**5875-S AMS CARL S2317.1 - NOT FOR FLOOR USE**

**SSB 5875** - S AMD **158**

By Senator Carlyle

**NOT ADOPTED 03/23/2017**

On page 1, after line 5, insert the following:

**"Part I**

**Findings and Intent**

NEW SECTION. **Sec.**  (1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogues. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

(2) The legislature recognizes that states may not impose sales or use tax collection obligations on an out-of-state business unless the business has a substantial nexus with the taxing state. The legislature also recognizes that under the United States supreme court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*, 386 U.S. 753 (1967), substantial nexus under the commerce clause requires a physical presence by the seller in the taxing state. Relying on the doctrine of stare decisis, the United States supreme court reaffirmed the physical presence nexus standard twenty-five years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

(3) The legislature further finds that the basis of the physical presence nexus standard was primarily justified by the complexity and burden on mail order sellers and other out-of-state sellers in complying with the sales tax laws in numerous jurisdictions at the state and local level all across the country. The legislature further finds that the supreme court's concerns underlying the *Bellas Hess* decision have been effectively addressed by advances in technology and simplified tax laws. For example, Washington and most other states with sales taxes allow or require electronic reporting and payment of the tax. Also, several states, including Washington, offer free online sales tax rate lookup tools. A number of private companies offer automated sales tax compliance solutions. In addition, sales tax laws have been simplified in many states, including Washington, through participation in the streamlined sales and use tax project and compliance with the streamlined sales and use tax agreement.

(4) The legislature further finds that *Bellas Hess* was decided one year before the first plans were developed for the computer network that became the basis of the internet. The legislature further finds that since *Quill* was decided e-commerce has grown substantially, generating retail sales of over three hundred forty-one billion dollars in 2015, which have been growing at a rate of about fifteen percent for the last five years. The legislature further finds that like their brick and mortar competitors, online businesses receive benefits and opportunities provided by their market states, such as transportation networks, infrastructure, laws providing protection of business interests, access to the courts to protect valuable rights, and a regulated marketplace. However, the legislature finds that under the current physical presence nexus standard, online only sellers have an unfair competitive advantage over in state brick and mortar stores to the detriment of main street retailers. Online only businesses have no geographical limitations to their marketplace; no costs of maintaining local physical retail stores, such as infrastructure costs, employee costs, and property taxes; and may not have to collect sales tax on sales to customers in states in which they do not have a physical presence, all of which lead to their ability to price their goods at a lower cost to consumers. The legislature further finds that even if the physical presence nexus standard was once a wise rule of law, it is no longer justifiable.

(5) The legislature further finds that the supreme court in its *Quill* decision implicitly invited the United States congress to resolve whether and to what extent states may impose a sales tax collection obligation on remote sellers. The legislature further finds that there is overwhelming support among the public, states, and municipalities, and many national and local associations representing brick and mortar businesses for federal legislation requiring remote sellers to collect and remit retail sales tax. The legislature further finds that despite such broad-based support, congress has failed to enact such legislation.

(6) The legislature agrees with Justice Kennedy's concurring opinion in the *Direct Marketing Association v. Brohl* decision (135 S. Ct. 1124) that the court's *Quill* holding is "inflicting extreme harm and unfairness on the States," and that "[t]here is a powerful case to be made that a retailer doing extensive business within a State has a sufficiently 'substantial nexus' to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet." Justice Kennedy stated that "it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*," and he closed his opinion by inviting a direct challenge to *Quill* and *Bellas Hess*, saying that "[t]he legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*."

(7) The legislature finds that because Washington is unique in that it relies so heavily on sales tax to fund education and other vital state services, and because Washington has frequently been at the forefront of advancing technology and tax policy, it is incumbent upon this state to lead the way to a more fair and equitable modern marketplace where online businesses and brick and mortar businesses can compete based on quality of products and other nontax factors, which benefits all consumers. The legislature recognizes that the fast pace of technological change seen with the rapid growth of electronic commerce puts pressure on states to update their tax codes just as this state did (a) in 2007 in adopting Senate Bill No. 5089, which enacted significant simplifications in sales and use administration and brought Washington into full compliance with the streamlined sales and use tax agreement, (b) in 2009 in adopting Engrossed Substitute House Bill No. 2075 addressing the excise taxation of digital products, and (c) in 2010 in adopting economic nexus and market-based apportionment for business and occupation tax purposes in Second Engrossed Substitute Senate Bill No. 6143. The legislature finds that making such changes is not radical or to be unexpected, but is a rational means to avoid an ever shrinking tax base resulting from an outdated tax code that has not kept up with significant changes in technology and the economy.

(8) The legislature finds that several states, including Alabama, South Dakota, and Tennessee have taken measures to adopt an "economic nexus" standard with respect to the collection of sales tax. The legislature further finds that other states are considering adopting similar rules or legislation.

(9) The legislature also finds that Colorado adopted a law requiring out-of-state retailers that do not collect Colorado's sales tax to report tax-related information to their Colorado customers and the Colorado department of revenue. The legislature further finds that in 2016 the United States court of appeals for the tenth circuit upheld that law.

(10) Therefore, the legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule by testing the boundaries of the rule. This act also sets up a legal challenge to the physical presence nexus rule that could potentially lead to the United States supreme court reevaluating *Bellas Hess* and *Quill* or congress enacting legislation authorizing and establishing the requirements for states to impose a sales tax collection duty on remote sellers. To achieve these objectives, part II of this act establishes clear statutory guidelines for determining when sellers are required to collect Washington's sales tax. These guidelines clarify the extent of the traditional physical presence standard and also adopt an "economic nexus" standard under which a remote seller would establish a substantial nexus with this state solely by making a meaningful amount of sales into this state. Part II of this act also extends the economic nexus standard for the business and occupation tax imposed on retail sales taxed under RCW 82.04.250(1) and 82.04.257(1). Part III of this act adopts a sales and use tax notice and reporting law based on the multistate tax commission's draft model sales and use tax notice reporting statute, which is similar to Colorado's sales and use tax notice reporting law.

(11) The legislature recognizes that the enactment of part II of this act places remote sellers in a complicated position, precisely because existing constitutional doctrine calls certain provisions of part II of this act into question. Accordingly, the legislature intends to clarify that the obligations created by this law on sellers with a substantial nexus with this state under section 206(1)(b) of this act would be appropriately stayed by the courts until the constitutionality of section 206(1)(b) of this act has been clearly established by a binding judgment, including, for example, a decision from the supreme court of the United States abrogating its existing doctrine, or a final judgment applicable to a particular taxpayer.

(12) The legislature finds that the declaratory judgment action authorized in section 211 of this act is warranted by existing law, by good faith arguments for the extension, modification, or reversal of existing law, or the establishment of new law.

**Part II**

**Nexus for Excise Tax Purposes**

**Sec.**  RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each amended to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or ((~~wholesale sales~~)) selling activity taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

**Sec.**  RCW 82.04.067 and 2016 c 137 s 2 are each amended to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if, in the current or immediately preceding calendar year, the person is:

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

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

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and ((~~in the immediately preceding tax year~~)) the person had:

(i) More than ((~~fifty~~)) fifty-three thousand dollars of property in this state;

(ii) More than ((~~fifty~~)) fifty-three thousand dollars of payroll in this state;

(iii) More than two hundred ((~~fifty~~)) sixty-seven thousand dollars of receipts from this state; or

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

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

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

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

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

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

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

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

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

(ii)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

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

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

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

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

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

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

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are:

(a) Those amounts included in the numerator of the receipts factor under RCW 82.04.462;

(b) For financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270 ((~~with respect to wholesale sales~~)), the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

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

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

(6)(a)(i) Except as provided in (a)(iii) of this subsection (6), subsections (1) through (5) of this section only apply with respect to the taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.

(ii) Subject to the limitation in RCW 82.32.531, for purposes of the taxes imposed under this chapter on ((~~any~~)) the business of making sales at retail or any other activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, ((~~except as provided in RCW 82.32.531,~~)) a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the tax year, which need only be demonstrably more than a slightest presence.

(iii) For purposes of the taxes imposed under this chapter on the business of making sales at retail taxable under RCW 82.04.250(1) or 82.04.257(1), a person is also deemed to have a substantial nexus with this state if the person's receipts from this state, pursuant to subsection (4)(c) of this section, meet either criterion in subsection (1)(c)(iii) or (iv) of this section, as adjusted under subsection (5) of this section.

(b) For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state.

(c)(i) A person is also physically present in this state for the purposes of this subsection if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(ii) A remote seller as defined in RCW 82.08.052 is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under RCW 82.08.052. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in RCW 82.08.052. To the extent that the presumption in RCW 82.08.052 is no longer operative pursuant to RCW 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer operative. ((~~Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms "agent" or "other representative" in this subsection (6)(c).~~))

**Sec.**  RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each amended to read as follows:

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

(2)(a) A person who has a substantial nexus with this state in ((~~any tax year under the provisions of RCW 82.04.067 will be deemed to have a substantial nexus with this state for the following tax year~~)) the current calendar year under the provisions of RCW 82.04.067, based solely on the person's property, payroll, or receipts in this state during the current calendar year, is subject to the tax imposed under this chapter for the current calendar year only on business activity occurring on and after the date that the person established a substantial nexus with this state in the current calendar year.

(b) This subsection (2) does not apply to any person who also had a substantial nexus with this state (i) during the immediately preceding calendar year under RCW 82.04.067, or (ii) during the current calendar year under RCW 82.04.067 (1) (a) or (b) or (6) (a)(ii) or (c).

NEW SECTION. **Sec.**  RCW 82.04.424 (Exemptions—Certain in-state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are each repealed.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.050 and 82.08.052 to read as follows:

A seller with a substantial nexus with this state must comply with the provisions of this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as follows:

(1) A seller has a substantial nexus with this state during a calendar year for the purposes of collecting the taxes imposed under this chapter if, during the current or immediately preceding calendar year:

(a) The seller had its property or employees in this state for the seller's business purposes; or

(b) The seller's receipts from retail sales in this state, pursuant to RCW 82.04.067(4), meet either criterion in RCW 82.04.067(1)(c) (iii) or (iv), as adjusted under RCW 82.04.067(5).

(2) A seller also has a substantial nexus with this state during a calendar year for the purposes of collecting the taxes imposed under this chapter if the seller's total gross proceeds of sales at retail sourced to this state under RCW 82.32.730 exceed ten thousand dollars during the current or immediately preceding calendar year and at any time during such current or immediately preceding calendar year:

(a)(i) The seller offers its products for sale through one or more marketplaces operated by any marketplace facilitator that has a substantial nexus with this state; or

(ii) The seller or another person, as the case may be, including an affiliated person, other than a common carrier acting solely as a common carrier, engages in or performs any of the following activities in this state, but not including the activities described in RCW 82.08.052:

(A) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller;

(B) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state;

(C) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state;

(D) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller;

(E) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state;

(F) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or any other place of business maintained by that person in this state;

(G) Shares management, business systems, business practices, or employees with the seller or, in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state; or

(H) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of products to purchasers in this state; or

(b)(i) The seller is under contract with a payment processor or merchant bank, or accepts credit cards issued either by a financial institution under a license from a credit card association or by an entity that also authorizes purchases and settles with consumers and merchants, if the payment processor, merchant bank, credit card association, or credit card issuer has a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of payment processors, credit card associations, credit card issuers described in (b)(i) of this subsection (2), and merchant banks that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(3)(a) For purposes of subsection (2)(a)(i) of this section, a marketplace facilitator is deemed to have a substantial nexus with this state during a calendar year if:

(i) The marketplace facilitator or any affiliated person maintained a physical presence in this state during any portion of the current or immediately preceding calendar year to engage in any of the activities described in subsection (5)(a)(i) or (ii) of this section; or

(ii) The marketplace facilitator generated more than ten thousand dollars of gross proceeds of sales in the current or immediately preceding calendar year from retail sales made through its physical or electronic marketplace by sellers that are physically located in this state. For purposes of this subsection (3)(a)(ii), a seller is presumed to be physically located in this state if the address for the seller maintained in the business records of the marketplace facilitator is in this state.

(b) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of marketplace facilitators that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(4) For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons who are affiliated with respect to each other.

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

(a) "Marketplace facilitator" means a person that contracts with sellers to facilitate, for consideration, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages, either directly or indirectly, through one or more affiliated persons, in:

(i) Any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(B) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(C) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(D) Software development or research and development activities related to any of the activities described in (a)(i)(A) through (C) or (ii)(A) through (H) of this subsection (5), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(ii) Any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;

(F) Order taking;

(G) Advertising or promotion; or

(H) Providing customer service or accepting or assisting with returns or exchanges.

(b) "Merchant bank" means a financial institution or any other member of a credit card network that allows the seller to accept credit card payments and is responsible for depositing transaction proceeds into the seller's designated account.

(c) "Payment processor" means a person that contracts directly with a seller to provide settlement for the seller's credit card, debit card, or other payment transactions.

(d) "Product" means any property or service that is sold in a sale at retail as defined in RCW 82.04.050.

(6) This section is subject to RCW 82.32.762.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to be codified between section 206 of this act and RCW 82.08.054 to read as follows:

(1) For purposes of this chapter, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace. A marketplace facilitator with a substantial nexus with this state must collect and remit to the department the taxes imposed under this chapter on all taxable retail sales made through the marketplace facilitator's marketplace and sourced to this state under RCW 82.32.730, whether as principal or as the agent of a marketplace seller.

(2) A marketplace facilitator is relieved of liability under this chapter for failure to collect the correct amount of tax to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and marketplace seller are affiliated persons. Where the marketplace facilitator is relieved of liability under this subsection (2), the marketplace seller is solely liable for the amount of uncollected tax due.

(3)(a) A marketplace facilitator is relieved of liability under this chapter for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator and marketplace seller are not affiliated persons; and

(iii) The failure to collect sales tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) Where the marketplace facilitator is relieved of liability under this subsection (3), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection (4) of this section.

(4) A marketplace seller with a substantial nexus with this state is relieved of its obligation to collect the taxes imposed under this chapter on all taxable retail sales through a marketplace operated by a marketplace facilitator if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under this chapter on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator. The documentation required by this subsection (4) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (4) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter resulting from a marketplace facilitator's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator by the marketplace seller.

(5) Nothing in this section affects the obligation of any purchaser to remit sales or use tax as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax.

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

(a) "Affiliated person" has the same meaning as in section 206 of this act.

(b) "Marketplace facilitator" has the same meaning as in section 206 of this act.

(c) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplace operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department as provided in RCW 82.32.030.

(7) This section is subject to RCW 82.32.762.

**Sec.**  RCW 82.08.050 and 2010 c 112 s 8 are each amended to read as follows:

(1)(a) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department under the provisions of RCW 82.08.060.

(b) Sellers, including marketplace facilitators as defined in section 206 of this act, establishing a substantial nexus with this state during the current calendar year based solely on the provisions of section 206 (1)(b), (2), or (3)(a)(ii) of this act, and who did not have a substantial nexus with this state during the immediately preceding calendar year for purposes of collecting the taxes imposed under this chapter, must begin collecting state and local sales taxes on taxable retail sales sourced to this state beginning on the first day of the calendar month that is at least thirty days from the date that the person established a substantial nexus with this state.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) Sellers are not relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, constitutes a debt from the buyer to the seller. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it must be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter. But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent of the unpaid tax to the amount of the tax due for failure of the buyer to pay the tax to the seller, regardless of when the tax may be collected by the department. In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, apply. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made will be considered as the due date of the tax.

(11) ((~~Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:~~

~~(a) The person's activities in this state, whether conducted directly or through another person, are limited to:~~

~~(i) The storage, dissemination, or display of advertising;~~

~~(ii) The taking of orders; or~~

~~(iii) The processing of payments; and~~

~~(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.~~

~~(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.~~

~~(13) For purposes of this section:~~)) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale; and

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

**Sec.**  RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each amended to read as follows:

(1) For purposes of this chapter, a remote seller is presumed to have a substantial nexus with this state and is obligated to collect retail sales tax during the current calendar year if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the remote seller, if the cumulative gross receipts from sales by the remote seller to Washington customers ((~~in this state~~)) who are referred to the remote seller by all residents with this type of an agreement with the remote seller exceed ten thousand dollars during the current or immediately preceding calendar year. This presumption may be rebutted by proof that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Proof may be shown by (a) establishing, in a manner acceptable to the department, that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition; or (b) any other means as may be approved by the department.

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

(a) "Remote seller" means a seller that makes retail sales in this state through one or more agreements described in subsection (1) of this section, and the seller's other physical presence in this state, if any, is not sufficient to establish a retail sales or use tax collection obligation under the commerce clause of the United States Constitution.

(b) "Washington customer" means a purchaser of goods or services that are received in this state by the purchaser or the purchaser's donee. "Washington customer" also means a purchaser that provides a seller with an address in this state during the consummation of the sale, if the location where the goods or services are received by the purchaser or the purchaser's donee is not known.

(3) ((~~Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).~~

~~(4)~~)) This section is subject to RCW 82.32.762.

**Sec.**  RCW 82.12.040 and 2015 c 169 s 9 are each amended to read as follows:

(1) Every person who ((~~maintains in this state a place of business or a stock of goods, or engages in business activities within this state,~~)) has a substantial nexus with this state based on RCW 82.08.052 or section 206 of this act must obtain from the department a certificate of registration, and must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)((~~(b)~~)) (c), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. ((~~For the purposes of this chapter, the phrase "maintains in this state a place of business" includes the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.~~))

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)((~~(b)~~)) (c), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) ((~~Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:~~

~~(a) The person's activities in this state, whether conducted directly or through another person, are limited to:~~

~~(i) The storage, dissemination, or display of advertising;~~

~~(ii) The taking of orders; or~~

~~(iii) The processing of payments; and~~

~~(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.~~

~~(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.~~

~~(7)~~)) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection ((~~(7)~~)) (5) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

((~~(8)~~)) (6) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

((~~(9)~~)) (7) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter.

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

(1) Notwithstanding any other provision of law, and whether or not the department initiates an audit or other tax collection procedure, the department may bring a declaratory judgment action under chapter 7.24 RCW, regardless of any other remedy available to the department, against any person the department believes has a substantial nexus with this state under section 206(1)(b) of this act to establish that the obligation to remit sales tax is applicable and valid under state and federal law.

(2) The filing of the declaratory judgment action by the department as authorized in this section prohibits the department, during the pendency of the action and any subsequent appeal, from enforcing the tax collection obligations of chapter 82.08 RCW against any remote seller who does not affirmatively consent or otherwise remit sales tax to the department on a voluntary basis. The prohibition in this subsection does not apply if there is a previous judgment from a court establishing the validity of the tax collection obligations of chapter 82.08 RCW with respect to the particular taxpayer.

(3) Notwithstanding any other provisions of state law, attorneys' fees may not be awarded to any party in any action brought pursuant to this section or any appeal from any action brought pursuant to this section.

(4) For purposes of this section, "remote seller" means any seller that makes retail sales in this state but does not have a physical presence in this state.

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

(1) A taxpayer that, for the purposes of the tax collection obligations in chapter 82.08 RCW, has a substantial nexus with this state solely under the provisions of section 206(1)(b) of this act and is complying with the requirements of chapter 82.08 RCW, voluntarily or otherwise, may only seek a recovery of sales taxes, penalties, or interest from the department by following the recovery procedures established under RCW 82.32.060. However, no claim may be granted on the basis that the taxpayer lacked a physical presence in the state and complied with the tax collection provisions of chapter 82.08 RCW voluntarily while covered by the prohibition on enforcement provided in section 211 of this act.

(2) Neither the state nor any seller who remits sales tax voluntarily or otherwise under this act is liable to a purchaser who claims that the sales tax has been over collected because a provision of this act is later deemed unlawful.

(3) Nothing in this act affects the obligation of any purchaser from this state to remit sales or use tax as to any applicable taxable transaction in which the seller does not collect and remit sales tax.

**Sec.**  RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each amended to read as follows:

(1) If the department determines that a change, taking effect after ((~~September 1, 2015~~)) the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of RCW 82.08.052, section 206 of this act, or section 207 of this act, such conflicting provision or provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with RCW 82.08.052, section 206 of this act, or section 207 of this act if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for, under RCW 82.08.052, section 206 of this act, or section 207 of this act.

(b) A change in the streamlined sales and use tax agreement conflicts with RCW 82.08.052, section 206 of this act, or section 207 of this act if one or more provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act, the department:

(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers to the fullest extent allowed under state and federal law; and

(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of RCW 82.08.052, section 206 of this act, or section 207 of this act that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller" has the same meaning as in RCW 82.08.052.

**Part III**

**Sales and Use Tax Notice and Reporting Requirements**

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer" has the same meaning as in chapters 82.04, 82.08, and 82.12 RCW.

(2) "Department" has the same meaning as in RCW 82.02.010.

(3) "Product" has the same meaning as in RCW 82.32.023.

(4) "Purchaser" means any consumer who purchases or leases a product sourced to this state under RCW 82.32.730.

(5) "Retail sale" has the same meaning as in RCW 82.04.050.

(6) "Sale" has the same meaning as in RCW 82.04.040.

(7) "Seller" has the same meaning as in RCW 82.08.010, and includes a marketplace facilitator as defined in section 206 of this act.

NEW SECTION. **Sec.**  (1) Except as otherwise provided in subsection (5) of this section, a seller who does not collect the tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale must comply with the notice and reporting requirements of this section. For taxable retail sales made through a marketplace facilitator or other agent, the marketplace facilitator or other agent must comply with the notice and reporting requirements of this section, and the principal is not subject to the notice and reporting requirements of this section with respect to those sales.

(2) A seller subject to the notice and reporting requirements of this section must provide a notice to each consumer at the time of each taxable retail sale.

(a) The notice under this subsection (2) must include the following information:

(i) A statement that neither sales nor use tax is being collected or remitted upon the sale;

(ii) A statement that the consumer may be required to remit sales or use tax directly to the department; and

(iii) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department.

(b) The notice under this subsection (2) must be prominently displayed on all invoices and order forms, including, where applicable, electronic and catalogue invoices and order forms, and upon each sales receipt or similar document provided to the purchaser, whether in paper or electronic form. No indication may be made that sales or use tax is not imposed upon the transaction, unless:

(i) Such indication is followed immediately with the notice required by this subsection (2); or

(ii) The transaction with respect to which the indication is given is exempt from sales and use tax pursuant to law.

(3) A seller subject to the notice and reporting requirements of this section must, no later than January 31st of each year, provide a report to each consumer for whom the seller was required to provide a notice under subsection (2) of this section.

(a) The report under this subsection (3) must include:

(i) A statement that the seller did not collect sales or use tax on the consumer's transactions with the seller and that the consumer may be required to remit such tax directly to the department;

(ii) A list, by date, generally indicating the type of product purchased or leased during the immediately preceding calendar year by the consumer from the seller sourced to this state under RCW 82.32.730 and the price of each product;

(iii) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department;

(iv) A statement that the seller is required to submit a report to the department pursuant to subsection (4) of this section stating the total dollar amount of the consumer's purchases from the seller; and

(v) Any information as the department may reasonably require.

(b) The report required under this subsection (3) must be sent to the consumer's billing address, or if unknown, the consumer's shipping address, in an envelope marked prominently with words indicating important tax information is enclosed. If no billing or shipping address is known, the report must be sent electronically to the consumer's last known email address with a subject heading indicating important tax information is enclosed.

(4) A seller subject to the notice and reporting requirements of this section must, no later than January 31st of each year, file a report with the department.

(a) The report under this subsection (4) must include, with respect to each consumer to whom the seller is required to provide a report under subsection (3) of this section by January 31st of the current calendar year:

(i) The consumer's name;

(ii) The billing address and, if different, the last known mailing address;

(iii) The shipping address for each product sold or leased to such consumer for delivery to a location in this state during the immediately preceding calendar year; and

(iv) The total dollar amount of all such purchases by such consumer.

(b) The report under this subsection (4) must be filed electronically in a form and manner required by the department.

(5) The following exemptions to the notice and reporting requirements of this section apply:

(a) A seller who made less than two hundred thousand dollars in total worldwide gross retail sales during the immediately preceding calendar year is not required to file reports under subsections (3) and (4) of this section in the current calendar year.

(b) A seller who made less than one hundred thousand dollars in total worldwide gross retail sales during the immediately preceding calendar year is not required to provide notice under subsection (2) of this section with respect to retail sales made in the current calendar year.

(c) A seller who made less than one hundred thousand dollars in total gross retail sales sourced to this state under RCW 82.32.730 during the immediately preceding calendar year is not required to file reports under subsections (3) and (4) of this section in the current calendar year.

(d) A seller who made less than fifty thousand dollars in total gross retail sales sourced to this state under RCW 82.32.730 during the immediately preceding calendar year is not required to provide notice under subsection (2) of this section with respect to retail sales made in the current calendar year.

(e) A seller who is registered with the department to collect and remit sales and use tax, and who makes a reasonable effort to comply with the requirements of RCW 82.08.050 and 82.12.040, is not required to provide notice or file reports under this section.

NEW SECTION. **Sec.**  (1) The following penalties apply to any seller who fails to provide notices and reports as required by section 302 of this act:

(a) The department must assess a penalty against any seller who fails to provide notice as required by section 302(2) of this act, in addition to any other applicable penalties, in the amount of five dollars for each such failure.

(b) The department must assess a penalty against any seller who fails to provide a report as required by section 302(3) of this act, in addition to any other applicable penalty, in the amount of ten dollars for each such failure.

(c) The department must assess a penalty against any seller who fails to file a report as required by section 302(4) of this act, in addition to any other applicable penalty, equal to ten dollars times the number of such consumers that should have been included on such report.

(2) When assessing a penalty under this section, the department may use any reasonable sampling or estimation technique where necessary or appropriate to determine the number of failures in any calendar year.

(3) Interest accrues on the amount of the total penalty that has been assessed under this section until the total penalty amount is paid in full. Interest imposed under this section must be computed and assessed as provided in RCW 82.32.050 as if the penalty imposed under this subsection were a tax liability.

(4) The department must notify a seller by mail, or electronically as provided in RCW 82.32.135, of the amount of any penalty and interest due under this section. Amounts due under this section must be paid in full within thirty days from the date of the notice, or within such further time as the department may provide in its sole discretion.

(5)(a)(i) A seller is entitled to a conditional waiver of penalties and interest imposed under this section if the seller enters into a written agreement with the department committing to fully comply with all notice and reporting requirements of this chapter beginning by a date acceptable to the department.

(ii) The department may grant a waiver of penalties and interest under this subsection (5)(a) for penalties and interest assessed for a seller's failure to comply with the notice and reporting requirements for one or more violations.

(iii) The department may not grant more than one request by a seller for a waiver of penalties and interest under this subsection (5)(a).

(iv) The department must reassess penalties and interest conditionally waived under this subsection (5)(a) if the department finds that, after the date that the seller agreed to fully comply with the notice and reporting requirements of this chapter, the seller failed to:

(A) Provide notice under section 302(2) of this act to at least ninety-five percent of the consumers entitled to such notice in any given calendar year or portion of the initial calendar year in which the agreement required under this subsection was in effect if the agreement was in effect for less than the entire calendar year;

(B) Timely provide the reports required under section 302(3) of this act to all consumers who received notice from the seller under section 302(2) of this act during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control; or

(C) Timely provide the reports required under section 302(4) of this act during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control.

(v) The department may not reassess penalties and interest conditionally waived under this subsection (5)(a) more than four calendar years following the calendar year in which the department granted the conditional waiver under this subsection (5)(a).

(vi) The provisions of subsection (4) of this section apply to penalties and interest reassessed under this subsection (5)(a). The department may add additional interest on penalties reassessed under this subsection (5)(a) only if the total amount of penalties reassessed under this subsection (5)(a) is not paid in full by the date due. Additional interest authorized under this subsection (5)(a)(vi) applies beginning on the day immediately following the day that the reassessed penalties were due and accrues until the total amount of reassessed penalties are paid in full.

(b) The department must waive penalties and interest imposed under this section if the department determines that the failure of the seller to fully comply with the notice or reporting requirements was due to circumstances beyond the seller's control.

(c) A request for a waiver of penalties and interest under this subsection must be received by the department in writing and before the penalties and interest for which a waiver is requested are due pursuant to subsection (4) of this section. The department must deny any request for a waiver of penalties and interest that does not fully comply with the provisions of this subsection (5)(c).

NEW SECTION. **Sec.**  Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. **Sec.**  (1) Except as otherwise provided in this section, taxes imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale and payable by a consumer directly to the department are due, on returns prescribed by the department, by March 1st of the calendar year immediately following the calendar year in which the taxable retail sale occurred.

(2) This section does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(a) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(b) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to RCW 82.32.045(4).

NEW SECTION. **Sec.**  Nothing in this chapter relieves sellers or consumers who are subject to chapter 82.08 or 82.12 RCW from any responsibilities imposed under those chapters. Nor does anything in this chapter prevent the department from administering and enforcing the taxes imposed under chapter 82.08 or 82.12 RCW with respect to any seller or consumer who is subject to such taxes.

**Sec.**  RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each amended to read as follows:

(1) Except as otherwise provided in this chapter or chapter 82.--- RCW (the new chapter created in section 404 of this act), payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than:

(i) Twenty-eight thousand dollars per year; or

(ii) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their taxable amount from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

**Part IV**

**Additional Revisions to Educational Reforms in Substitute Senate Bill No. 5607"**

Renumber the remaining sections and parts consecutively and correct any internal references accordingly.

On page 5, line 17, after "((~~eighty~~))" strike "fifty-five" and insert "thirty-nine"

On page 10, after line 24, insert the following:

**"Part V**

**Miscellaneous**

NEW SECTION. **Sec.**  (1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

(2) If the department of revenue is prevented from enforcing chapters 82.04, 82.08, and 82.12 RCW against persons without a physical presence in this state because any provision of this act or its application to any person or circumstance is held invalid, the department of revenue must impose such provisions to the fullest extent allowed under the Constitution and laws of the United States.

NEW SECTION. **Sec.**  The tax collection, reporting, and payment obligations imposed by this act apply prospectively only.

NEW SECTION. **Sec.**  For purposes of determining whether a person engaged in the business of making sales at retail has a substantial nexus with this state under the provisions of RCW 82.04.067(6)(a)(iii) or section 206 (1)(b), (2), or (3)(a)(ii) of this act for taxable periods beginning on the effective date of this section through December 31, 2017, the person's gross proceeds of sales are based on the entire 2017 calendar year.

NEW SECTION. **Sec.**  Sections 301 through 306 of this act constitute a new chapter in Title 82 RCW."

**SSB 5875** - S AMD **158**

By Senator Carlyle

**NOT ADOPTED 03/23/2017**

On page 1, line 2 of the title, after "RCW" insert "82.04.066, 82.04.067, 82.04.220, 82.08.050, 82.08.052, 82.12.040, 82.32.762, 82.32.045," and on line 3 of the title, after "28A.320.---;" strike "and" and on line 4 of the title, after "(uncodified)" insert "; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; creating new sections; repealing RCW 82.04.424; and prescribing penalties"

EFFECT: The local effort property tax levy is reduced by 16 cents from $1.55 to $1.39. The funding is made up from additional retail sales nexus standards that will require retail sales tax collection by remote sellers making sales into Washington.

FISCAL IMPACT: No fiscal impact. The two provisions offset.