
HOUSE BILL 3157

State of Washington 61st Legislature 2010 Regular Session

By Representatives Hunter, Ericks, and Conway; by request of
Department of Revenue

Read first time 02/01/10. Referred to Committee on Finance.

1 AN ACT Relating to the state business and occupation tax; amending
2 RCW 82.04.220, 82.04.2907, and 82.04.460; adding new sections to
3 chapter 82.04 RCW; creating new sections; and providing an effective
4 date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that out-of-state
7 businesses that do not have a physical presence in Washington earn
8 significant income from Washington residents from providing services or
9 collecting royalties on the use of intangible property in this state.
10 The legislature further finds that these businesses receive significant
11 benefits and opportunities provided by the state, such as: Laws
12 providing protection of business interests or regulating consumer
13 credit; access to courts and judicial process to enforce business
14 rights, including debt collection and intellectual property rights; an
15 orderly and regulated marketplace; and police and fire protection and
16 a transportation system benefiting in-state agents and other
17 representatives of out-of-state businesses. Therefore, the legislature
18 intends to extend the state's business and occupation tax to these

1 companies to ensure that they pay their fair share of the cost of
2 services that this state renders and the infrastructure it provides.

3 (2)(a) The legislature also finds that the current cost
4 apportionment method in RCW 82.04.460(1) for apportioning most service
5 income has been difficult for both taxpayers and the department to
6 apply due in large part (i) to the difficulty in assigning certain
7 costs of doing business inside or outside of this state, and (ii) to
8 its dissimilarity with the apportionment methods used in other states
9 for their business activity taxes.

10 (b) The legislature further finds that there is a trend among
11 states to adopt a single factor apportionment formula based on sales.
12 The legislature recognizes that adoption of a sales factor only
13 apportionment method has the advantages of simplifying apportionment
14 and making Washington a more attractive place for businesses to expand
15 their property and payroll. For these reasons, the legislature adopts
16 single factor sales apportionment for purposes of apportioning royalty
17 income and certain service income.

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

26 **Sec. 2.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended
27 to read as follows:

28 (1) There is levied and ((shall be)) collected from every person
29 that has substantial nexus with this state a tax for the act or
30 privilege of engaging in business activities. ((Such)) The tax ((shall
31 be)) is measured by the application of rates against value of products,
32 gross proceeds of sales, or gross income of the business, as the case
33 may be.

34 (2) A person who has substantial nexus with this state in any tax
35 year will be deemed to have substantial nexus with this state for the
36 following four tax years.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW
2 to read as follows:

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

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW
10 to read as follows:

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

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

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

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

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

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

21 (iii) More than five hundred thousand dollars of receipts from this
22 state; or

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

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

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

1 (ii) Property rented by the taxpayer is valued at eight times the
2 net annual rental rate. For purposes of this subsection, "net annual
3 rental rate" means the annual rental rate paid by the taxpayer less any
4 annual rental rate received by the taxpayer from subrentals.

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

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

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

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

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

30 (ii) The definitions in section 6 of this act apply to this
31 subsection.

32 (e) Notwithstanding anything else to the contrary in this
33 subsection, property counting toward the thresholds in subsection
34 (1)(c)(i) and (iv) of this section does not include a person's
35 ownership of, or rights in, computer software as defined in RCW
36 82.04.215, including computer software used in providing a digital
37 automated service; master copies of software; and digital goods and
38 digital codes residing on servers located in this state.

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

9 (b) Compensation is paid in this state if the compensation is
10 properly reportable to this state for unemployment compensation tax
11 purposes, regardless of whether the compensation was actually reported
12 to this state.

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

16 (d) For purposes of this subsection, "compensation" means wages,
17 salaries, commissions, and any other form of remuneration paid to
18 employees and defined as gross income under 26 U.S.C. Sec. 61 of the
19 federal internal revenue code of 1986, as existing on July 1, 2010.

20 (4) Receipts counting toward the thresholds in subsection
21 (1)(c)(iii) and (iv) of this section are those amounts included in the
22 numerator of the receipts factor under sections 5 and 6 of this act.

23 (5)(a) Each December, the department must review the cumulative
24 percentage change in the consumer price index. The department must
25 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
26 section if the consumer price index has changed by five percent or more
27 since the later of July 1, 2010, or the date that the thresholds were
28 last adjusted under this subsection. For purposes of determining the
29 cumulative percentage change in the consumer price index, the
30 department must compare the consumer price index available as of
31 December 1st of the current year with the consumer price index as of
32 the later of July 1, 2010, or the date that the thresholds were last
33 adjusted under this subsection. The thresholds must be adjusted to
34 reflect that cumulative percentage change in the consumer price index.
35 The adjusted thresholds must be rounded to the nearest one thousand
36 dollars. Any adjustment will apply to tax periods that begin after the
37 adjustment is made.

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

4 (6) Notwithstanding anything to the contrary in this section, a
5 person is not subject to taxes imposed under this chapter on any
6 activity not included in the definition of apportionable activities in
7 RCW 82.04.460, unless the person has a physical presence in this state,
8 which need only be demonstrably more than a slightest presence. For
9 purposes of this subsection, a person is physically present in this
10 state if the person has property or employees in this state or the
11 person, either directly or through an agent or other representative,
12 engages in activities in this state that are significantly associated
13 with the person's ability to establish or maintain a market for its
14 products in this state.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.04 RCW
16 to read as follows:

17 (1) The apportionable income of a person within the scope of RCW
18 82.04.460(1) is apportioned to Washington by multiplying its
19 apportionable income by the receipts factor. Persons who are subject
20 to tax under more than one of the tax classifications enumerated in RCW
21 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts
22 factor for each tax classification that the person is taxable under.

23 (2) For purposes of subsection (1) of this section, the receipts
24 factor is a fraction and is calculated as provided in subsections (3)
25 and (4) of this section and section 6 of this act.

26 (3)(a) The numerator of the receipts factor is the total gross
27 income of the business of the taxpayer attributable to this state
28 during the tax year from engaging in an apportionable activity. The
29 denominator of the receipts factor is the total gross income of the
30 business of the taxpayer from engaging in an apportionable activity
31 everywhere in the world during the tax year.

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

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

1 (ii) If the customer received the benefit of the service or used
2 the intangible property in more than one state, gross income of the
3 business must be attributed to the state in which the benefit of the
4 service was primarily received or in which the intangible property was
5 primarily used.

6 (iii) If the taxpayer is unable to attribute gross income of the
7 business under the provisions of (b)(i) or (ii) of this subsection (3),
8 gross income of the business must be attributed to the state from which
9 the customer ordered the service or, in the case of royalties, the
10 office of the customer from which the royalty agreement with the
11 taxpayer was negotiated.

12 (iv) If the taxpayer is unable to attribute gross income of the
13 business under the provisions of (b)(i), (ii), or (iii) of this
14 subsection (3), gross income of the business must be attributed to the
15 state to which the billing statements or invoices are sent to the
16 customer by the taxpayer.

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

21 (vi) If the taxpayer is unable to attribute gross income of the
22 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
23 this subsection (3), gross income of the business must be attributed to
24 the state where the customer is located as indicated by the customer's
25 address: (A) Shown in the taxpayer's business records maintained in
26 the regular course of business; or (B) obtained during consummation of
27 the sale or the negotiation of the contract for services or for the use
28 of the taxpayer's intangible property, including any address of a
29 customer's payment instrument when readily available to the taxpayer
30 and no other address is available.

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

35 (viii) For purposes of this subsection (3)(b), "customer" means a
36 person or entity to whom the taxpayer makes a sale or renders services
37 or from whom the taxpayer otherwise receives gross income of the

1 business. "Customer" includes anyone who pays royalties or charges in
2 the nature of royalties for the use of the taxpayer's intangible
3 property.

4 (c) Gross income of the business from engaging in an apportionable
5 activity must be excluded from the denominator of the receipts factor
6 if, in respect to such activity, at least some of the activity is
7 performed in this state, and the gross income is attributable under (b)
8 of this subsection (3) to a state in which the taxpayer is not taxable.
9 For purposes of this subsection (3)(c), "not taxable" means that the
10 taxpayer is not subject to a business activities tax by that state,
11 except that a taxpayer is taxable in a state in which it would be
12 deemed to have substantial nexus with that state under the standards in
13 section 4(1) of this act regardless of whether that state imposes such
14 a tax. "Business activities tax" means a tax measured by the amount
15 of, or economic results of, business activity conducted in a state.
16 The term includes taxes measured in whole or in part on net income or
17 gross income or receipts. "Business activities tax" does not include
18 a sales tax, use tax, or a similar transaction tax, imposed on the sale
19 or acquisition of goods or services, whether or not denominated a gross
20 receipts tax or a tax imposed on the privilege of doing business.

21 (d) This subsection (3) does not apply to financial institutions
22 with respect to apportionable income taxable under RCW 82.04.290.
23 Financial institutions must calculate the receipts factor as provided
24 in section 6 of this act and subsection (4) of this section with
25 respect to apportionable income taxable under RCW 82.04.290. For
26 purposes of this subsection, "financial institution" has the same
27 meaning as in section 6 of this act.

28 (4) A taxpayer may calculate the receipts factor for the current
29 tax year based on the most recent calendar year for which information
30 is available for the full calendar year. If a taxpayer does not
31 calculate the receipts factor for the current tax year based on
32 previous calendar year information as authorized in this subsection,
33 the business must use current year information to calculate the
34 receipts factor for the current tax year. In either case, a taxpayer
35 must correct the reporting for the current tax year when complete
36 information is available to calculate the receipts factor for that
37 year, but not later than October 31st of the following tax year.
38 Interest will apply to any additional tax due on a corrected tax

1 return. Interest must be assessed at the rate provided for delinquent
2 excise taxes under chapter 82.32 RCW, retroactively to the date the
3 original return was due, and will accrue until the additional taxes are
4 paid. Penalties as provided in RCW 82.32.090 will apply to any such
5 additional tax due only if the current tax year reporting is not
6 corrected and the additional tax is not paid by October 31st of the
7 following tax year. Interest as provided in RCW 82.32.060 will apply
8 to any tax paid in excess of that properly due on a return as a result
9 of a taxpayer using previous calendar year data or incomplete current-
10 year data to calculate the receipts factor.

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

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

15 (b) "State" has the same meaning as in section 6 of this act.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.04 RCW
17 to read as follows:

18 (1) A financial institution must, for purposes of apportioning
19 gross income of the business taxable under RCW 82.04.290 using the
20 apportionment method provided in section 5(1) of this act, calculate
21 the receipts factor as provided in this section and section 5(4) of
22 this act. Financial institutions that are subject to tax under any
23 other tax classification enumerated in RCW 82.04.460(3)(a) (i) through
24 (v) and (vii) through (ix) must calculate a separate receipts factor,
25 as provided in section 5 of this act, for each of the other tax
26 classifications that the financial institution is taxable under.

27 (2)(a)(i) The numerator of the receipts factor includes gross
28 income from interest, fees, and penalties on loans secured by real
29 property, personal property, or both real and personal property, if the
30 real or personal property is located within this state. If the
31 property securing the loan is located both within this state and one or
32 more other states, the income described in this subsection (2)(a)(i) is
33 included in the numerator of the receipts factor if more than fifty
34 percent of the fair market value of the real or personal property is
35 located within this state. If more than fifty percent of the fair
36 market value of the real or personal property is not located within any

1 one state, then the income described in this subsection (2)(a)(i) is
2 included in the numerator of the receipts factor if the borrower is
3 located in this state.

4 (ii) The denominator of the receipts factor includes gross income
5 from interest, fees, and penalties on loans secured by real property,
6 personal property, or both real and personal property, wherever the
7 property is located.

8 (iii) The determination of whether the real or personal property
9 securing a loan is located within this state must be made as of the
10 time the original agreement was made and any and all subsequent
11 substitutions of collateral must be disregarded.

12 (b) The numerator of the receipts factor includes gross income from
13 interest, fees, and penalties on loans not secured by real or personal
14 property if the borrower is located in this state. The denominator of
15 the receipts factor includes gross income from interest, fees, and
16 penalties on loans that are not secured by real or personal property,
17 regardless of where the borrower is located.

18 (c) The receipts factor includes gross income from net gains, which
19 may not be less than zero, on the sale of loans. Net gains on the sale
20 of loans includes income recorded under the coupon stripping rules of
21 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as
22 existing on July 1, 2010.

23 (i) The amount of net gains, which may not be less than zero, on
24 the sale of loans secured by real property, personal property, or both
25 real and personal property, included in the numerator of the receipts
26 factor is determined by multiplying such net gains by a fraction. The
27 numerator of the fraction is the amount included in the numerator of
28 the receipts factor under (a) of this subsection (2). The denominator
29 of the fraction is the amount included in the denominator of the
30 receipts factor under (a) of this subsection (2).

31 (ii) The amount of net gains, which may not be less than zero, from
32 the sale of loans not secured by real or personal property included in
33 the numerator of the receipts factor is determined by multiplying such
34 net gains by a fraction. The numerator of the fraction is the amount
35 included in the numerator of the receipts factor under (b) of this
36 subsection (2). The denominator of the fraction is the amount included
37 in the denominator of the receipts factor under (b) of this subsection
38 (2).

1 (iii) The denominator of the receipts factor includes gross income
2 from net gains, which may not be less than zero, on all sales of loans.

3 (d) Loan servicing fees are included in the receipts factor as
4 provided in (d)(i) and (ii) of this subsection (2).

5 (i)(A)(I) The numerator of the receipts factor includes gross
6 income from loan servicing fees derived from loans secured by real
7 property, personal property, or both real and personal property,
8 multiplied by a fraction. The numerator of the fraction is the amount
9 included in the numerator of the receipts factor under (a) of this
10 subsection (2). The denominator of the fraction is the amount included
11 in the denominator of the receipts factor under (a) of this subsection
12 (2).

13 (II) The denominator of the receipts factor includes gross income
14 from all loan servicing fees derived from loans secured by real
15 property, personal property, or both real and personal property.

16 (B)(I) The numerator of the receipts factor includes gross income
17 from loan servicing fees derived from loans not secured by real or
18 personal property multiplied by a fraction. The numerator of the
19 fraction is the amount included in the numerator of the receipts factor
20 under (b) of this subsection (2). The denominator of the fraction is
21 the amount included in the denominator of the receipts factor under (b)
22 of this subsection (2).

23 (II) The denominator of the receipts factor includes gross income
24 from all loan servicing fees derived from loans not secured by real or
25 personal property.

26 (ii) If the financial institution receives loan servicing fees for
27 servicing either the secured or the unsecured loans of another, the
28 numerator of the receipts factor includes such fees if the borrower is
29 located in this state. The denominator of the receipts factor includes
30 all such fees.

31 (e)(i) Interest, dividends, net gains (which may not be less than
32 zero), and other income from investment assets and activities and from
33 trading assets and activities, as provided in this subsection (2)(e),
34 are included in the receipts factor. Investment assets and activities
35 and trading assets and activities include but are not limited to:
36 Investment securities; trading account assets; federal funds;
37 securities purchased and sold under agreements to resell or repurchase;

1 options; futures contracts; forward contracts; notional principal
2 contracts such as swaps; equities; and foreign currency transactions.

3 (ii) The numerator of the receipts factor includes gross income
4 from interest, dividends, net gains (which may not be less than zero),
5 and other receipts from investment assets and activities and from
6 trading assets and activities described in (e)(i) of this subsection
7 (2) that are attributable to this state. The denominator of the
8 receipts factor includes all such gross income wherever earned.

9 (A) The amount of interest, dividends, net gains (which may not be
10 less than zero), and other income from investment assets and activities
11 in the investment account to be attributed to this state and included
12 in the numerator of the receipts factor is determined by multiplying
13 all such income from such assets and activities by a fraction. The
14 numerator of the fraction is the average value of such assets that are
15 properly assigned to a regular place of business of the financial
16 institution within this state. The denominator of the fraction is the
17 average value of all such assets.

18 (B)(I) The amount of interest from federal funds sold and purchased
19 and from securities purchased under resale agreements and securities
20 sold under repurchase agreements attributable to this state and
21 included in the numerator of the receipts factor is determined by
22 multiplying the amount described in (e)(ii)(B)(II) of this subsection
23 (2) from such funds and such securities by a fraction. The numerator
24 of the fraction is the average value of federal funds sold and
25 securities purchased under agreements to resell that are properly
26 assigned to a regular place of business of the financial institution
27 within this state. The denominator of the fraction is the average
28 value of all such funds and such securities.

29 (II) The amount used for purposes of making the calculation in
30 (e)(ii)(B)(I) of this subsection (2) is the amount by which interest
31 from federal funds sold and securities purchased under resale
32 agreements exceeds interest expense on federal funds purchased and
33 securities sold under repurchase agreements.

34 (C)(I) The amount of interest, dividends, gains and other income
35 from trading assets and activities, including but not limited to assets
36 and activities in the matched book, in the arbitrage book, and foreign
37 currency transactions, but excluding amounts described in (e)(ii)(A) or
38 (B) of this subsection (2), attributable to this state and included in

1 the numerator of the receipts factor is determined by multiplying the
2 amount described in (e)(ii)(C)(II) of this subsection (2) by a
3 fraction. The numerator of the fraction is the average value of such
4 trading assets that are properly assigned to a regular place of
5 business of the financial institution within this state. The
6 denominator of the fraction is the average value of all such assets.

7 (II) The amount used for purposes of making the calculation in
8 (e)(ii)(C)(I) of this subsection (2) is the amount by which interest,
9 dividends, gains and other receipts from trading assets and activities,
10 including but not limited to assets and activities in the matched book,
11 in the arbitrage book, and foreign currency transactions, exceed
12 amounts paid in lieu of interest, amounts paid in lieu of dividends,
13 and losses from such assets and activities.

14 (D) For purposes of this subsection (2)(e)(ii), average value must
15 be determined using the rules for determining the average value of
16 property set forth in section 4(2) of this act.

17 (iii) In lieu of using the method set forth in (e)(ii) of this
18 subsection (2), the financial institution may elect, or the department
19 may require, in order to fairly represent the business activity of the
20 financial institution in this state, the use of the method set forth in
21 this subsection (2)(e)(iii).

22 (A) The amount of interest, dividends, net gains (which may not be
23 less than zero), and other income from investment assets and activities
24 in the investment account to be attributed to this state and included
25 in the numerator of the receipts factor is determined by multiplying
26 all such income from such assets and activities by a fraction. The
27 numerator of the fraction is the gross income from such assets and
28 activities that are properly assigned to a regular place of business of
29 the financial institution within this state. The denominator of the
30 fraction is the gross income from all such assets and activities.

31 (B) The amount of interest from federal funds sold and purchased
32 and from securities purchased under resale agreements and securities
33 sold under repurchase agreements attributable to this state and
34 included in the numerator of the receipts factor is determined by
35 multiplying the amount described in (e)(ii)(B)(II) of this subsection
36 (2) from such funds and such securities by a fraction. The numerator
37 of the fraction is the gross income from such funds and such securities

1 that are properly assigned to a regular place of business of the
2 financial institution within this state. The denominator of the
3 fraction is the gross income from all such funds and such securities.

4 (C) The amount of interest, dividends, gains and other receipts
5 from trading assets and activities, including but not limited to assets
6 and activities in the matched book, in the arbitrage book, and foreign
7 currency transactions, but excluding amounts described in (e)(ii)(A) or
8 (B) of this subsection (2), attributable to this state and included in
9 the numerator of the receipts factor is determined by multiplying the
10 amount described in (e)(ii)(C)(II) of this subsection (2) by a
11 fraction. The numerator of the fraction is the gross income from such
12 trading assets and activities that are properly assigned to a regular
13 place of business of the financial institution within this state. The
14 denominator of the fraction is the gross income from all such assets
15 and activities.

16 (iv) If the financial institution elects or is required by the
17 department to use the method set forth in (e)(iii) of this subsection
18 (2), it must use this method for subsequent tax returns unless the
19 financial institution receives prior permission from the department to
20 use, or the department requires, a different method.

21 (v) The financial institution has the burden of proving that an
22 investment asset or activity or trading asset or activity was properly
23 assigned to a regular place of business outside of this state by
24 demonstrating that the day-to-day decisions regarding the asset or
25 activity occurred at a regular place of business outside this state.
26 If the day-to-day decisions regarding an investment asset or activity
27 or trading asset or activity occur at more than one regular place of
28 business and one such regular place of business is in this state and
29 one such regular place of business is outside this state, such asset or
30 activity is considered to be located at the regular place of business
31 of the financial institution where the investment or trading policies
32 or guidelines with respect to the asset or activity are established.
33 Such policies and guidelines are presumed, subject to rebuttal by
34 preponderance of the evidence, to be established at the commercial
35 domicile of the financial institution.

36 (f) The numerator of the receipts factor includes gross income from
37 interest, fees, and penalties on credit card receivables, and gross
38 income from fees charged to cardholders, such as annual fees, if the

1 billing address of the cardholder is in this state. The denominator of
2 the receipts factor includes gross income from interest, fees, and
3 penalties on all credit card receivables, and gross income from fees
4 charged to all cardholders, such as annual fees.

5 (g)(i) The numerator of the receipts factor includes gross income
6 from net gains, which may not be less than zero, from the sale of
7 credit card receivables multiplied by a fraction. The numerator of the
8 fraction is the amount included in the numerator of the receipts factor
9 under (f) of this subsection (2). The denominator of the fraction is
10 the amount included in the denominator of the receipts factor under (f)
11 of this subsection (2).

12 (ii) The denominator of the receipts factor includes gross income
13 from net gains, which may not be less than zero, from all sales of
14 credit card receivables.

15 (h)(i) The numerator of the receipts factor includes gross income
16 from all credit card issuer's reimbursement fees multiplied by a
17 fraction. The numerator of the fraction is the amount included in the
18 numerator of the receipts factor under (f) of this subsection (2). The
19 denominator of the fraction is the amount included in the denominator
20 of the receipts factor under (f) of this subsection (2).

21 (ii) The denominator of the receipts factor includes gross income
22 from all credit card issuer's reimbursement fees.

23 (i) The numerator of the receipts factor includes gross income from
24 merchant discounts if the commercial domicile of the merchant is in
25 this state. The denominator of the receipts factor includes gross
26 income from all merchant discounts. For purposes of this subsection
27 (2)(i), gross income must be computed net of any cardholder charge
28 backs but may not be reduced by any interchange transaction fees or by
29 any issuer's reimbursement fees paid to another for charges made by its
30 cardholders.

31 (j) Apportionable income that would be attributable under this
32 subsection (2) to a state in which the financial institution is not
33 taxable must be excluded from the denominator of the receipts factor if
34 at least some of the activity that generated the income is performed in
35 this state, and the gross income is attributable under this subsection
36 (2) to a state in which the taxpayer is not taxable. For purposes of
37 this subsection (2)(j), "not taxable" has the same meaning as in
38 section 5 of this act.

1 (k)(i) The numerator of the receipts factor includes apportionable
2 income taxable under RCW 82.04.290 and not otherwise included in the
3 receipts factor under this subsection (2) if the activity producing the
4 apportionable income is performed in this state. If the activity is
5 performed both inside and outside this state, the numerator of the
6 receipts factor includes apportionable income taxable under RCW
7 82.04.290 and not otherwise included in the receipts factor under this
8 subsection (2) if a greater proportion of the activity producing the
9 apportionable income is performed in this state based on cost of
10 performance.

11 (ii) The denominator of the receipts factor includes apportionable
12 income taxable under RCW 82.04.290 from activities performed
13 everywhere, where the apportionable income taxable under RCW 82.04.290
14 is not otherwise included in the receipts factor under this subsection
15 (2).

16 (3) Except as otherwise provided in subsection (4) of this section,
17 the definitions in the multistate tax commission's recommended formula
18 for the apportionment and allocation of net income of financial
19 institutions, adopted November 17, 1994, as existing on the effective
20 date of this act, apply to this section.

21 (4) Unless the context clearly requires otherwise, the definitions
22 in this subsection apply throughout this section.

23 (a) "Apportionable income" has the same meaning as in RCW
24 82.04.460.

25 (b) "Credit card" means a card or device existing for the purpose
26 of obtaining money, property, labor, or services on credit.

27 (c) "Financial institution" has the same meaning as in WAC 458-20-
28 14601. However, the department may not make any substantive changes to
29 the definition of "financial institution" in WAC 458-20-14601 unless
30 the changes implement a legislative amendment to this definition of
31 financial institution.

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

36 **Sec. 7.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
37 read as follows:

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

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

19 **Sec. 8.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read
20 as follows:

21 (1) Except as otherwise provided in this section, any person
22 ~~((rendering services))~~ earning apportionable income taxable under ((RCW
23 ~~82.04.290 or 82.04.2908))~~ this chapter and ~~((maintaining places of~~
24 ~~business both within and without this state which contribute to the~~
25 ~~rendition of such services shall))~~ also taxable in another state, must,
26 for the purpose of computing tax liability under ~~((RCW 82.04.290 or~~
27 ~~82.04.2908))~~ this chapter, apportion to this state, in accordance with
28 section 5 of this act, that portion of the person's ((gross))
29 apportionable income ((which is)) derived from ((services rendered))
30 business activities performed within this state. (~~(Where such~~
31 ~~apportionment cannot be accurately made by separate accounting methods,~~
32 ~~the taxpayer shall apportion to this state that proportion of the~~
33 ~~taxpayer's total income which the cost of doing business within the~~
34 ~~state bears to the total cost of doing business both within and without~~
35 ~~the state.))~~)

36 (2) (~~(Notwithstanding the provision of subsection (1) of this~~
37 ~~section, persons doing business both within and without the state who~~

1 ~~receive gross income from service charges, as defined in RCW 63.14.010~~
2 ~~(relating to amounts charged for granting the right or privilege to~~
3 ~~make deferred or installment payments) or who receive gross income from~~
4 ~~engaging in business as financial institutions within the scope of~~
5 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~
6 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~
7 ~~this state pursuant to rules promulgated by the department consistent~~
8 ~~with uniform rules for apportionment or allocation developed by the~~
9 ~~states.~~

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 (3) 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), (5), (6), (7), (8), (9), (10), and (13);

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; and

1 (ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to
2 the extent of any activity that would be taxable under any of the
3 provisions enumerated under (a)(i) through (viii) of this subsection
4 (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and
5 82.04.280(1) did not exist.

6 (b)(i) "Taxable in another state" means that the taxpayer is
7 subject to a business activities tax by another state on its income
8 received from engaging in apportionable activities; or the taxpayer is
9 not subject to a business activities tax by another state on its income
10 received from engaging in apportionable activities, but any other state
11 has jurisdiction to subject the taxpayer to a business activities tax
12 on such income under the substantial nexus standards in section 4(1) of
13 this act.

14 (ii) For purposes of this subsection (3)(b):

15 (A) "Business activities tax" has the same meaning as in section 5
16 of this act; and

17 (B) "State" has the same meaning as in section 6 of this act.

18 NEW SECTION. Sec. 9. (1) Except as provided in subsection (2) of
19 this section, if any provision of this act or its application to any
20 person or circumstance is held invalid, the remainder of the act or the
21 application of the provision to other persons or circumstances is not
22 affected.

23 (2) If a court of competent jurisdiction, in a final judgment not
24 subject to appeal, adjudges any provision of section 4(1)(c) of this
25 act unconstitutional or otherwise invalid, this act is null and void in
26 its entirety.

27 NEW SECTION. Sec. 10. This act applies with respect to gross
28 income of the business, as defined in RCW 82.04.080, including gross
29 income from royalties as defined in RCW 82.04.2907, generated on and
30 after July 1, 2010. For purposes of calculating the thresholds in
31 section 4(1)(c) of this act for the 2010 tax year, property, payroll,
32 and receipts are based on the entire 2010 tax year.

33 NEW SECTION. Sec. 11. This act takes effect July 1, 2010.

--- END ---