27 product, the value of the article used (~~(shall)~~) must be determined by:
28 (i) The retail selling price of such new or improved product when first
29 offered for sale; or (ii) the value of materials incorporated into the
30 prototype in cases in which the new or improved product is not offered
31 for sale.

32 (f) In the case of an article purchased with a direct pay permit
33 under RCW 82.32.087, the value of the article used (~~(shall be)~~) is
34 determined by the purchase price of such article if, but for the use of
35 the direct pay permit, the transaction would have been subject to sales
36 tax;

37 (3) "Value of the service used" means the purchase price for the
38 digital automated service or other service, the use of which is taxable

1 under this chapter. If the service is received by gift or under
2 conditions wherein the purchase price does not represent the true value
3 thereof, the value of the service used (~~shall~~) must be determined as
4 nearly as possible according to the retail selling price at place of
5 use of similar services of like quality and character under rules the
6 department may prescribe;

7 (4) "Value of the extended warranty used" means the purchase price
8 for the extended warranty, the use of which is taxable under this
9 chapter. If the extended warranty is received by gift or under
10 conditions wherein the purchase price does not represent the true value
11 of the extended warranty, the value of the extended warranty used
12 (~~shall~~) must be determined as nearly as possible according to the
13 retail selling price at place of use of similar extended warranties of
14 like quality and character under rules the department may prescribe;

15 (5) "Value of the digital good or digital code used" means the
16 purchase price for the digital good or digital code, the use of which
17 is taxable under this chapter. If the digital good or digital code is
18 acquired other than by purchase, the value of the digital good or
19 digital code must be determined as nearly as possible according to the
20 retail selling price at place of use of similar digital goods or
21 digital codes of like quality and character under rules the department
22 may prescribe;

23 (6) "Use," "used," "using," or "put to use" have their ordinary
24 meaning, and mean:

25 (a) With respect to tangible personal property, the first act
26 within this state by which the taxpayer takes or assumes dominion or
27 control over the article of tangible personal property (as a consumer),
28 and include installation, storage, withdrawal from storage,
29 distribution, or any other act preparatory to subsequent actual use or
30 consumption within this state;

31 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
32 first act within this state after the service has been performed by
33 which the taxpayer takes or assumes dominion or control over the
34 article of tangible personal property upon which the service was
35 performed (as a consumer), and includes installation, storage,
36 withdrawal from storage, distribution, or any other act preparatory to
37 subsequent actual use or consumption of the article within this state;

1 (c) With respect to an extended warranty, the first act within this
2 state after the extended warranty has been acquired by which the
3 taxpayer takes or assumes dominion or control over the article of
4 tangible personal property to which the extended warranty applies, and
5 includes installation, storage, withdrawal from storage, distribution,
6 or any other act preparatory to subsequent actual use or consumption of
7 the article within this state;

8 (d) With respect to a digital good or digital code, the first act
9 within this state by which the taxpayer, as a consumer, views,
10 accesses, downloads, possesses, stores, opens, manipulates, or
11 otherwise uses or enjoys the digital good or digital code;

12 (e) With respect to a digital automated service, the first act
13 within this state by which the taxpayer, as a consumer, uses, enjoys,
14 or otherwise receives the benefit of the service;

15 (f) With respect to a service defined as a retail sale in RCW
16 82.04.050 (6)(b) or (7), the first act within this state by which the
17 taxpayer, as a consumer, accesses the (~~prewritten~~) computer software;
18 and

19 (g) With respect to a service defined as a retail sale in RCW
20 82.04.050(2)(g), the first act within this state after the service has
21 been performed by which the taxpayer, as a consumer, views, accesses,
22 downloads, possesses, stores, opens, manipulates, or otherwise uses or
23 enjoys the digital good upon which the service was performed;

24 (7) "Taxpayer" and "purchaser" include all persons included within
25 the meaning of the word "buyer" and the word "consumer" as defined in
26 chapters 82.04 and 82.08 RCW;

27 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
28 "retailer" means every seller as defined in RCW 82.08.010 and every
29 person engaged in the business of selling tangible personal property at
30 retail and every person required to collect from purchasers the tax
31 imposed under this chapter.

32 (ii) "Retailer" does not include a professional employer
33 organization when a covered employee coemployed with the client under
34 the terms of a professional employer agreement engages in activities
35 that constitute a sale of tangible personal property, extended
36 warranty, digital good, digital code, or a sale of any digital
37 automated service or service defined as a retail sale in RCW 82.04.050
38 (2)(a) or (g), (3)(a), (~~or~~) (6)(b), or (7) that is subject to the tax

1 imposed by this chapter. In such cases, the client, and not the
2 professional employer organization, is deemed to be the retailer and is
3 responsible for collecting and remitting the tax imposed by this
4 chapter.

5 (b) For the purposes of (a) of this subsection, the terms "client,"
6 "covered employee," "professional employer agreement," and
7 "professional employer organization" have the same meanings as in RCW
8 82.04.540;

9 (9) "Extended warranty" has the same meaning as in RCW
10 82.04.050(7);

11 (10) The meaning ascribed to words and phrases in chapters 82.04
12 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
13 effect with respect to taxes imposed under the provisions of this
14 chapter. "Consumer," in addition to the meaning ascribed to it in
15 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
16 means any person who distributes or displays, or causes to be
17 distributed or displayed, any article of tangible personal property,
18 except newspapers, the primary purpose of which is to promote the sale
19 of products or services. With respect to property distributed to
20 persons within this state by a consumer as defined in this subsection
21 (10), the use of the property (~~shall be~~) is deemed to be by such
22 consumer.

23 **Sec. 1213.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
24 read as follows:

25 (1) There is (~~hereby~~) levied and (~~there shall be~~) collected
26 from every person in this state a tax or excise for the privilege of
27 using within this state as a consumer any:

28 (a) Article of tangible personal property purchased at retail, or
29 acquired by lease, gift, repossession, or bailment, or extracted or
30 produced or manufactured by the person so using the same, or otherwise
31 furnished to a person engaged in any business taxable under RCW
32 82.04.280 (2) or (7), including tangible personal property acquired at
33 a casual or isolated sale, and including by-products used by the
34 manufacturer thereof, except as otherwise provided in this chapter,
35 irrespective of whether the article or similar articles are
36 manufactured or are available for purchase within this state;

1 (b) Prewritten computer software, regardless of the method of
2 delivery, but excluding prewritten computer software that is either
3 provided free of charge or is provided for temporary use in viewing
4 information, or both;

5 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
6 (g), (3)(a), (~~(6)(b)~~) (6)(b), or (7), excluding services defined as a
7 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

8 (d) Extended warranty; or

9 (e)(i) Digital good, digital code, or digital automated service,
10 including the use of any services provided by a seller exclusively in
11 connection with digital goods, digital codes, or digital automated
12 services, whether or not a separate charge is made for such services.

13 (ii) With respect to the use of digital goods, digital automated
14 services, and digital codes acquired by purchase, the tax imposed in
15 this subsection (1)(e) applies in respect to:

16 (A) Sales in which the seller has granted the purchaser the right
17 of permanent use;

18 (B) Sales in which the seller has granted the purchaser a right of
19 use that is less than permanent;

20 (C) Sales in which the purchaser is not obligated to make continued
21 payment as a condition of the sale; and

22 (D) Sales in which the purchaser is obligated to make continued
23 payment as a condition of the sale.

24 (iii) With respect to digital goods, digital automated services,
25 and digital codes acquired other than by purchase, the tax imposed in
26 this subsection (1)(e) applies regardless of whether or not the
27 consumer has a right of permanent use or is obligated to make continued
28 payment as a condition of use.

29 (2) The provisions of this chapter do not apply in respect to the
30 use of any article of tangible personal property, extended warranty,
31 digital good, digital code, digital automated service, or service
32 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), (~~(6)(b)~~) or
33 (7), if the sale to, or the use by, the present user or the present
34 user's bailor or donor has already been subjected to the tax under
35 chapter 82.08 RCW or this chapter and the tax has been paid by the
36 present user or by the present user's bailor or donor.

37 (3)(a) Except as provided in this section, payment of the tax
38 imposed by this chapter or chapter 82.08 RCW by one purchaser or user

1 of tangible personal property, extended warranty, digital good, digital
2 code, digital automated service, or other service does not have the
3 effect of exempting any other purchaser or user of the same property,
4 extended warranty, digital good, digital code, digital automated
5 service, or other service from the taxes imposed by such chapters.

6 (b) The tax imposed by this chapter does not apply:

7 (i) If the sale to, or the use by, the present user or his or her
8 bailor or donor has already been subjected to the tax under chapter
9 82.08 RCW or this chapter and the tax has been paid by the present user
10 or by his or her bailor or donor;

11 (ii) In respect to the use of any article of tangible personal
12 property acquired by bailment and the tax has once been paid based on
13 reasonable rental as determined by RCW 82.12.060 measured by the value
14 of the article at time of first use multiplied by the tax rate imposed
15 by chapter 82.08 RCW or this chapter as of the time of first use;

16 (iii) In respect to the use of any article of tangible personal
17 property acquired by bailment, if the property was acquired by a
18 previous bailee from the same bailor for use in the same general
19 activity and the original bailment was prior to June 9, 1961; or

20 (iv) To the use of digital goods or digital automated services,
21 which were obtained through the use of a digital code, if the sale of
22 the digital code to, or the use of the digital code by, the present
23 user or the present user's bailor or donor has already been subjected
24 to the tax under chapter 82.08 RCW or this chapter and the tax has been
25 paid by the present user or by the present user's bailor or donor.

26 (4)(a) Except as provided in (b) of this subsection (4), the tax is
27 levied and must be collected in an amount equal to the value of the
28 article used, value of the digital good or digital code used, value of
29 the extended warranty used, or value of the service used by the
30 taxpayer, multiplied by the applicable rates in effect for the retail
31 sales tax under RCW 82.08.020.

32 (b) In the case of a seller required to collect use tax from the
33 purchaser, the tax must be collected in an amount equal to the purchase
34 price multiplied by the applicable rate in effect for the retail sales
35 tax under RCW 82.08.020.

36 **PART XIII**

37 **PUD Privilege Tax Clarification**

1 of months in the reporting period, as determined under RCW 82.32.045.
2 The maximum credit for a taxpayer, which reports at least fifty percent
3 of its taxable income under RCW 82.04.290(2)(a) and 82.04.285, for a
4 reporting period is seventy dollars multiplied by the number of months
5 in the reporting period, as determined under RCW 82.32.045.

6 (2) When the amount of tax otherwise due under this chapter is
7 equal to or less than the maximum credit, a credit is allowed equal to
8 the amount of tax otherwise due under this chapter.

9 (3) When the amount of tax otherwise due under this chapter exceeds
10 the maximum credit, a reduced credit is allowed equal to twice the
11 maximum credit, minus the tax otherwise due under this chapter, but not
12 less than zero.

13 (4) The department may prepare a tax credit table consisting of tax
14 ranges using increments of no more than five dollars and a
15 corresponding tax credit to be applied to those tax ranges. The table
16 shall be prepared in such a manner that no taxpayer will owe a greater
17 amount of tax by using the table than would be owed by performing the
18 calculation under subsections (1) through (3) of this section. A table
19 prepared by the department under this subsection (~~shall~~) must be used
20 by all taxpayers in taking the credit provided in this section.

21 **Sec. 1403.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to
22 read as follows:

23 (1) Except as otherwise provided in this chapter, payments of the
24 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,
25 along with reports and returns on forms prescribed by the department,
26 are due monthly within twenty-five days after the end of the month in
27 which the taxable activities occur.

28 (2) The department of revenue may relieve any taxpayer or class of
29 taxpayers from the obligation of remitting monthly and may require the
30 return to cover other longer reporting periods, but in no event may
31 returns be filed for a period greater than one year. For these
32 taxpayers, tax payments are due on or before the last day of the month
33 next succeeding the end of the period covered by the return.

34 (3) The department of revenue may also require verified annual
35 returns from any taxpayer, setting forth such additional information as
36 it may deem necessary to correctly determine tax liability.

1 (4) Notwithstanding subsections (1) and (2) of this section, the
2 department may relieve any person of the requirement to file returns if
3 the following conditions are met:

4 (a) The person's value of products, gross proceeds of sales, or
5 gross income of the business, from all business activities taxable
6 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per
7 year, except for businesses paying at least fifty percent of their tax
8 under RCW 82.04.290(2)(a) and 82.04.285, the amount of business
9 activities taxable under chapter 82.04 RCW is less than fifty-six
10 thousand dollars per year;

11 (b) The person's gross income of the business from all activities
12 taxable under chapter 82.16 RCW is less than twenty-four thousand
13 dollars per year; and

14 (c) The person is not required to collect or pay to the department
15 of revenue any other tax or fee which the department is authorized to
16 collect.

17 **PART XV**

18 **Property Management Salaries**

19 NEW SECTION. **Sec. 1501.** RCW 82.04.394 (Exemptions--Amounts
20 received by property management company for on-site personnel) and 1998
21 c 338 s 2 are each repealed.

22 **PART XVI**

23 **Convention Center Taxes**

24 **Sec. 1601.** RCW 67.40.140 and 1995 c 386 s 2 are each amended to
25 read as follows:

26 When remitting sales tax receipts to the state under RCW 82.14.050,
27 the city treasurer, or its designee, (~~shall~~) must at the same time
28 remit the sales taxes collected under RCW 67.40.130 for the
29 municipality. (~~The sum so collected and paid over on behalf of the~~
30 ~~municipality shall be credited against the amount of the tax otherwise~~
31 ~~due to the state from those same taxpayers under RCW 82.08.020(1).)~~)

32 **Sec. 1602.** RCW 67.40.190 and 1995 c 386 s 7 are each amended to
33 read as follows:

1 (1) Moneys received from any tax imposed under RCW 67.40.130 shall
2 be used for the purpose of providing funds to the corporation for the
3 costs associated with paying all or any part of the cost associated
4 with: The financing, design, acquisition, construction, equipping,
5 operating, maintaining, and reequipping of convention center
6 facilities; the acquisition, construction, and relocation costs of
7 replacement housing; and repayment of loans and advances from the
8 state, including loans authorized previously under this chapter, or to
9 pay or secure the payment of all or part of the principal of or
10 interest on any state bonds issued for purposes authorized under this
11 chapter.

12 (2) If any of the revenue from any local sales tax authorized under
13 RCW 67.40.130 (~~shall have~~) has been encumbered or pledged by the
14 state to secure the payment of any state bonds as authorized under RCW
15 67.40.030, then as long as that agreement or pledge (~~shall be~~) is in
16 effect, the legislature shall not withdraw from the municipality the
17 authority to levy and collect the tax (~~or the tax credit~~) authorized
18 under RCW 67.40.130 (~~and 67.40.140~~).

19 **Sec. 1603.** RCW 82.14.410 and 2001 c 6 s 1 are each amended to read
20 as follows:

21 (1) A local sales and use tax change adopted after December 1,
22 2000, must provide an exemption for those sales of lodging for which,
23 but for the exemption, the total sales tax rate imposed on sales of
24 lodging would exceed the greater of:

- 25 (a) Twelve percent; or
- 26 (b) The total sales tax rate that would have applied to the sale of
27 lodging if the sale were made on December 1, 2000.

28 (2) For the purposes of this section:
29 (a) "Local sales and use tax change" is defined as provided in RCW
30 82.14.055.

31 (b) "Sale of lodging" means the sale of or charge made for the
32 furnishing of lodging and all other services by a hotel, rooming house,
33 tourist court, motel, trailer camp, and the granting of any similar
34 license to use real property.

35 (c) "Total sales tax rate" means the combined rates of all state
36 and local taxes imposed under this chapter and chapters 36.100, 67.28,
37 67.40, and 82.08 RCW, and any other tax authorized after March 29,

1 2001, if the tax is in the nature of a sales tax collected from the
2 buyer, but excluding taxes imposed under RCW 81.104.170 before December
3 1, 2000, and taxes imposed under RCW 67.40.130.

4 **Sec. 1604.** RCW 67.28.181 and 2004 c 79 s 8 are each amended to
5 read as follows:

6 (1) The legislative body of any municipality may impose an excise
7 tax on the sale of or charge made for the furnishing of lodging that is
8 subject to tax under chapter 82.08 RCW. The rate of tax (~~shall~~) may
9 not exceed the lesser of two percent or a rate that, when combined with
10 all other taxes imposed upon sales of lodging within the municipality
11 under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW,
12 equals twelve percent. A tax under this chapter (~~shall~~) may not be
13 imposed in increments smaller than tenths of a percent.

14 (2) Notwithstanding subsection (1) of this section:

15 (a) If a municipality was authorized to impose taxes under this
16 chapter or RCW 67.40.100 or both with a total rate exceeding four
17 percent before July 27, 1997, such total authorization (~~shall~~) must
18 continue through January 31, 1999, and thereafter the municipality may
19 impose a tax under this section at a rate not exceeding the rate
20 actually imposed by the municipality on January 31, 1999.

21 (b) If a city or town, other than a municipality imposing a tax
22 under (a) of this subsection, is located in a county that imposed taxes
23 under this chapter with a total rate of four percent or more on January
24 1, 1997, the city or town may not impose a tax under this section.

25 (c) If a city has a population of four hundred thousand or more and
26 is located in a county with a population of one million or more, the
27 rate of tax imposed under this chapter by the city (~~shall~~) may not
28 exceed the lesser of four percent or a rate that, when combined with
29 all other taxes imposed upon sales of lodging in the municipality under
30 this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals
31 (~~fifteen~~) seventeen and two-tenths percent.

32 (d) If a municipality was authorized to impose taxes under this
33 chapter or RCW 67.40.100, or both, at a rate equal to six percent
34 before January 1, 1998, the municipality may impose a tax under this
35 section at a rate not exceeding the rate actually imposed by the
36 municipality on January 1, 1998.

1 (3) Any county ordinance or resolution adopted under this section
2 (~~shall~~) must contain a provision allowing a credit against the county
3 tax for the full amount of any city or town tax imposed under this
4 section upon the same taxable event.

5 **PART XVII**

6 **Miscellaneous Provisions**

7 NEW SECTION. **Sec. 1701.** (1) Except as provided in subsection (2)
8 of this section, if any provision of Part I of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of Part I of this act or the application of the provision to
11 other persons or circumstances is not affected.

12 (2) If a court of competent jurisdiction, in a final judgment not
13 subject to appeal, adjudges any provision of section 104(1)(c) of this
14 act unconstitutional or otherwise invalid, Part I of this act is null
15 and void in its entirety.

16 NEW SECTION. **Sec. 1702.** Part I of this act applies with respect
17 to gross income of the business, as defined in RCW 82.04.080, including
18 gross income from royalties as defined in RCW 82.04.2907, generated on
19 and after July 1, 2010. For purposes of calculating the thresholds in
20 section 104(1)(c) of this act for the 2010 tax year, property, payroll,
21 and receipts are based on the entire 2010 tax year.

22 NEW SECTION. **Sec. 1703.** Part II of this act must be construed
23 liberally to effectuate the legislature's intent to ensure that all
24 businesses and individuals pay their fair share of taxes.

25 NEW SECTION. **Sec. 1704.** (1) Except as provided in subsection (2)
26 of this section, section 201 of this act applies to tax periods
27 beginning January 1, 2006.

28 (2) Section 201 of this act does not apply to any tax periods
29 ending before April 1, 2010, that were included in a completed field
30 audit conducted by the department.

31 NEW SECTION. **Sec. 1705.** Sections 502, 802, and 803 of this act
32 apply both retroactively and prospectively.

1 NEW SECTION. **Sec. 1706.** In accordance with Article VIII, section
2 5 of the state Constitution, sections 802, 803, and 1705 of this act do
3 not authorize refunds of business and occupation tax validly collected
4 before April 1, 2010, on amounts received by an individual from a
5 corporation as compensation for serving as a member of that
6 corporation's board of directors.

7 NEW SECTION. **Sec. 1707.** Section 502 of this act does not affect
8 any final judgments, not subject to appeal, entered by a court of
9 competent jurisdiction before the effective date of this section.

10 NEW SECTION. **Sec. 1708.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 1709.** Except as otherwise provided in this act,
15 this act is necessary for the immediate preservation of the public
16 peace, health, or safety, or support of the state government and its
17 existing public institutions, and takes effect April 1, 2010.

18 NEW SECTION. **Sec. 1710.** Part XIV of this act is necessary for the
19 immediate preservation of the public peace, health, or safety, or
20 support of the state government and its existing public institutions,
21 and takes effect May 1, 2010.

22 NEW SECTION. **Sec. 1711.** Sections 603, 605, 613, and 1202 of this
23 act expire June 10, 2010.

24 NEW SECTION. **Sec. 1712.** Sections 604, 606, 614, and 1203 of this
25 act take effect June 10, 2010.

26 NEW SECTION. **Sec. 1713.** Sections 106, 802, 1102, 1203, 1205, and
27 1207 of this act expire July 1, 2010.

28 NEW SECTION. **Sec. 1714.** Parts II and III and sections 101 through
29 105, 107 through 111, 402, 803, 1103, 1204, 1206, and 1208 of this act
30 take effect July 1, 2010.

1 NEW SECTION. **Sec. 1715.** Section 607 of this act expires July 1,
2 2011.

3 NEW SECTION. **Sec. 1716.** Section 608 of this act takes effect July
4 1, 2011.

5 NEW SECTION. **Sec. 1717.** Part IX of this act takes effect January
6 1, 2011.

7 NEW SECTION. **Sec. 1718.** Section 1301 of this act applies
8 prospectively only."

9 Correct the title.

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