
HOUSE BILL 3204

State of Washington**61st Legislature****2010 Regular Session****By Representatives Cody, Pettigrew, Kenney, Hunt, Williams, and Chase**

Read first time 03/01/10. Referred to Committee on Finance.

1 AN ACT Relating to modifying Washington state excise tax laws;
2 amending RCW 82.04.220, 82.04.2907, 82.04.460, 82.32.090, 82.12.020,
3 82.45.033, 82.45.070, 82.45.080, 82.45.100, 82.45.220, 43.07.390,
4 82.04.4292, 82.04.423, 82.04.4266, 82.04.250, 82.04.250, 82.04.298,
5 82.04.334, 82.04.4463, 82.08.806, 82.32.545, 82.32.550, 82.32.630,
6 82.32.632, 82.45.195, 35.102.150, 48.14.080, 82.08.890, 82.12.890,
7 82.48.010, 82.48.020, 82.48.030, 82.48.070, 82.48.080, 82.48.110,
8 82.16.050, 82.12.0254, 82.45.010, 82.45.080, 82.32.145, 82.08.0293,
9 82.12.0293, 82.04.060, 82.04.190, 82.04.215, 82.08.02088, 82.12.010,
10 82.12.020, 82.24.020, 82.24.026, 82.26.010, 82.26.020, 82.26.030,
11 82.21.030, 82.64.010, 82.64.020, 82.64.030, and 82.64.040; reenacting
12 and amending RCW 82.45.010, 82.04.260, 82.04.261, 82.04.440, 82.04.360,
13 82.04.050, 82.04.050, and 82.04.050; adding new sections to chapter
14 82.04 RCW; adding new sections to chapter 82.32 RCW; adding a new
15 section to chapter 82.48 RCW; adding a new section to chapter 82.16
16 RCW; adding new sections to chapter 82.26 RCW; adding a new section to
17 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding
18 new sections to chapter 90.48 RCW; adding a new section to chapter
19 46.68 RCW; adding a new section to chapter 90.71 RCW; creating new
20 sections; repealing RCW 82.08.0273, 82.04.44525, 82.04.29001,
21 82.24.027, 82.24.028, 82.08.811, 82.12.811, and 82.04.062; providing

1 effective dates; providing contingent effective dates; providing
2 expiration dates; and declaring an emergency.

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

4 **PART I**

5 **Minimum Nexus Standards**

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

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

28 (b) The legislature further finds that there is a trend among
29 states to adopt a single factor apportionment formula based on sales.
30 The legislature recognizes that adoption of a sales factor only
31 apportionment method has the advantages of simplifying apportionment
32 and making Washington a more attractive place for businesses to expand
33 their property and payroll. For these reasons, the legislature adopts
34 single factor sales apportionment for purposes of apportioning royalty
35 income and certain service income.

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

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

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

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

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

22 "Engaging within this state" and "engaging within the state," when
23 used in connection with any apportionable activity as defined in RCW
24 82.04.460, means that a person generates gross income of the business
25 from sources within this state, such as customers or intangible
26 property located in this state, regardless of whether the person is
27 physically present in this state.

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

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

- 32 (a) An individual and is a resident or domiciliary of this state;
- 33 (b) A business entity and is organized or commercially domiciled in
34 this state; or

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

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

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

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

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

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

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

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

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

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

33 (A) Loans secured by real property, personal property, or both real
34 and personal property, are deemed owned and used in the state if the
35 real property or personal property securing the loan is located within
36 this state. If the property securing the loan is located both within
37 this state and one or more other states, the loan is deemed owned and
38 used in this state if more than fifty percent of the fair market value

1 of the real or personal property is located within this state. If more
2 than fifty percent of the fair market value of the real or personal
3 property is not located within any one state, then the loan is deemed
4 owned and used in this state if the borrower is located in this state.
5 The determination of whether the real or personal property securing a
6 loan is located within this state must be made, as of the time the
7 original agreement was made, and any and all subsequent substitutions
8 of collateral must be disregarded.

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

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

13 (ii) The definitions in section 106 of this act apply to this
14 subsection.

15 (e) Notwithstanding anything else to the contrary in this
16 subsection, property counting toward the thresholds in subsection
17 (1)(c)(i) and (iv) of this section does not include a person's
18 ownership of, or rights in, computer software as defined in RCW
19 82.04.215, including computer software used in providing a digital
20 automated service; master copies of software; and digital goods and
21 digital codes residing on servers located in this state.

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

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

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

37 (d) For purposes of this subsection, "compensation" means wages,
38 salaries, commissions, and any other form of remuneration paid to

1 employees or nonemployees and defined as gross income under 26 U.S.C.
2 Sec. 61 of the federal internal revenue code of 1986, as existing on
3 July 1, 2010.

4 (4) Receipts counting toward the thresholds in subsection
5 (1)(c)(iii) and (iv) of this section are those amounts included in the
6 numerator of the receipts factor under sections 105 and 106 of this
7 act.

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

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

26 (6) Notwithstanding anything to the contrary in this section, a
27 person is not subject to taxes imposed under this chapter on any
28 activity not included in the definition of apportionable activities in
29 RCW 82.04.460, unless the person has a physical presence in this state,
30 which need only be demonstrably more than a slightest presence. For
31 purposes of this subsection, a person is physically present in this
32 state if the person has property or employees in this state or the
33 person, either directly or through an agent or other representative,
34 engages in activities in this state that are significantly associated
35 with the person's ability to establish or maintain a market for its
36 products in this state.

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

3 (1) The apportionable income of a person within the scope of RCW
4 82.04.460(1) is apportioned to Washington by multiplying its
5 apportionable income by the receipts factor. Persons who are subject
6 to tax under more than one of the tax classifications enumerated in RCW
7 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts
8 factor for each tax classification that the person is taxable under.

9 (2) For purposes of subsection (1) of this section, the receipts
10 factor is a fraction and is calculated as provided in subsections (3)
11 and (4) of this section and section 106 of this act.

12 (3)(a) The numerator of the receipts factor is the total gross
13 income of the business of the taxpayer attributable to this state
14 during the tax year from engaging in an apportionable activity. The
15 denominator of the receipts factor is the total gross income of the
16 business of the taxpayer from engaging in an apportionable activity
17 everywhere in the world during the tax year.

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

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

24 (ii) If the customer received the benefit of the service or used
25 the intangible property in more than one state, gross income of the
26 business must be attributed to the state in which the benefit of the
27 service was primarily received or in which the intangible property was
28 primarily used.

29 (iii) If the taxpayer is unable to attribute gross income of the
30 business under the provisions of (b)(i) or (ii) of this subsection (3),
31 gross income of the business must be attributed to the state from which
32 the customer ordered the service or, in the case of royalties, the
33 office of the customer from which the royalty agreement with the
34 taxpayer was negotiated.

35 (iv) If the taxpayer is unable to attribute gross income of the
36 business under the provisions of (b)(i), (ii), or (iii) of this
37 subsection (3), gross income of the business must be attributed to the

1 state to which the billing statements or invoices are sent to the
2 customer by the taxpayer.

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

7 (vi) If the taxpayer is unable to attribute gross income of the
8 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
9 this subsection (3), gross income of the business must be attributed to
10 the state where the customer is located as indicated by the customer's
11 address: (A) Shown in the taxpayer's business records maintained in
12 the regular course of business; or (B) obtained during consummation of
13 the sale or the negotiation of the contract for services or for the use
14 of the taxpayer's intangible property, including any address of a
15 customer's payment instrument when readily available to the taxpayer
16 and no other address is available.

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

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

27 (c) Gross income of the business from engaging in an apportionable
28 activity must be excluded from the denominator of the receipts factor
29 if, in respect to such activity, at least some of the activity is
30 performed in this state, and the gross income is attributable under (b)
31 of this subsection (3) to a state in which the taxpayer is not taxable.
32 For purposes of this subsection (3)(c), "not taxable" means that the
33 taxpayer is not subject to a business activities tax by that state,
34 except that a taxpayer is taxable in a state in which it would be
35 deemed to have substantial nexus with that state under the standards in
36 section 104(1) of this act regardless of whether that state imposes
37 such a tax. "Business activities tax" means a tax measured by the
38 amount of, or economic results of, business activity conducted in a

1 state. The term includes taxes measured in whole or in part on net
2 income or gross income or receipts. "Business activities tax" does not
3 include a sales tax, use tax, or a similar transaction tax, imposed on
4 the sale or acquisition of goods or services, whether or not
5 denominated a gross receipts tax or a tax imposed on the privilege of
6 doing business.

7 (d) This subsection (3) does not apply to financial institutions
8 with respect to apportionable income taxable under RCW 82.04.290.
9 Financial institutions must calculate the receipts factor as provided
10 in section 106 of this act and subsection (4) of this section with
11 respect to apportionable income taxable under RCW 82.04.290. For
12 purposes of this subsection, "financial institution" has the same
13 meaning as in section 106 of this act.

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

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

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

1 (b) "State" has the same meaning as in section 106 of this act.

2 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.04
3 RCW to read as follows:

4 (1) A financial institution must, for purposes of apportioning
5 gross income of the business taxable under RCW 82.04.290 using the
6 apportionment method provided in section 105(1) of this act, calculate
7 the receipts factor as provided in this section and section 105(4) of
8 this act. Financial institutions that are subject to tax under any
9 other tax classification enumerated in RCW 82.04.460(3)(a) (i) through
10 (v) and (vii) through (ix) must calculate a separate receipts factor,
11 as provided in section 105 of this act, for each of the other tax
12 classifications that the financial institution is taxable under.

13 (2)(a)(i) The numerator of the receipts factor includes gross
14 income from interest, fees, and penalties on loans secured by real
15 property, personal property, or both real and personal property, if the
16 real or personal property is located within this state. If the
17 property securing the loan is located both within this state and one or
18 more other states, the income described in this subsection (2)(a)(i) is
19 included in the numerator of the receipts factor if more than fifty
20 percent of the fair market value of the real or personal property is
21 located within this state. If more than fifty percent of the fair
22 market value of the real or personal property is not located within any
23 one state, then the income described in this subsection (2)(a)(i) is
24 included in the numerator of the receipts factor if the borrower is
25 located in this state.

26 (ii) The denominator of the receipts factor includes gross income
27 from interest, fees, and penalties on loans secured by real property,
28 personal property, or both real and personal property, wherever the
29 property is located.

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

34 (b) The numerator of the receipts factor includes gross income from
35 interest, fees, and penalties on loans not secured by real or personal
36 property if the borrower is located in this state. The denominator of

1 the receipts factor includes gross income from interest, fees, and
2 penalties on loans that are not secured by real or personal property,
3 regardless of where the borrower is located.

4 (c) The receipts factor includes gross income from net gains, which
5 may not be less than zero, on the sale of loans. Net gains on the sale
6 of loans includes income recorded under the coupon stripping rules of
7 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as
8 existing on July 1, 2010.

9 (i) The amount of net gains, which may not be less than zero, on
10 the sale of loans secured by real property, personal property, or both
11 real and personal property, included in the numerator of the receipts
12 factor is determined by multiplying such net gains by a fraction. The
13 numerator of the fraction is the amount included in the numerator of
14 the receipts factor under (a) of this subsection (2). The denominator
15 of the fraction is the amount included in the denominator of the
16 receipts factor under (a) of this subsection (2).

17 (ii) The amount of net gains, which may not be less than zero, from
18 the sale of loans not secured by real or personal property included in
19 the numerator of the receipts factor is determined by multiplying such
20 net gains by a fraction. The numerator of the fraction is the amount
21 included in the numerator of the receipts factor under (b) of this
22 subsection (2). The denominator of the fraction is the amount included
23 in the denominator of the receipts factor under (b) of this subsection
24 (2).

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

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

29 (i)(A)(I) The numerator of the receipts factor includes gross
30 income from loan servicing fees derived from loans secured by real
31 property, personal property, or both real and personal property,
32 multiplied by a fraction. The numerator of the fraction is the amount
33 included in the numerator of the receipts factor under (a) of this
34 subsection (2). The denominator of the fraction is the amount included
35 in the denominator of the receipts factor under (a) of this subsection
36 (2).

37 (II) The denominator of the receipts factor includes gross income

1 from all loan servicing fees derived from loans secured by real
2 property, personal property, or both real and personal property.

3 (B)(I) The numerator of the receipts factor includes gross income
4 from loan servicing fees derived from loans not secured by real or
5 personal property multiplied by a fraction. The numerator of the
6 fraction is the amount included in the numerator of the receipts factor
7 under (b) of this subsection (2). The denominator of the fraction is
8 the amount included in the denominator of the receipts factor under (b)
9 of this subsection (2).

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

13 (ii) If the financial institution receives loan servicing fees for
14 servicing either the secured or the unsecured loans of another, the
15 numerator of the receipts factor includes such fees if the borrower is
16 located in this state. The denominator of the receipts factor includes
17 all such fees.

18 (e)(i) Interest, dividends, net gains (which may not be less than
19 zero), and other income from investment assets and activities and from
20 trading assets and activities, as provided in this subsection (2)(e),
21 are included in the receipts factor. Investment assets and activities
22 and trading assets and activities include but are not limited to:
23 Investment securities; trading account assets; federal funds;
24 securities purchased and sold under agreements to resell or repurchase;
25 options; futures contracts; forward contracts; notional principal
26 contracts such as swaps; equities; and foreign currency transactions.

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

33 (A) The amount of interest, dividends, net gains (which may not be
34 less than zero), and other income from investment assets and activities
35 in the investment account to be attributed to this state and included
36 in the numerator of the receipts factor is determined by multiplying
37 all such income from such assets and activities by a fraction. The
38 numerator of the fraction is the average value of such assets that are

1 properly assigned to a regular place of business of the financial
2 institution within this state. The denominator of the fraction is the
3 average value of all such assets.

4 (B)(I) The amount of interest from federal funds sold and purchased
5 and from securities purchased under resale agreements and securities
6 sold under repurchase agreements attributable to this state and
7 included in the numerator of the receipts factor is determined by
8 multiplying the amount described in (e)(ii)(B)(II) of this subsection
9 (2) from such funds and such securities by a fraction. The numerator
10 of the fraction is the average value of federal funds sold and
11 securities purchased under agreements to resell that are properly
12 assigned to a regular place of business of the financial institution
13 within this state. The denominator of the fraction is the average
14 value of all such funds and such securities.

15 (II) The amount used for purposes of making the calculation in
16 (e)(ii)(B)(I) of this subsection (2) is the amount by which interest
17 from federal funds sold and securities purchased under resale
18 agreements exceeds interest expense on federal funds purchased and
19 securities sold under repurchase agreements.

20 (C)(I) The amount of interest, dividends, gains and other income
21 from trading assets and activities, including but not limited to assets
22 and activities in the matched book, in the arbitrage book, and foreign
23 currency transactions, but excluding amounts described in (e)(ii)(A) or
24 (B) of this subsection (2), attributable to this state and included in
25 the numerator of the receipts factor is determined by multiplying the
26 amount described in (e)(ii)(C)(II) of this subsection (2) by a
27 fraction. The numerator of the fraction is the average value of such
28 trading assets that are properly assigned to a regular place of
29 business of the financial institution within this state. The
30 denominator of the fraction is the average value of all such assets.

31 (II) The amount used for purposes of making the calculation in
32 (e)(ii)(C)(I) of this subsection (2) is the amount by which interest,
33 dividends, gains and other receipts from trading assets and activities,
34 including but not limited to assets and activities in the matched book,
35 in the arbitrage book, and foreign currency transactions, exceed
36 amounts paid in lieu of interest, amounts paid in lieu of dividends,
37 and losses from such assets and activities.

1 (D) For purposes of this subsection (2)(e)(ii), average value must
2 be determined using the rules for determining the average value of
3 property set forth in section 104(2) of this act.

4 (iii) In lieu of using the method set forth in (e)(ii) of this
5 subsection (2), the financial institution may elect, or the department
6 may require, in order to fairly represent the business activity of the
7 financial institution in this state, the use of the method set forth in
8 this subsection (2)(e)(iii).

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 gross income from such assets and
15 activities that are properly assigned to a regular place of business of
16 the financial institution within this state. The denominator of the
17 fraction is the gross income from all such assets and activities.

18 (B) 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 gross income from such funds and such securities
25 that are properly assigned to a regular place of business of the
26 financial institution within this state. The denominator of the
27 fraction is the gross income from all such funds and such securities.

28 (C) The amount of interest, dividends, gains and other receipts
29 from trading assets and activities, including but not limited to assets
30 and activities in the matched book, in the arbitrage book, and foreign
31 currency transactions, but excluding amounts described in (e)(ii)(A) or
32 (B) of this subsection (2), attributable to this state and included in
33 the numerator of the receipts factor is determined by multiplying the
34 amount described in (e)(ii)(C)(II) of this subsection (2) by a
35 fraction. The numerator of the fraction is the gross income from such
36 trading assets and activities that are properly assigned to a regular
37 place of business of the financial institution within this state. The

1 denominator of the fraction is the gross income from all such assets
2 and activities.

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

8 (v) The financial institution has the burden of proving that an
9 investment asset or activity or trading asset or activity was properly
10 assigned to a regular place of business outside of this state by
11 demonstrating that the day-to-day decisions regarding the asset or
12 activity occurred at a regular place of business outside this state.
13 If the day-to-day decisions regarding an investment asset or activity
14 or trading asset or activity occur at more than one regular place of
15 business and one such regular place of business is in this state and
16 one such regular place of business is outside this state, such asset or
17 activity is considered to be located at the regular place of business
18 of the financial institution where the investment or trading policies
19 or guidelines with respect to the asset or activity are established.
20 Such policies and guidelines are presumed, subject to rebuttal by
21 preponderance of the evidence, to be established at the commercial
22 domicile of the financial institution.

23 (f) The numerator of the receipts factor includes gross income from
24 interest, fees, and penalties on credit card receivables, and gross
25 income from fees charged to cardholders, such as annual fees, if the
26 billing address of the cardholder is in this state. The denominator of
27 the receipts factor includes gross income from interest, fees, and
28 penalties on all credit card receivables, and gross income from fees
29 charged to all cardholders, such as annual fees.

30 (g)(i) The numerator of the receipts factor includes gross income
31 from net gains, which may not be less than zero, from the sale of
32 credit card receivables multiplied by a fraction. The numerator of the
33 fraction is the amount included in the numerator of the receipts factor
34 under (f) of this subsection (2). The denominator of the fraction is
35 the amount included in the denominator of the receipts factor under (f)
36 of this subsection (2).

37 (ii) The denominator of the receipts factor includes gross income

1 from net gains, which may not be less than zero, from all sales of
2 credit card receivables.

3 (h)(i) The numerator of the receipts factor includes gross income
4 from all credit card issuer's reimbursement fees multiplied by a
5 fraction. The numerator of the fraction is the amount included in the
6 numerator of the receipts factor under (f) of this subsection (2). The
7 denominator of the fraction is the amount included in the denominator
8 of the receipts factor under (f) of this subsection (2).

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

11 (i) The numerator of the receipts factor includes gross income from
12 merchant discounts if the commercial domicile of the merchant is in
13 this state. The denominator of the receipts factor includes gross
14 income from all merchant discounts. For purposes of this subsection
15 (2)(i), gross income must be computed net of any cardholder charge
16 backs but may not be reduced by any interchange transaction fees or by
17 any issuer's reimbursement fees paid to another for charges made by its
18 cardholders.

19 (j) Apportionable income that would be attributable under this
20 subsection (2) to a state in which the financial institution is not
21 taxable must be excluded from the denominator of the receipts factor if
22 at least some of the activity that generated the income is performed in
23 this state, and the gross income is attributable under this subsection
24 (2) to a state in which the taxpayer is not taxable. For purposes of
25 this subsection (2)(j), "not taxable" has the same meaning as in
26 section 105 of this act.

27 (k)(i) The numerator of the receipts factor includes apportionable
28 income taxable under RCW 82.04.290 and not otherwise included in the
29 receipts factor under this subsection (2) if the activity producing the
30 apportionable income is performed in this state. If the activity is
31 performed both inside and outside this state, the numerator of the
32 receipts factor includes apportionable income taxable under RCW
33 82.04.290 and not otherwise included in the receipts factor under this
34 subsection (2) if a greater proportion of the activity producing the
35 apportionable income is performed in this state based on cost of
36 performance.

37 (ii) The denominator of the receipts factor includes apportionable
38 income taxable under RCW 82.04.290 from activities performed

1 everywhere, where the apportionable income taxable under RCW 82.04.290
2 is not otherwise included in the receipts factor under this subsection
3 (2).

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

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

11 (a) "Apportionable income" has the same meaning as in RCW
12 82.04.460.

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

15 (c) "Financial institution" has the same meaning as in WAC 458-20-
16 14601. However, the department may not make any substantive changes to
17 the definition of "financial institution" in WAC 458-20-14601 unless
18 the changes implement a legislative amendment to this definition of
19 financial institution.

20 (d) "State" means a state of the United States, the District of
21 Columbia, the Commonwealth of Puerto Rico, any territory or possession
22 of the United States, or any foreign country or political subdivision
23 of a foreign country.

24 **Sec. 107.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
25 read as follows:

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

33 (2) For the purposes of this section, "gross income from royalties"
34 means compensation for the use of intangible property, (~~((such as))~~)
35 including charges in the nature of royalties, regardless of where the
36 intangible property will be used. For purposes of this subsection,
37 "intangible property" includes copyrights, patents, licenses,

1 franchises, trademarks, trade names, and similar items. (~~(It)~~) "Gross
2 income from royalties" does not include compensation for any natural
3 resource, the licensing of prewritten computer software to the end
4 user, or the licensing (~~(or use)~~) of digital goods, digital codes, or
5 digital automated services to the end user as defined in RCW
6 82.04.190(11).

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

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

24 (2) (~~(Notwithstanding the provision of subsection (1) of this~~
25 ~~section, persons doing business both within and without the state who~~
26 ~~receive gross income from service charges, as defined in RCW 63.14.010~~
27 ~~(relating to amounts charged for granting the right or privilege to~~
28 ~~make deferred or installment payments) or who receive gross income from~~
29 ~~engaging in business as financial institutions within the scope of~~
30 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~
31 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~
32 ~~this state pursuant to rules promulgated by the department consistent~~
33 ~~with uniform rules for apportionment or allocation developed by the~~
34 ~~states.~~

35 (~~3~~) The department (~~(shall)~~) may by rule provide a method or
36 methods of apportioning or allocating gross income derived from sales
37 of telecommunications service and competitive telephone service(~~(s)~~)

1 taxed under this chapter, if the gross proceeds of sales subject to tax
2 under this chapter do not fairly represent the extent of the taxpayer's
3 income attributable to this state. (~~The rules shall be, so far as~~
4 ~~feasible, consistent with the methods of apportionment contained in~~
5 ~~this section and shall require the consideration of those facts,~~
6 ~~circumstances, and apportionment factors as will result in an equitable~~
7 ~~and constitutionally permissible division of the services.)) The rule
8 must provide for an equitable and constitutionally permissible division
9 of the tax base.~~

10 (3) For purposes of this section, the following definitions apply
11 unless the context clearly requires otherwise:

12 (a) "Apportionable income" means gross income of the business
13 generated from engaging in apportionable activities, including income
14 received from apportionable activities performed outside this state if
15 the income would be taxable under this chapter if received from
16 activities in this state, less the exemptions and deductions allowable
17 under this chapter. For purposes of this subsection, "apportionable
18 activities" means only those activities taxed under:

19 (i) RCW 82.04.255;

20 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);

21 (iii) RCW 82.04.280(5);

22 (iv) RCW 82.04.285;

23 (v) RCW 82.04.286;

24 (vi) RCW 82.04.290;

25 (vii) RCW 82.04.2907;

26 (viii) RCW 82.04.2908; and

27 (ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to
28 the extent of any activity that would be taxable under any of the
29 provisions enumerated under (a)(i) through (viii) of this subsection
30 (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and
31 82.04.280(1) did not exist.

32 (b)(i) "Taxable in another state" means that the taxpayer is
33 subject to a business activities tax by another state on its income
34 received from engaging in apportionable activities; or the taxpayer is
35 not subject to a business activities tax by another state on its income
36 received from engaging in apportionable activities, but any other state
37 has jurisdiction to subject the taxpayer to a business activities tax

1 on such income under the substantial nexus standards in section 104(1)
2 of this act.

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

4 (A) "Business activities tax" has the same meaning as in section
5 105 of this act; and

6 (B) "State" has the same meaning as in section 106 of this act.

7 **PART II**

8 **Abusive Tax Transactions**

9 NEW SECTION. Sec. 201. A new section is added to chapter 82.32
10 RCW to read as follows:

11 (1)(a) Unless otherwise specifically provided in statute, the
12 department must respect the form of a transaction, except where the
13 form of the transaction or a related series of transactions is adopted
14 for the purpose of:

15 (i) Disguising income received, or otherwise avoiding tax on
16 income, from a person that is not affiliated with the taxpayer;

17 (ii) Disguising the purchase or sale of property or services from
18 or to a person that is not affiliated with the taxpayer; or

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

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

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

34 (i) The sham transaction doctrine;

35 (ii) The economic substance doctrine;

36 (iii) The business purpose doctrine;

- 1 (iv) The substance over form doctrine;
2 (v) The step transaction doctrine; and
3 (vi) The assignment of income doctrine.

4 (b) The adoption of a rule as required under this subsection is not
5 a condition precedent for the department to use the authority provided
6 in this section. Any rules adopted under this section must include
7 examples of transactions that the department will disregard for tax
8 purposes.

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

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

14 (1)(a) The department may not use section 201 of this act to
15 disregard any transaction, plan, or arrangement initiated before July
16 1, 2010, if, in respect to such transaction, plan, or arrangement, the
17 taxpayer had reported its tax liability in conformance with either
18 specific written instructions provided by the department to the
19 taxpayer, a determination published under the authority of RCW
20 82.32.410, or other document published by the department.

21 (b) This section does not apply if the transaction, plan, or
22 arrangement engaged in by the taxpayer differs materially from the
23 transaction, plan, or arrangement that was addressed in the specific
24 written instructions, published determination, or other published
25 document.

26 (2) For purposes of this section, "specific written instructions"
27 means tax reporting instructions provided to a taxpayer and which
28 specifically identifies the taxpayer to whom the instructions apply.
29 Specific written instructions may be provided as part of an audit, tax
30 assessment, determination, closing agreement, or in response to a
31 binding ruling request.

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

34 (1) If payment of any tax due on a return to be filed by a taxpayer
35 is not received by the department of revenue by the due date, there
36 (~~shall be~~) is assessed a penalty of five percent of the amount of the

1 tax; and if the tax is not received on or before the last day of the
2 month following the due date, there (~~shall be~~) is assessed a total
3 penalty of fifteen percent of the amount of the tax under this
4 subsection; and if the tax is not received on or before the last day of
5 the second month following the due date, there (~~shall be~~) is assessed
6 a total penalty of twenty-five percent of the amount of the tax under
7 this subsection. No penalty so added shall be less than five dollars.

8 (2) If the department of revenue determines that any tax has been
9 substantially underpaid, there (~~shall be~~) is assessed a penalty of
10 five percent of the amount of the tax determined by the department to
11 be due. If payment of any tax determined by the department to be due
12 is not received by the department by the due date specified in the
13 notice, or any extension thereof, there (~~shall be~~) is assessed a
14 total penalty of fifteen percent of the amount of the tax under this
15 subsection; and if payment of any tax determined by the department to
16 be due is not received on or before the thirtieth day following the due
17 date specified in the notice of tax due, or any extension thereof,
18 there (~~shall be~~) is assessed a total penalty of twenty-five percent
19 of the amount of the tax under this subsection. No penalty so added
20 (~~shall~~) may be less than five dollars. As used in this section,
21 "substantially underpaid" means that the taxpayer has paid less than
22 eighty percent of the amount of tax determined by the department to be
23 due for all of the types of taxes included in, and for the entire
24 period of time covered by, the department's examination, and the amount
25 of underpayment is at least one thousand dollars.

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

30 (4) If the department finds that a person has engaged in any
31 business or performed any act upon which a tax is imposed under this
32 title and that person has not obtained from the department a
33 registration certificate as required by RCW 82.32.030, the department
34 (~~shall~~) must impose a penalty of five percent of the amount of tax
35 due from that person for the period that the person was not registered
36 as required by RCW 82.32.030. The department (~~shall~~) may not impose
37 the penalty under this subsection (4) if a person who has engaged in
38 business taxable under this title without first having registered as

1 required by RCW 82.32.030, prior to any notification by the department
2 of the need to register, obtains a registration certificate from the
3 department.

4 (5) If the department finds that all or any part of a deficiency
5 resulted from the disregard of specific written instructions as to
6 reporting or tax liabilities, the department (~~shall~~) must add a
7 penalty of ten percent of the amount of the additional tax found due
8 because of the failure to follow the instructions. A taxpayer
9 disregards specific written instructions when the department (~~of~~
10 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
11 obligations and the taxpayer fails to act in accordance with those
12 instructions unless the department has not issued final instructions
13 because the matter is under appeal pursuant to this chapter or
14 departmental regulations. The department (~~shall~~) may not assess the
15 penalty under this section upon any taxpayer who has made a good faith
16 effort to comply with the specific written instructions provided by the
17 department to that taxpayer. Specific written instructions may be
18 given as a part of a tax assessment, audit, determination, or closing
19 agreement, provided that such specific written instructions (~~shall~~)
20 apply only to the taxpayer addressed or referenced on such documents.
21 Any specific written instructions by the department (~~of—revenue~~
22 ~~shall~~) must be clearly identified as such and (~~shall~~) must inform
23 the taxpayer that failure to follow the instructions may subject the
24 taxpayer to the penalties imposed by this subsection.

25 (6) If the department finds that all or any part of a deficiency
26 resulted from engaging in a disregarded transaction, as described in
27 section 201(1)(a)(i), (ii), or (iii) of this act, the department must
28 assess a penalty of thirty-five percent of the additional tax found to
29 be due as a result of engaging in a transaction disregarded by the
30 department under section 201(1)(a)(i), (ii), or (iii) of this act. The
31 penalty provided in this subsection may be assessed together with any
32 other applicable penalties provided in this section on the same tax
33 found to be due, except for the evasion penalty provided in subsection
34 (7) of this section. The department may not assess the penalty under
35 this subsection if, before the department discovers the taxpayer's use
36 of a transaction described under section 201(1)(a)(i), (ii), or (iii)
37 of this act, the taxpayer discloses its participation in the
38 transaction to the department.

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

5 (~~(7)~~) (8) The penalties imposed under subsections (1) through (4)
6 of this section can each be imposed on the same tax found to be due.
7 This subsection does not prohibit or restrict the application of other
8 penalties authorized by law.

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

13 (~~(9)~~) (10) For the purposes of this section, "return" means any
14 document a person is required by the state of Washington to file to
15 satisfy or establish a tax or fee obligation that is administered or
16 collected by the department (~~of revenue~~), and that has a statutorily
17 defined due date.

18 NEW SECTION. **Sec. 204.** (1) The legislature finds that this
19 state's tax policy with respect to the taxation of transactions between
20 affiliated entities and the income derived from such transactions
21 (intercompany transactions) has motivated some taxpayers to engage in
22 transactions designed solely or primarily to minimize the tax effects
23 of intercompany transactions. The legislature further finds that some
24 intercompany transactions result from taxpayers that are required to
25 establish affiliated entities to comply with regulatory mandates and
26 that transactions between such affiliates effectively increases the tax
27 burden in this state on the affiliated group of entities.

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

34 (3) In conducting the review, the department must examine how this
35 state's tax policy compares to the tax policy of other states with
36 respect to the taxation of intercompany transactions. The department's

1 review must include an analysis of potential alternatives to the
2 current policy of taxing intercompany transactions, including their
3 estimated revenue impacts if practicable.

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

6 (5) The department must report its findings to the fiscal
7 committees of the house of representatives and senate by December 1,
8 2010. However, if the department has not completed its review by
9 December 1, 2010, the department must provide the fiscal committees of
10 the legislature with a brief status report by December 1, 2010, and the
11 final report by December 1, 2011.

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

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

17 (a) Article of tangible personal property ~~((purchased at retail,~~
18 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
19 ~~or produced or manufactured by the person so using the same, or~~
20 ~~otherwise furnished to a person engaged in any business taxable under~~
21 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
22 personal property acquired at a casual or isolated sale, and including
23 by-products used by the manufacturer thereof, except as otherwise
24 provided in this chapter, irrespective of whether the article or
25 similar articles are manufactured or are available for purchase within
26 this state;

27 (b) Prewritten computer software, regardless of the method of
28 delivery, but excluding prewritten computer software that is either
29 provided free of charge or is provided for temporary use in viewing
30 information, or both;

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

34 (d) Extended warranty; or

35 (e)(i) Digital good, digital code, or digital automated service,
36 including the use of any services provided by a seller exclusively in

1 connection with digital goods, digital codes, or digital automated
2 services, whether or not a separate charge is made for such services.

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

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

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

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

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

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

19 (2) The provisions of this chapter do not apply in respect to the
20 use of any article of tangible personal property, extended warranty,
21 digital good, digital code, digital automated service, or service
22 taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
23 sale to, or the use by, the present user or the present user's bailor
24 or donor has already been subjected to the tax under chapter 82.08 RCW
25 or this chapter and the tax has been paid by the present user or by the
26 present user's bailor or donor.

27 (3)(a) Except as provided in this section, payment of the tax
28 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
29 of tangible personal property, extended warranty, digital good, digital
30 code, digital automated service, or other service does not have the
31 effect of exempting any other purchaser or user of the same property,
32 extended warranty, digital good, digital code, digital automated
33 service, or other service from the taxes imposed by such chapters.

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

35 (i) If the sale to, or the use by, the present user or his or her
36 bailor or donor has already been subjected to the tax under chapter
37 82.08 RCW or this chapter and the tax has been paid by the present user
38 or by his or her bailor or donor;

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

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

10 (iv) To the use of digital goods or digital automated services,
11 which were obtained through the use of a digital code, if the sale of
12 the digital code to, or the use of the digital code by, the present
13 user or the present user's bailor or donor has already been subjected
14 to the tax under chapter 82.08 RCW or this chapter and the tax has been
15 paid by the present user or by the present user's bailor or donor.

16 (4)(a) Except as provided in (b) of this subsection (4), the tax is
17 levied and must be collected in an amount equal to the value of the
18 article used, value of the digital good or digital code used, value of
19 the extended warranty used, or value of the service used by the
20 taxpayer, multiplied by the applicable rates in effect for the retail
21 sales tax under RCW 82.08.020.

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

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

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

31 (1) As used in this chapter, the term "sale" (~~(shall have)~~) has its
32 ordinary meaning and (~~shall~~) includes any conveyance, grant,
33 assignment, quitclaim, or transfer of the ownership of or title to real
34 property, including standing timber, or any estate or interest therein
35 for a valuable consideration, and any contract for such conveyance,
36 grant, assignment, quitclaim, or transfer, and any lease with an option
37 to purchase real property, including standing timber, or any estate or

1 interest therein or other contract under which possession of the
2 property is given to the purchaser, or any other person at the
3 purchaser's direction, and title to the property is retained by the
4 vendor as security for the payment of the purchase price. The term
5 also includes the grant, assignment, quitclaim, sale, or transfer of
6 improvements constructed upon leased land.

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

11 (b) For the sole purpose of determining whether, pursuant to the
12 exercise of an option, a controlling interest was transferred or
13 acquired within a twelve-month period, the date that the option
14 agreement was executed is the date on which the transfer or acquisition
15 of the controlling interest is deemed to occur. For all other purposes
16 under this chapter, the date upon which the option is exercised is the
17 date of the transfer or acquisition of the controlling interest.

18 (c) For purposes of this subsection, all acquisitions of persons
19 acting in concert (~~shall~~) must be aggregated for purposes of
20 determining whether a transfer or acquisition of a controlling interest
21 has taken place. The department (~~of revenue shall~~) must adopt
22 standards by rule to determine when persons are acting in concert. In
23 adopting a rule for this purpose, the department (~~shall~~) must
24 consider the following:

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

29 ((+b)) (ii) When persons are not commonly owned or controlled,
30 they (~~shall~~) must be treated as acting in concert only when the unity
31 with which the purchasers have negotiated and will consummate the
32 transfer of ownership interests supports a finding that they are acting
33 as a single entity. If the acquisitions are completely independent,
34 with each purchaser buying without regard to the identity of the other
35 purchasers, then the acquisitions (~~shall be~~) are considered separate
36 acquisitions.

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

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

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

3 (c) A cancellation or forfeiture of a vendee's interest in a
4 contract for the sale of real property, whether or not such contract
5 contains a forfeiture clause, or deed in lieu of foreclosure of a
6 mortgage.

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

9 (e) The assignment of property or interest in property from one
10 spouse or one domestic partner to the other spouse or other domestic
11 partner in accordance with the terms of a decree of dissolution of
12 marriage or state registered domestic partnership or in fulfillment of
13 a property settlement agreement.

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

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

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

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

26 (j) A conveyance to the federal housing administration or veterans
27 administration by an authorized mortgagee made pursuant to a contract
28 of insurance or guaranty with the federal housing administration or
29 veterans administration.

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

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

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

37 (n) A sale to a regional transit authority or public corporation

1 under RCW 81.112.320 under a sale/leaseback agreement under RCW
2 81.112.300.

3 (o) A transfer of real property, however effected, if it consists
4 of a mere change in identity or form of ownership of an entity where
5 there is no change in the beneficial ownership. These include
6 transfers to a corporation or partnership which is wholly owned by the
7 transferor and/or the transferor's spouse or domestic partner or
8 children of the transferor or the transferor's spouse or domestic
9 partner(~~(:—PROVIDED, That)~~). However, if thereafter such transferee
10 corporation or partnership voluntarily transfers such real property, or
11 such transferor, spouse or domestic partner, or children of the
12 transferor or the transferor's spouse or domestic partner voluntarily
13 transfer stock in the transferee corporation or interest in the
14 transferee partnership capital, as the case may be, to other than
15 ~~((+1))~~ (i) the transferor and/or the transferor's spouse or domestic
16 partner or children of the transferor or the transferor's spouse or
17 domestic partner, ~~((+2))~~ (ii) a trust having the transferor and/or the
18 transferor's spouse or domestic partner or children of the transferor
19 or the transferor's spouse or domestic partner as the only
20 beneficiaries at the time of the transfer to the trust, or ~~((+3))~~
21 (iii) a corporation or partnership wholly owned by the original
22 transferor and/or the transferor's spouse or domestic partner or
23 children of the transferor or the transferor's spouse or domestic
24 partner, within three years of the original transfer to which this
25 exemption applies, and the tax on the subsequent transfer has not been
26 paid within sixty days of becoming due, excise taxes ~~((shall))~~ become
27 due and payable on the original transfer as otherwise provided by law.

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

34 (ii) However, the transfer described in (p)(i) of this subsection
35 cannot be preceded or followed within a twelve-month period by another
36 transfer or series of transfers, that, when combined with the otherwise
37 exempt transfer or transfers described in (p)(i) of this subsection,
38 results in the transfer of a controlling interest in the entity for

1 valuable consideration, and in which one or more persons previously
2 holding a controlling interest in the entity receive cash or property
3 in exchange for any interest the person or persons acting in concert
4 hold in the entity. This subsection (3)(p)(ii) does not apply to that
5 part of the transfer involving property received that is the real
6 property interest that the person or persons originally contributed to
7 the entity or when one or more persons who did not contribute real
8 property or belong to the entity at a time when real property was
9 purchased receive cash or personal property in exchange for that person
10 or persons' interest in the entity. The real estate excise tax under
11 this subsection (3)(p)(ii) is imposed upon the person or persons who
12 previously held a controlling interest in the entity.

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

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

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

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

24 ~~((+2))~~ (b) In the case of a partnership, association, trust, or
25 other entity, fifty percent or more of the capital, profits, or
26 beneficial interest in such partnership, association, trust, or other
27 entity.

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

31 (a) In the transfer or acquisition of a controlling interest as
32 defined in subsection (1)(a) of this section, either against the
33 corporation in which a controlling interest is transferred or acquired,
34 against the person or persons who acquired the controlling interest in
35 the corporation or, when the corporation is not a publicly traded
36 company, against the person or persons who transferred the controlling
37 interest in the corporation; and

1 (b) In the transfer or acquisition of a controlling interest as
2 defined in subsection (1)(b) of this section, either against the entity
3 in which a controlling interest is transferred or acquired or against
4 the person or persons who transferred or acquired the controlling
5 interest in the entity.

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

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

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

17 (1) The tax levied under this chapter (~~shall be~~) is the
18 obligation of the seller and the department (~~of revenue~~) may, at the
19 department's option, enforce the obligation through an action of debt
20 against the seller or the department may proceed in the manner
21 prescribed for the foreclosure of mortgages (~~and resort to~~). The
22 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
23 an election not to pursue the other.

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

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

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

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

3 (b) Interest imposed after December 31, 1998, (~~shall be~~) is
4 computed on a monthly basis at the rate as computed under RCW
5 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
6 first day of January of each year for use in computing interest for
7 that calendar year. The department (~~of revenue shall~~) must provide
8 written notification to the county treasurers of the variable rate on
9 or before December 1st of the year preceding the calendar year in which
10 the rate applies.

11 (2) In addition to the interest described in subsection (1) of this
12 section, if the payment of any tax is not received by the county
13 treasurer or the department of revenue, as the case may be, within one
14 month of the date due, there (~~shall be~~) is assessed a penalty of five
15 percent of the amount of the tax; if the tax is not received within two
16 months of the date due, there (~~shall~~) will be assessed a total
17 penalty of ten percent of the amount of the tax; and if the tax is not
18 received within three months of the date due, there (~~shall~~) will be
19 assessed a total penalty of twenty percent of the amount of the tax.
20 The payment of the penalty described in this subsection (~~shall be~~) is
21 collectible from the seller only, and RCW 82.45.070 does not apply to
22 the penalties described in this subsection.

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

27 ~~(a))~~ an instrument evidencing the sale is recorded in the official
28 real property records of the county in which the property conveyed is
29 located(~~;-or~~

30 ~~(b) Either the transferor or transferee notifies the department of~~
31 ~~revenue in writing of the occurrence of the sale within thirty days~~
32 ~~following the date of the sale)).~~

33 (4) If upon examination of any affidavits or from other information
34 obtained by the department or its agents it appears that all or a
35 portion of the tax is unpaid, the department (~~shall~~) must assess
36 against the taxpayer the additional amount found to be due plus
37 interest and penalties as provided in subsections (1) and (2) of this
38 section. The department (~~shall~~) must notify the taxpayer by mail, or

1 electronically as provided in RCW 82.32.135, of the additional amount
2 and the same (~~shall~~) becomes due and (~~shall~~) must be paid within
3 thirty days from the date of the notice, or within such further time as
4 the department may provide.

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

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

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

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

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

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

18 (1) An organization that fails to report a transfer of the
19 controlling interest in the organization under RCW 43.07.390 to the
20 secretary of state and is later determined to be subject to real estate
21 excise taxes due to the transfer, (~~shall be~~) is subject to the
22 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
23 82.32.090(~~(+6)~~) (7).

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

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

30 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
31 any entity that is required to file an annual report with the secretary
32 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
33 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
34 in the entity (~~and any interest in real property~~); and (ii) the
35 granting of any option to acquire an interest in the entity if the

1 exercise of the option would result in a sale as defined in RCW
2 82.45.010(2).

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

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

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

12 PART III

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

14 NEW SECTION. **Sec. 301.** In 1980, the legislature adopted a
15 business and occupation tax deduction to financial businesses for
16 amounts derived from interest received on investments or loans
17 primarily secured by first mortgages or trust deeds on nontransient
18 residential properties which was codified in RCW 82.04.4292. However,
19 the Washington state supreme court in *Homestreet, Inc. v. Dep't of*
20 *Revenue*, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled
21 to a business and occupation tax deduction under RCW 82.04.4292 for the
22 portion of interest it retained for servicing loans and mortgage-backed
23 securities that it sold on a service-retained basis on the secondary
24 market. The legislature finds that inclusion of interest retained for
25 servicing loans and mortgage-backed securities was not within the
26 legislative intent when the deduction provided in 82.04.4292 was
27 adopted in 1980. Therefore, by this act, the legislature declares that
28 the deduction provided by RCW 82.04.4292 does not apply to fees that
29 are received in exchange for services, regardless of whether the source
30 of the fees is or may have been interest when paid by a borrower.

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

33 (1) In computing tax there may be deducted from the measure of tax
34 by those engaged in banking, loan, security or other financial

1 businesses, amounts derived from interest received on investments or
2 loans primarily secured by first mortgages or trust deeds on
3 nontransient residential properties.

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

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

12 (a) Fees for specific services such as: Document preparation fees;
13 finder fees; brokerage fees; title examination fees; fees for credit
14 checks; notary fees; loan application fees; interest lock-in fees if
15 the loan is not made; servicing fees, including servicing fees received
16 by lenders when they sell loans or mortgage-backed or mortgage-related
17 securities in the secondary market while retaining the right to service
18 the loans or securities and receive a portion of the interest payments
19 as the servicing fee; and similar fees or amounts;

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

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

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

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

30 (ii) Gains on the sale of loans.

31 (4) The total amount a person may deduct under this section for any
32 calendar year may not exceed thirty-five million dollars.

33 **PART IV**

34 **Repealing the Nonresident Sales Tax Exemption**

35 NEW SECTION. Sec. 401. RCW 82.08.0273 (Exemptions--Sales to
36 nonresidents of tangible personal property, digital goods, and digital

1 codes for use outside the state--Proof of nonresident status--
2 Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993
3 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are
4 each repealed.

5 **PART V**

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

7 NEW SECTION. **Sec. 501.** (1) A business and occupation tax
8 exemption is provided in RCW 82.04.423 for certain out-of-state sellers
9 that sell consumer products exclusively to or through a direct seller's
10 representative. The intent of the legislature in enacting this
11 exemption was to provide a narrow exemption for out-of-state businesses
12 engaged in direct sales of consumer products, typically accomplished
13 through in-home parties or door-to-door selling.

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

20 (3) The legislature finds that most out-of-state businesses selling
21 consumer products in this state will either be eligible for the
22 exemption under RCW 82.04.423 or could easily restructure their
23 business operations to qualify for the exemption. As a result, the
24 legislature expects that the broadened interpretation of the direct
25 sellers' exemption will lead to large and devastating revenue losses.
26 This comes at a time when the state's existing budget is facing a two
27 billion six hundred million dollar shortfall, which could grow, while
28 at the same time the demand for state and state-funded services is also
29 growing. Moreover, the legislature further finds that RCW 82.04.423
30 provides preferential tax treatment for out-of-state businesses over
31 their in-state competitors and now creates a strong incentive for in-
32 state businesses to move their operations outside Washington.

33 (4) Therefore, the legislature finds that it is necessary to
34 reaffirm the legislature's intent in establishing the direct sellers'
35 exemption and prevent the loss of revenues resulting from the expanded
36 interpretation of the exemption by amending RCW 82.04.423 retroactively

1 to conform the exemption to the original intent of the legislature and
2 by prospectively ending the direct sellers' exemption effective July 1,
3 2010. The legislature recognizes that the department of revenue has
4 asked the Washington supreme court to reconsider its decision in *Dot*
5 *Foods*. As a result, if the *Dot Foods* decision is not final on the
6 effective date of section 502 of this act, it is the legislature's
7 intent that the amendments in section 502 of this act be considered
8 clarifying in nature.

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

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

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

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

17 (c) Is not a corporation incorporated under the laws of this state;
18 and

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

21 (2) For purposes of this section, the term "direct seller's
22 representative" means a person who buys only consumer products on a
23 buy-sell basis or a deposit-commission basis for resale, by the buyer
24 or any other person, in the home or otherwise than in a permanent
25 retail establishment, or who sells at retail, or solicits the sale at
26 retail of, only consumer products in the home or otherwise than in a
27 permanent retail establishment; and

28 (a) Substantially all of the remuneration paid to such person,
29 whether or not paid in cash, for the performance of services described
30 in this subsection is directly related to sales or other output,
31 including the performance of services, rather than the number of hours
32 worked; and

33 (b) The services performed by the person are performed pursuant to
34 a written contract between such person and the person for whom the
35 services are performed and such contract provides that the person will
36 not be treated as an employee with respect to such purposes for federal
37 tax purposes.

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

5 **PART VI**

6 **Business and Occupation Tax Preferences for Manufacturers of Products**
7 **Derived from Certain Agricultural Products**

8 NEW SECTION. **Sec. 601.** (1)(a) In 1967, the legislature amended
9 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
10 preferential business and occupation tax rate for slaughtering,
11 breaking, and/or processing perishable meat products and/or selling the
12 same at wholesale. The legislature finds that RCW 82.04.260(4) was
13 interpreted by the state supreme court on January 13, 2005, in *Agrilink*
14 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
15 supreme court held that the preferential business and occupation tax
16 rate on the slaughtering, breaking, and/or processing of perishable
17 meat products applied to the processing of perishable meat products
18 into nonperishable finished products, such as canned food.

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

25 (2)(a) A business and occupation tax exemption is provided for (i)
26 manufacturing by canning, preserving, freezing, processing, or
27 dehydrating fresh fruits or vegetables, and (ii) selling such products
28 at wholesale by the manufacturer to purchasers who transport the goods
29 out of state in the ordinary course of business. This exemption
30 expires July 1, 2012, and is replaced by a preferential business and
31 occupation tax rate.

32 (b) The legislature finds that the rationale of the *Agrilink*
33 decision, if applied to these tax preferences, could result in
34 preferential tax treatment for any processed food product that
35 contained any fresh fruit or vegetable as an ingredient, however small
36 the amount.

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

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

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

11 (a) Perishable meat products, by slaughtering, breaking, or
12 processing, if the finished product is a perishable meat product; as to
13 such persons the tax imposed is equal to the value of the perishable
14 meat products manufactured, or, in the case of a processor for hire,
15 the gross income of the business, multiplied by the rate of 0.138
16 percent;

17 (b) Meat products, by dehydration, curing, smoking, or any
18 combination of these activities, if the finished meat products are not
19 canned; as to such persons the tax imposed is equal to the value of the
20 meat products manufactured, or, in the case of a processor for hire,
21 the gross income of the business, multiplied by the rate of 0.138
22 percent;

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

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

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

34 (b) Meat products that have been manufactured by the seller by
35 dehydration, curing, smoking, or any combination of such activities, if
36 the finished meat products are not canned; as to such persons the tax

1 imposed is equal to the gross proceeds derived from such sales
2 multiplied by the rate of 0.138 percent;

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

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

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

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

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

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

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

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

18 (B) Except as provided in (e)(ii) of this subsection (3), products,
19 such as jerky, sausage, and other cured meat products, that are
20 comprised primarily of animal carcass by weight or volume and may also
21 contain water; nitrates; nitrites; acids; binders and extenders;
22 natural or synthetic casings; colorings; flavorings such as soy sauce,
23 liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and
24 vinegar; and similar substances.

25 (ii) "Meat products" does not include products containing any
26 cereal grains or cereal-grain products, dairy products, legumes and
27 legume products, fruit or vegetable products as defined in RCW
28 82.04.260, and similar ingredients, unless the ingredient is used as a
29 flavoring. For purposes of this subsection, "flavoring" means a
30 substance that contains the flavoring constituents derived from a
31 spice, fruit or fruit juice, vegetable or vegetable juice, edible
32 yeast, herb, bark, bud, root, leaf, or any other edible substance of
33 plant origin, whose primary function in food is flavoring or seasoning
34 rather than nutritional, and which may legally appear as "natural
35 flavor," "flavor," or "flavorings" in the ingredient statement on the
36 label of the meat product.

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

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

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

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

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

11 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
12 preserving, freezing, processing, or dehydrating fresh fruits or
13 vegetables; or

14 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
15 manufactured by the seller by canning, preserving, freezing,
16 processing, or dehydrating fresh fruits or vegetables and sold to
17 purchasers who transport in the ordinary course of business the goods
18 out of this state. A person taking an exemption under this subsection
19 (1)(b) must keep and preserve records for the period required by RCW
20 82.32.070 establishing that the goods were transported by the purchaser
21 in the ordinary course of business out of this state.

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

23 (i) Products comprised exclusively of fruits, vegetables, or both;
24 and

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

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

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

34 **Sec. 604.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
35 2009 c 162 s 34 are each reenacted and amended to read as follows:

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

3 (a) Wheat into flour, barley into pearl barley, soybeans into
4 soybean oil, canola into canola oil, canola meal, or canola by-
5 products, or sunflower seeds into sunflower oil; as to such persons the
6 amount of tax with respect to such business (~~shall be~~) is equal to
7 the value of the flour, pearl barley, oil, canola meal, or canola by-
8 product manufactured, multiplied by the rate of 0.138 percent;

9 (b) Beginning July 1, 2012, seafood products that remain in a raw,
10 raw frozen, or raw salted state at the completion of the manufacturing
11 by that person; or selling manufactured seafood products that remain in
12 a raw, raw frozen, or raw salted state at the completion of the
13 manufacturing, to purchasers who transport in the ordinary course of
14 business the goods out of this state; as to such persons the amount of
15 tax with respect to such business (~~shall be~~) is equal to the value of
16 the products manufactured or the gross proceeds derived from such
17 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
18 preserve records for the period required by RCW 82.32.070 establishing
19 that the goods were transported by the purchaser in the ordinary course
20 of business out of this state;

21 (c) Beginning July 1, 2012, dairy products that as of September 20,
22 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
23 including by-products from the manufacturing of the dairy products such
24 as whey and casein; or selling the same to purchasers who transport in
25 the ordinary course of business the goods out of state; as to such
26 persons the tax imposed (~~shall be~~) is equal to the value of the
27 products manufactured or the gross proceeds derived from such sales
28 multiplied by the rate of 0.138 percent. Sellers must keep and
29 preserve records for the period required by RCW 82.32.070 establishing
30 that the goods were transported by the purchaser in the ordinary course
31 of business out of this state;

32 (d)(i) Beginning July 1, 2012, fruit(~~s~~) or vegetable(~~s~~)
33 products by canning, preserving, freezing, processing, or dehydrating
34 fresh fruits or vegetables, or selling at wholesale fruit(~~s~~) or
35 vegetable(~~s~~) products manufactured by the seller by canning,
36 preserving, freezing, processing, or dehydrating fresh fruits or
37 vegetables and sold to purchasers who transport in the ordinary course
38 of business the goods out of this state; as to such persons the amount

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

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

9 (A) Products comprised exclusively of fruits, vegetables, or both;
10 or

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

17 (iii) "Fruit and vegetable products" includes only products that
18 are intended for human consumption as food or animal consumption as
19 feed;

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

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

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

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

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

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

11 (6)) (5) Upon every person engaging within this state in
12 business as an international steamship agent, international customs
13 house broker, international freight forwarder, vessel and/or cargo
14 charter broker in foreign commerce, and/or international air cargo
15 agent; as to such persons the amount of the tax with respect to only
16 international activities (~~shall be~~) is equal to the gross income
17 derived from such activities multiplied by the rate of 0.275 percent.

18 (7)) (6) Upon every person engaging within this state in the
19 business of stevedoring and associated activities pertinent to the
20 movement of goods and commodities in waterborne interstate or foreign
21 commerce; as to such persons the amount of tax with respect to such
22 business (~~shall be~~) is equal to the gross proceeds derived from such
23 activities multiplied by the rate of 0.275 percent. Persons subject to
24 taxation under this subsection (~~shall be~~) are exempt from payment of
25 taxes imposed by chapter 82.16 RCW for that portion of their business
26 subject to taxation under this subsection. Stevedoring and associated
27 activities pertinent to the conduct of goods and commodities in
28 waterborne interstate or foreign commerce are defined as all activities
29 of a labor, service or transportation nature whereby cargo may be
30 loaded or unloaded to or from vessels or barges, passing over, onto or
31 under a wharf, pier, or similar structure; cargo may be moved to a
32 warehouse or similar holding or storage yard or area to await further
33 movement in import or export or may move to a consolidation freight
34 station and be stuffed, unstuffed, containerized, separated or
35 otherwise segregated or aggregated for delivery or loaded on any mode
36 of transportation for delivery to its consignee. Specific activities
37 included in this definition are: Wharfage, handling, loading,
38 unloading, moving of cargo to a convenient place of delivery to the

1 consignee or a convenient place for further movement to export mode;
2 documentation services in connection with the receipt, delivery,
3 checking, care, custody and control of cargo required in the transfer
4 of cargo; imported automobile handling prior to delivery to consignee;
5 terminal stevedoring and incidental vessel services, including but not
6 limited to plugging and unplugging refrigerator service to containers,
7 trailers, and other refrigerated cargo receptacles, and securing ship
8 hatch covers.

9 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
10 business of disposing of low-level waste, as defined in RCW 43.145.010;
11 as to such persons the amount of the tax with respect to such business
12 ~~((shall be))~~ is equal to the gross income of the business, excluding
13 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
14 3.3 percent.

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

19 ~~((+9))~~ (8) Upon every person engaging within this state as an
20 insurance producer or title insurance agent licensed under chapter
21 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
22 to such persons, the amount of the tax with respect to such licensed
23 activities ~~((shall be))~~ is equal to the gross income of such business
24 multiplied by the rate of 0.484 percent.

25 ~~((+10))~~ (9) Upon every person engaging within this state in
26 business as a hospital, as defined in chapter 70.41 RCW, that is
27 operated as a nonprofit corporation or by the state or any of its
28 political subdivisions, as to such persons, the amount of tax with
29 respect to such activities ~~((shall be))~~ is equal to the gross income of
30 the business multiplied by the rate of 0.75 percent through June 30,
31 1995, and 1.5 percent thereafter.

32 ~~((+11))~~ (10)(a) Beginning October 1, 2005, upon every person
33 engaging within this state in the business of manufacturing commercial
34 airplanes, or components of such airplanes, or making sales, at retail
35 or wholesale, of commercial airplanes or components of such airplanes,
36 manufactured by the seller, as to such persons the amount of tax with
37 respect to such business ~~((shall))~~, in the case of manufacturers,
38 ~~((be))~~ is equal to the value of the product manufactured and the gross

1 proceeds of sales of the product manufactured, or in the case of
2 processors for hire, ~~((be))~~ is equal to the gross income of the
3 business, multiplied by the rate of:

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

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

7 (b) Beginning July 1, 2008, upon every person who is not eligible
8 to report under the provisions of (a) of this subsection ~~((+11+))~~ (10)
9 and is engaging within this state in the business of manufacturing
10 tooling specifically designed for use in manufacturing commercial
11 airplanes or components of such airplanes, or making sales, at retail
12 or wholesale, of such tooling manufactured by the seller, as to such
13 persons the amount of tax with respect to such business ~~((shall))~~, in
14 the case of manufacturers, ~~((be))~~ is equal to the value of the product
15 manufactured and the gross proceeds of sales of the product
16 manufactured, or in the case of processors for hire, ~~((be))~~ is equal to
17 the gross income of the business, multiplied by the rate of 0.2904
18 percent.

19 (c) For the purposes of this subsection ~~((+11+))~~ (10), "commercial
20 airplane" and "component" have the same meanings as provided in RCW
21 82.32.550.

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

25 (e) This subsection ~~((+11+))~~ (10) does not apply on and after July
26 1, 2024.

27 ~~((+12+))~~ (11)(a) Until July 1, 2024, upon every person engaging
28 within this state in the business of extracting timber or extracting
29 for hire timber; as to such persons the amount of tax with respect to
30 the business ~~((shall))~~, in the case of extractors, ~~((be))~~ is equal to
31 the value of products, including by-products, extracted, or in the case
32 of extractors for hire, ~~((be))~~ is equal to the gross income of the
33 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
34 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
35 June 30, 2024.

36 (b) Until July 1, 2024, upon every person engaging within this
37 state in the business of manufacturing or processing for hire: (i)
38 Timber into timber products or wood products; or (ii) timber products

1 into other timber products or wood products; as to such persons the
2 amount of the tax with respect to the business (~~shall~~), in the case
3 of manufacturers, (~~be~~) is equal to the value of products, including
4 by-products, manufactured, or in the case of processors for hire,
5 (~~be~~) is equal to the gross income of the business, multiplied by the
6 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
7 0.2904 percent from July 1, 2007, through June 30, 2024.

8 (c) Until July 1, 2024, upon every person engaging within this
9 state in the business of selling at wholesale: (i) Timber extracted by
10 that person; (ii) timber products manufactured by that person from
11 timber or other timber products; or (iii) wood products manufactured by
12 that person from timber or timber products; as to such persons the
13 amount of the tax with respect to the business (~~shall be~~) is equal to
14 the gross proceeds of sales of the timber, timber products, or wood
15 products multiplied by the rate of 0.4235 percent from July 1, 2006,
16 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
17 June 30, 2024.

18 (d) Until July 1, 2024, upon every person engaging within this
19 state in the business of selling standing timber; as to such persons
20 the amount of the tax with respect to the business (~~shall be~~) is
21 equal to the gross income of the business multiplied by the rate of
22 0.2904 percent. For purposes of this subsection (~~(+12+)~~) (11)(d),
23 "selling standing timber" means the sale of timber apart from the land,
24 where the buyer is required to sever the timber within thirty months
25 from the date of the original contract, regardless of the method of
26 payment for the timber and whether title to the timber transfers
27 before, upon, or after severance.

28 (e) For purposes of this subsection, the following definitions
29 apply:

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

33 (ii) "Paper and paper products" means products made of interwoven
34 cellulosic fibers held together largely by hydrogen bonding. "Paper
35 and paper products" includes newsprint; office, printing, fine, and
36 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
37 kraft bag, construction, and other kraft industrial papers; paperboard,
38 liquid packaging containers, containerboard, corrugated, and solid-

1 fiber containers including linerboard and corrugated medium; and
2 related types of cellulosic products containing primarily, by weight or
3 volume, cellulosic materials. "Paper and paper products" does not
4 include books, newspapers, magazines, periodicals, and other printed
5 publications, advertising materials, calendars, and similar types of
6 printed materials.

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

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

17 (v) "Timber products" means:

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

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

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

25 (vi) "Wood products" means paper and paper products; dimensional
26 lumber; engineered wood products such as particleboard, oriented strand
27 board, medium density fiberboard, and plywood; wood doors; wood
28 windows; and biocomposite surface products.

29 (~~((+13+))~~) (12) Upon every person engaging within this state in
30 inspecting, testing, labeling, and storing canned salmon owned by
31 another person, as to such persons, the amount of tax with respect to
32 such activities (~~((shall be))~~) is equal to the gross income derived from
33 such activities multiplied by the rate of 0.484 percent.

34 (~~((+14+))~~) (13) Upon every person engaging within this state in the
35 business of printing a newspaper, publishing a newspaper, or both, the
36 amount of tax on such business is equal to the gross income of the
37 business multiplied by the rate of 0.2904 percent.

1 **Sec. 605.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
2 as follows:

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

8 (2) Upon every person engaging within this state in the business of
9 making sales at retail that are exempt from the tax imposed under
10 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
11 82.08.0263, except persons taxable under RCW 82.04.260(~~((+11+))~~) (10) or
12 subsection (3) of this section, as to such persons, the amount of tax
13 with respect to such business (~~((shall be))~~) is equal to the gross
14 proceeds of sales of the business, multiplied by the rate of 0.484
15 percent.

16 (3) Upon every person classified by the federal aviation
17 administration as a federal aviation regulation part 145 certificated
18 repair station and that is engaging within this state in the business
19 of making sales at retail that are exempt from the tax imposed under
20 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
21 82.08.0263, as to such persons, the amount of tax with respect to such
22 business (~~((shall be))~~) is equal to the gross proceeds of sales of the
23 business, multiplied by the rate of .2904 percent.

24 **Sec. 606.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
25 as follows:

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

31 (2) Upon every person engaging within this state in the business of
32 making sales at retail that are exempt from the tax imposed under
33 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
34 82.08.0263, except persons taxable under RCW 82.04.260(~~((+11+))~~) (10), as
35 to such persons, the amount of tax with respect to such business
36 (~~((shall be))~~) is equal to the gross proceeds of sales of the business,
37 multiplied by the rate of 0.484 percent.

1 **Sec. 607.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
2 each reenacted and amended to read as follows:

3 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12+)~~)
4 (11), a surcharge is imposed on those persons who are subject to any of
5 the taxes imposed under RCW 82.04.260(~~(+12+)~~) (11). Except as
6 otherwise provided in this section, the surcharge is equal to 0.052
7 percent. The surcharge is added to the rates provided in RCW
8 82.04.260(~~(+12+)~~) (11) (a), (b), (c), and (d). The surcharge and this
9 section expire July 1, 2024.

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

13 (3)(a) The surcharge imposed under this section (~~(shall-be)~~) is
14 suspended if:

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

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

22 (b)(i) The suspension of the surcharge under (a)(i) of this
23 subsection (3) (~~(shall)~~) takes effect on the first day of the calendar
24 month that is at least thirty days after the end of the month during
25 which the department determines that receipts from the surcharge total
26 at least eight million dollars during the fiscal biennium. The
27 surcharge (~~(shall-be)~~) is imposed again at the beginning of the
28 following fiscal biennium.

29 (ii) The suspension of the surcharge under (a)(ii) of this
30 subsection (3) (~~(shall)~~) takes effect on the later of the first day of
31 October of any federal fiscal year for which the federal government
32 appropriates at least two million dollars for participation in forest
33 and fish report-related activities by federally recognized Indian
34 tribes located within the geographical boundaries of the state of
35 Washington, or the first day of a calendar month that is at least
36 thirty days following the date that the office of financial management
37 makes a certification to the department under subsection (5) of this

1 section. The surcharge (~~shall be~~) is imposed again on the first day
2 of the following July.

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

11 (b) The department (~~shall~~) must adjust the surcharge by an amount
12 that the department estimates will cause the amount of funds deposited
13 into the forest and fish support account for the state fiscal year that
14 begins July 1st and that includes the beginning of the federal fiscal
15 year for which the federal appropriation is made, to be reduced by
16 twice the amount of the federal appropriation for participation in
17 forest and fish report-related activities by federally recognized
18 Indian tribes located within the geographical boundaries of the state
19 of Washington.

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

24 (d) The surcharge (~~shall be~~) is imposed again at the rate
25 provided in subsection (1) of this section on the first day of the
26 following state fiscal year unless the surcharge is suspended under
27 subsection (3) of this section or adjusted for that fiscal year under
28 this subsection.

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

32 (f) The department (~~shall~~) must provide timely notice to affected
33 taxpayers of the suspension of the surcharge or an adjustment of the
34 surcharge.

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

1 **Sec. 608.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
2 as follows:

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

10 (2) A qualified grocery distribution cooperative is allowed a
11 deduction from the gross proceeds of sales of groceries or related
12 goods for resale, excluding items subject to tax under (~~RCW
13 82.04.260(4)~~) section 602 of this act, to customer-owners of the
14 grocery distribution cooperative that is equal to the portion of the
15 gross proceeds of sales for resale that represents the actual cost of
16 the merchandise sold by the grocery distribution cooperative to
17 customer-owners.

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

20 (a) "Grocery distribution cooperative" means an entity that sells
21 groceries and related items to customer-owners of the grocery
22 distribution cooperative and has customer-owners, in the aggregate, who
23 own a majority of the outstanding ownership interests of the grocery
24 distribution cooperative or of the entity controlling the grocery
25 distribution cooperative. "Grocery distribution cooperative" includes
26 an entity that controls a grocery distribution cooperative.

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

28 (i) A grocery distribution cooperative that has been determined by
29 a court of record of the state of Washington to be not engaged in
30 wholesaling or making sales at wholesale, within the meaning of RCW
31 82.04.270 or any similar provision of a municipal ordinance that
32 imposes a tax on gross receipts, gross proceeds of sales, or gross
33 income, with respect to purchases made by customer-owners, and
34 subsequently changes its form of doing business to make sales at
35 wholesale of groceries or related items to its customer-owners; or

36 (ii) A grocery distribution cooperative that has acquired
37 substantially all of the assets of a grocery distribution cooperative
38 described in (b)(i) of this subsection.

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

4 (d) "Controlling" means holding fifty percent or more of the voting
5 interests of an entity and having at least equal power to direct or
6 cause the direction of the management and policies of the entity,
7 whether through the ownership of voting securities, by contract, or
8 otherwise.

9 **Sec. 609.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
10 as follows:

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

14 **Sec. 610.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
15 each reenacted and amended to read as follows:

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

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

34 (3) Persons taxable as manufacturers under RCW 82.04.240 or
35 82.04.260 (1)(b) or (~~((+12+))~~) (11), including those persons who are also
36 taxable under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against

1 those taxes for any extracting taxes paid with respect to extracting
2 the ingredients of the products so manufactured in this state. The
3 amount of the credit (~~(shall)~~) may not exceed the tax liability arising
4 under this chapter with respect to the manufacturing of those products.

5 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
6 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~((+4),)~~) (10), or
7 (11), or (~~((+12),)~~) section 602(1) of this act, including those persons
8 who are also taxable under RCW 82.04.261, with respect to extracting or
9 manufacturing products in this state (~~(shall be)~~) are allowed a credit
10 against those taxes for any (i) gross receipts taxes paid to another
11 state with respect to the sales of the products so extracted or
12 manufactured in this state, (ii) manufacturing taxes paid with respect
13 to the manufacturing of products using ingredients so extracted in this
14 state, or (iii) manufacturing taxes paid with respect to manufacturing
15 activities completed in another state for products so manufactured in
16 this state. The amount of the credit (~~(shall)~~) may not exceed the tax
17 liability arising under this chapter with respect to the extraction or
18 manufacturing of those products.

19 (5) For the purpose of this section:

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

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

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

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

31 (c) "Manufacturing tax" means a gross receipts tax imposed on the
32 act or privilege of engaging in business as a manufacturer, and
33 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
34 82.04.2909(1), 82.04.260 (1), (2), (~~((+4),)~~) (10), and (11), (~~(and~~
35 ~~+12),)~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
36 imposed under RCW 82.04.261 on persons who are engaged in business as
37 a manufacturer; and (iii) similar gross receipts taxes paid to other
38 states.

1 (d) "Extracting tax" means a gross receipts tax imposed on the act
2 or privilege of engaging in business as an extractor, and includes (i)
3 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(+12+)~~)
4 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
5 engaged in business as an extractor; and (iii) similar gross receipts
6 taxes paid to other states.

7 (e) "Business", "manufacturer", "extractor", and other terms used
8 in this section have the meanings given in RCW 82.04.020 through
9 82.04.212, notwithstanding the use of those terms in the context of
10 describing taxes imposed by other states.

11 **Sec. 611.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
12 read as follows:

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

16 (2) The credit is equal to:

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

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

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

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

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

1 services, by persons not within the scope of (a)(ii)(A) of this
2 subsection (2) and are: (I) Engaged in manufacturing tooling
3 specifically designed for use in manufacturing commercial airplanes or
4 their components; or (II) taxable under RCW 82.04.290(3) or
5 82.04.250(3); and

6 (b) An amount equal to:

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

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

13 (C) Property taxes paid, by persons taxable under RCW
14 (~~((82.04.0250(3) — [82.04.250(3)]))~~) 82.04.250(3) or 82.04.290(3), on
15 computer hardware, computer peripherals, and software exempt under RCW
16 82.08.975 or 82.12.975 and acquired after June 30, 2008.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **Sec. 612.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
25 read as follows:

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

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

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

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

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

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

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

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

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

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

27 **Sec. 613.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to
28 read as follows:

29 (1) The legislature finds that accountability and effectiveness are
30 important aspects of setting tax policy. In order to make policy
31 choices regarding the best use of limited state resources the
32 legislature needs information on how a tax incentive is used.

33 (2)(a) A person who reports taxes under RCW 82.04.260(~~(+11)~~) (10),
34 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit
35 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
36 82.04.4463 (~~shall~~) must make an annual report to the department
37 detailing employment, wages, and employer-provided health and

1 retirement benefits for employment positions in Washington. However,
2 persons engaged in manufacturing commercial airplanes or components of
3 such airplanes may report employment, wage, and benefit information per
4 job at the manufacturing site. The report (~~shall~~) may not include
5 names of employees. The report (~~shall~~) must also detail employment
6 by the total number of full-time, part-time, and temporary positions.
7 The first report filed under this subsection (~~shall~~) must include
8 employment, wage, and benefit information for the twelve-month period
9 immediately before first use of a preferential tax rate under RCW
10 82.04.260(~~(+11+)~~) (10), 82.04.250(3), or 82.04.290(3), or tax exemption
11 or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,
12 84.36.655, and 82.04.4463, unless a survey covering this twelve-month
13 period was filed as required by a statute repealed by chapter 81, Laws
14 of 2008. The report is due by March 31st following any year in which
15 a preferential tax rate under RCW 82.04.260(~~(+11+)~~) (10), 82.04.250(3),
16 or 82.04.290(3), is used, or tax exemption or credit under RCW
17 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463
18 is taken. This information is not subject to the confidentiality
19 provisions of RCW 82.32.330 and may be disclosed to the public upon
20 request.

21 (b) If a person fails to submit an annual report under (a) of this
22 subsection by the due date of the report, the department (~~shall~~) must
23 declare the amount of taxes exempted or credited, or reduced in the
24 case of the preferential business and occupation tax rate, for that
25 year to be immediately due and payable. Excise taxes payable under
26 this subsection are subject to interest but not penalties, as provided
27 under this chapter. This information is not subject to the
28 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
29 public upon request.

30 (3) By November 1, 2010, and by November 1, 2023, the fiscal
31 committees of the house of representatives and the senate, in
32 consultation with the department, (~~shall~~) must report to the
33 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.
34 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in
35 regard to keeping Washington competitive. The report (~~shall~~) must
36 measure the effect of these laws on job retention, net jobs created for
37 Washington residents, company growth, diversification of the state's
38 economy, cluster dynamics, and other factors as the committees select.

1 The reports (~~shall~~) must include a discussion of principles to apply
2 in evaluating whether the legislature should reenact any or all of the
3 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,
4 Laws of 2006, and chapter 81, Laws of 2008.

5 **Sec. 614.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
6 read as follows:

7 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
8 ~~first day of the month in which the governor and a manufacturer of~~
9 ~~commercial airplanes sign a memorandum of agreement regarding an~~
10 ~~affirmative final decision to site a significant commercial airplane~~
11 ~~final assembly facility in Washington state. The department shall~~
12 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
13 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
14 ~~appropriate by the department.~~

15 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
16 ~~siting of a significant commercial airplane final assembly facility in~~
17 ~~the state of Washington. If a memorandum of agreement under subsection~~
18 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
19 ~~2003 2nd sp. sess. is null and void.~~

20 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
21 ~~2007.~~

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

26 ~~(2) The definitions in this subsection apply throughout this~~
27 ~~section.~~

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

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

35 ~~((c) "Final assembly of a superefficient airplane" means the~~
36 ~~activity of assembling an airplane from components parts necessary for~~

1 ~~its mechanical operation such that the finished commercial airplane is~~
2 ~~ready to deliver to the ultimate consumer.~~

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

6 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
7 ~~significant commercial airplane final assembly facility in Washington~~
8 ~~state.~~

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

14 **Sec. 615.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read
15 as follows:

16 (1) The legislature finds that accountability and effectiveness are
17 important aspects of setting tax policy. In order to make policy
18 choices regarding the best use of limited state resources, the
19 legislature needs information on how a tax incentive is used.

20 (2)(a) A person who reports taxes under RCW 82.04.260(~~((12) shall))~~)
21 (11) must file a complete annual survey with the department. The
22 survey is due by March 31st following any year in which a person
23 reports taxes under RCW 82.04.260(~~((12))~~) (11). The department may
24 extend the due date for timely filing of annual surveys under this
25 section as provided in RCW 82.32.590. The survey (~~((shall))~~) must
26 include the amount of tax reduced under the preferential rate in RCW
27 82.04.260(~~((12))~~) (11). The survey (~~((shall))~~) must also include the
28 following information for employment positions in Washington:

29 (i) The number of total employment positions;

30 (ii) Full-time, part-time, and temporary employment positions as a
31 percent of total employment;

32 (iii) The number of employment positions according to the following
33 wage bands: Less than thirty thousand dollars; thirty thousand dollars
34 or greater, but less than sixty thousand dollars; and sixty thousand
35 dollars or greater. A wage band containing fewer than three
36 individuals may be combined with another wage band; and

1 (iv) The number of employment positions that have employer-provided
2 medical, dental, and retirement benefits, by each of the wage bands.

3 (b) The first survey filed under this subsection (~~shall~~) must
4 include employment, wage, and benefit information for the twelve-month
5 period immediately before first use of a preferential tax rate under
6 RCW 82.04.260(~~(+12+)~~) (11).

7 (c) As part of the annual survey, the department may request
8 additional information, including the amount of investment in equipment
9 used in the activities taxable under the preferential rate in RCW
10 82.04.260(~~(+12+)~~) (11), necessary to measure the results of, or
11 determine eligibility for, the preferential tax rate in RCW
12 82.04.260(~~(+12+)~~) (11).

13 (d) All information collected under this section, except the amount
14 of the tax reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~)
15 (11), is deemed taxpayer information under RCW 82.32.330. Information
16 on the amount of tax reduced is not subject to the confidentiality
17 provisions of RCW 82.32.330 and may be disclosed to the public upon
18 request, except as provided in (e) of this subsection. If the amount
19 of the tax reduced as reported on the survey is different than the
20 amount actually reduced based on the taxpayer's excise tax returns or
21 otherwise allowed by the department, the amount actually reduced may be
22 disclosed.

23 (e) Persons for whom the actual amount of the tax reduction is less
24 than ten thousand dollars during the period covered by the survey may
25 request the department to treat the amount of the tax reduction as
26 confidential under RCW 82.32.330.

27 (f) Small harvesters as defined in RCW 84.33.035 are not required
28 to file the annual survey under this section.

29 (3) If a person fails to submit a complete annual survey under
30 subsection (2) of this section by the due date or any extension under
31 RCW 82.32.590, the department (~~shall~~) must declare the amount of
32 taxes reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~) (11)
33 for the period covered by the survey to be immediately due and payable.
34 The department (~~shall~~) must assess interest, but not penalties, on
35 the taxes. Interest (~~shall~~) must be assessed at the rate provided
36 for delinquent excise taxes under this chapter, retroactively to the
37 date the reduced taxes were due, and (~~shall~~) will accrue until the
38 amount of the reduced taxes is repaid.

1 (4) The department (~~shall~~) must use the information from the
2 annual survey required under subsection (2) of this section to prepare
3 summary descriptive statistics by category. The department (~~shall~~)
4 must report these statistics to the legislature each year by September
5 1st. The requirement to prepare and report summary descriptive
6 statistics (~~shall~~) ceases after September 1, 2025.

7 (5) By November 1, 2011, and November 1, 2023, the fiscal
8 committees of the house of representatives and the senate, in
9 consultation with the department, (~~shall~~) must report to the
10 legislature on the effectiveness of the preferential tax rate provided
11 in RCW 82.04.260(~~(+12+)~~) (11). The report shall measure the effect of
12 the preferential tax rate provided in RCW 82.04.260(~~(+12+)~~) (11) on job
13 retention, net jobs created for Washington residents, company growth,
14 and other factors as the committees select. The report (~~shall~~) must
15 include a discussion of principles to apply in evaluating whether the
16 legislature should continue the preferential tax rate provided in RCW
17 82.04.260(~~(+12+)~~) (11).

18 **Sec. 616.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to
19 read as follows:

20 (1)(a) Every person claiming the preferential rate provided in RCW
21 82.04.260(~~(+14+)~~) (13) must file a complete annual report with the
22 department. The report is due by March 31st of the year following any
23 calendar year in which a person is eligible to claim the preferential
24 rate provided in RCW 82.04.260(~~(+14+)~~) (13). The department may extend
25 the due date for timely filing of annual reports under this section as
26 provided in RCW 82.32.590.

27 (b) The report must include information detailing employment,
28 wages, and employer-provided health and retirement benefits for
29 employment positions in Washington for the year that the preferential
30 rate was claimed. The report must not include names of employees. The
31 report must also detail employment by the total number of full-time,
32 part-time, and temporary positions for the year that the tax preference
33 was claimed.

34 (c) If a person filing a report under this section did not file a
35 report with the department in the previous calendar year, the report
36 filed under this section must also include employment, wage, and

1 benefit information for the calendar year immediately preceding the
2 calendar year for which the preferential rate provided in RCW
3 82.04.260(~~((+14))~~) (13) was claimed.

4 (2) As part of the annual report, the department may request
5 additional information necessary to measure the results of, or
6 determine eligibility for, the preferential rate provided in RCW
7 82.04.260(~~((+14))~~) (13).

8 (3) Other than information requested under subsection (2) of this
9 section, the information contained in an annual report filed under this
10 section is not subject to the confidentiality provisions of RCW
11 82.32.330 and may be disclosed to the public upon request.

12 (4) Except as otherwise provided by law, if a person claims the
13 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) but fails to
14 submit a report by the due date or any extension under RCW 82.32.590,
15 the department must declare the amount of the tax preference claimed
16 for the previous calendar year to be immediately due and payable. The
17 department must assess interest, but not penalties, on the amounts due
18 under this subsection. The interest must be assessed at the rate
19 provided for delinquent taxes under this chapter, retroactively to the
20 date the tax preference was claimed, and accrues until the taxes for
21 which the tax preference was claimed are repaid. Amounts due under
22 this subsection are not subject to the confidentiality provisions of
23 RCW 82.32.330 and may be disclosed to the public upon request.

24 (5) By November 1, 2014, and November 1, 2016, the fiscal
25 committees of the house of representatives and the senate, in
26 consultation with the department, must report to the legislature on the
27 effectiveness of the preferential rate provided in RCW
28 82.04.260(~~((+14))~~) (13). The report must measure the effect of the
29 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) on job
30 retention, net jobs created for Washington residents, industry growth,
31 and other factors as the committees select. The report must include a
32 discussion of principles to apply in evaluating whether the legislature
33 should continue the preferential rate provided in RCW 82.04.260(~~((+14))~~)
34 (13).

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

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

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

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

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

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

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

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

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

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

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

32 **PART VII**

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

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

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

5 (a) Qualifying livestock nutrient management equipment;

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

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

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

23 (2) The exemption provided in subsection (1) of this section
24 applies to sales made after the livestock nutrient management plan is:

25 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
26 permit issued under chapter 90.48 RCW; or (c) approved as required
27 under subsection (4)(c)(iii) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (5) A person may not claim the exemption under this section July 1,
17 2010, through June 30, 2015.

18 (6) This section expires July 1, 2020.

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

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

23 (a) Qualifying livestock nutrient management equipment;

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

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

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

1 (2)(a) To be eligible, the equipment and facilities must be used
2 exclusively for activities necessary to maintain a livestock nutrient
3 management plan.

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

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

12 (4) A person may not claim the exemption under this section July 1,
13 2010, through June 30, 2015.

14 (5) This section expires July 1, 2020.

15 PART VIII

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 803.** The sole reason for deleting the language
35 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term

1 "booth renter." This should not be construed as a substantive change
2 in the law.

3 **PART IX**
4 **Airplane Excise Tax**

5 **Sec. 901.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to
6 read as follows:

7 For the purposes of this chapter, unless otherwise required by the
8 context:

9 (1) "Department" means the department of licensing.

10 (2) "Aircraft" means any weight-carrying device or structure for
11 navigation of the air which is designed to be supported by the air;

12 ~~((2) "Secretary" means the secretary of transportation;))~~

13 (3) "Person" includes a firm, partnership, limited liability
14 company, or corporation(~~(+~~

15 ~~(4) "Small multi-engine fixed wing" means any piston-driven multi-~~
16 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
17 ~~manufacturer of less than seventy-five hundred pounds; and~~

18 ~~(5) "Large multi-engine fixed wing" means any piston-driven multi-~~
19 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
20 ~~manufacturer of seventy-five hundred pounds or more)).~~

21 **Sec. 902.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to
22 read as follows:

23 (1) An annual excise tax is hereby imposed for the privilege of
24 using any aircraft in the state. A current certificate of air
25 worthiness with a current inspection date from the appropriate federal
26 agency and/or the purchase of aviation fuel (~~(shall)~~) constitutes the
27 necessary evidence of aircraft use or intended use. (~~(The tax shall)~~)
28 The amount of the tax is five-tenths of one percent of the taxable
29 value of the aircraft, as determined under section 903 of this act.

30 (2) The tax imposed under this section must be collected annually
31 or under a staggered collection schedule as required by the
32 (secretary) department by rule. (No additional tax shall be imposed
33 under this chapter upon any aircraft upon the transfer of ownership
34 thereof, if the tax imposed by this chapter with respect to such

1 ~~aircraft has already been paid for the year in which transfer of~~
2 ~~ownership occurs. A violation of this subsection is a misdemeanor~~
3 ~~punishable as provided under chapter 9A.20 RCW.~~

4 ~~(2))~~ (3) Persons who are required to register aircraft under
5 chapter 47.68 RCW and who register aircraft in another state or foreign
6 country and avoid the ~~((Washington))~~ aircraft excise tax imposed under
7 this section are liable for ~~((such))~~ the unpaid excise tax. A
8 violation of this subsection is a gross misdemeanor.

9 (4) The department of revenue may, under chapter 82.32 RCW, assess
10 and collect the unpaid excise tax imposed under ~~((chapter 82.32 RCW))~~
11 this section, including the penalties and interest provided in chapter
12 82.32 RCW.

13 ~~((3))~~ (5) Except as provided under subsection~~((s (1) and (2)))~~
14 (3) of this section, a violation of this chapter is a misdemeanor
15 punishable as provided in chapter 9A.20 RCW.

16 NEW SECTION. Sec. 903. A new section is added to chapter 82.48
17 RCW to read as follows:

18 (1) The department of revenue must prepare at least once each year
19 a depreciation schedule for use in the determination of fair market
20 value, which is considered the taxable value for the purposes of this
21 chapter. The schedule must be based upon information available to the
22 department pertaining to the current fair market value of aircraft.
23 Except as otherwise provided in this section, the fair market value of
24 an aircraft for the purposes of this chapter must be based on the most
25 recent purchase price depreciated according to the year of the most
26 recent purchase of the aircraft. The most recent purchase price is the
27 consideration, whether money, credit, rights, or other property
28 expressed in terms of money, paid or given or contracted to be paid or
29 given by the purchaser to the seller for the aircraft.

30 (2) If the most recent purchase price of the aircraft is not
31 available or ascertainable, the department of revenue may determine the
32 fair market value using any information that may be available,
33 including any guidebook, report, or compendium of recognized standing
34 in the aviation industry. In the case of aircraft manufactured or
35 produced by the owner, the value of the aircraft may be determined
36 according to the value of the ingredients or components used to

1 manufacture or produce the aircraft. The amount of the tax is five-
2 tenths of one percent of the taxable value of the aircraft, as
3 determined under this section.

4 (3) The department of revenue may adopt any rules necessary to
5 implement this section, including any rules necessary to provide a
6 reasonable method or methods to determine the fair market value of an
7 aircraft where the most recent purchase price is not available or
8 ascertainable.

9 **Sec. 904.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
10 amended to read as follows:

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

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

23
24 ~~(2))~~ The amount of tax imposed under ~~((subsection (1) of this~~
25 ~~section))~~ RCW 82.48.020 for each calendar year ~~((shall))~~ must be
26 divided into twelve parts corresponding to the months of the calendar
27 year, and the excise tax upon an aircraft registered for the first time
28 in this state after the last day of any month ~~((shall))~~ is only ~~((be))~~
29 levied for the remaining months of the calendar year including the
30 month in which the aircraft is being registered ~~((: PROVIDED, That))~~.
31 However, the minimum amount payable ~~((shall be))~~ is three dollars.

32 (2) For the purposes of this chapter, an aircraft ~~((shall be))~~ is
33 deemed registered for the first time in this state when such aircraft
34 was not ~~((previously))~~ required to be registered by this state for the

1 year immediately preceding the year in which application for
2 registration is made and was not so registered.

3 **Sec. 905.** RCW 82.48.070 and 1987 c 220 s 7 are each amended to
4 read as follows:

5 The (~~secretary shall~~) department must give a receipt to each
6 person paying (~~the~~) excise tax under this chapter.

7 **Sec. 906.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
8 read as follows:

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

15 **Sec. 907.** RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended to
16 read as follows:

17 (~~The first tax to be collected under this chapter shall be for the~~
18 ~~calendar year 1968.~~) (1) No aircraft with respect to which the excise
19 tax imposed by this chapter is payable (~~shall~~) may be listed and
20 assessed for ad valorem taxation so long as this chapter remains in
21 effect(~~, and any such assessment heretofore made except under~~
22 ~~authority of section 13, chapter 49, Laws of 1949 and section~~
23 ~~82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled:~~
24 ~~PROVIDED, That~~)).

25 (2) Any aircraft, whether or not subject to the provisions of this
26 chapter, with respect to which the excise tax imposed by this chapter
27 will not be paid or has not been paid for any year (~~shall~~) must be
28 listed and assessed for ad valorem taxation in that year, and the ad
29 valorem tax liability resulting from such listing and assessment
30 (~~shall~~) must be collected in the same manner as though this chapter
31 had not been passed(~~: PROVIDED FURTHER, That this chapter shall not~~
32 ~~be construed to affect any ad valorem tax based upon assessed~~
33 ~~valuations made in 1948 and/or any preceding year for taxes payable in~~
34 ~~1949 or any preceding year, which ad valorem tax liability tax for any~~

1 ~~such years shall remain payable and collectible in the same manner as~~
2 ~~though this chapter had not been passed)).~~

3 **PART X**

4 **Public Utility Tax on Interstate Hauls**

5 NEW SECTION. **Sec. 1001.** (1) The legislature finds that at the
6 time the revenue act of 1935 was enacted, the United States supreme
7 court interpreted the commerce clause of the United States Constitution
8 as barring a direct tax on gross receipts from interstate
9 transportation. As a result, the tax commission's rules to implement
10 the revenue act recognized explicitly that the state could not tax the
11 income derived from the transportation of goods across the state's
12 boundaries. The legislature finds that the department of revenue, as
13 successor to the tax commission, has maintained this exemption to this
14 day in a department rule, WAC 458-20-193D.

15 (2) The legislature recognizes that the commerce clause no longer
16 bars states from taxing the privilege of engaging in an interstate
17 business. The legislature further recognizes that under the United
18 States supreme court's current commerce clause jurisprudence, a state
19 tax affecting interstate commerce will be sustained as long as it is
20 applied to an activity with a substantial nexus with the taxing state,
21 is fairly apportioned, does not discriminate against interstate
22 commerce, and is fairly related to services provided by the state. See
23 *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

24 (3) The legislature finds that the department of revenue has
25 maintained the tax-exempt treatment of interstate transportation for
26 appropriate reasons, including:

27 (a) The litigation risk in administratively eliminating the tax
28 exemption for interstate transportation;

29 (b) The lack of any statutory provisions for apportioning the
30 income of interstate transportation businesses. A legislative
31 determination to end the exemption has the benefit of allowing the
32 legislature to prescribe a specific methodology for apportioning the
33 income of interstate transportation businesses; and

34 (c) Because the transportation of persons or property across the
35 state's boundaries has been treated as exempt from the state's public
36 utility tax for nearly seventy-five years, the expectation of continued

1 exemption has been established over the years in the transportation
2 industry. Therefore, the legislature believes that, as the elected
3 representatives of the people, it is appropriate under these unique
4 circumstances for the legislature to have an opportunity to determine
5 the state's tax policy in regards to the public utility taxation of
6 interstate transportation before the department of revenue takes action
7 on its own.

8 (4) Therefore, by this act, the legislature intends to establish a
9 policy of taxing interstate transportation on an apportioned basis
10 effective July 1, 2010. However, to prevent the retroactive assessment
11 of public utility tax on interstate transportation on an apportioned
12 basis for periods prior to July 1, 2010, this act provides a statutory
13 deduction for income received from interstate transportation for
14 periods before July 1, 2010. This act also revises a use tax exemption
15 for motor carriers so that it is consistent with similar exemptions
16 provided to other interstate transportation businesses.

17 (5) Nothing in this act may be construed as requiring the
18 department of revenue to receive approval from the legislature before
19 changing a long-standing interpretation of the tax laws it administers.

20 **Sec. 1002.** RCW 82.16.050 and 2007 c 330 s 1 are each amended to
21 read as follows:

22 In computing tax there may be deducted from the gross income the
23 following items:

24 (1) Amounts derived by municipally owned or operated public service
25 businesses, directly from taxes levied for the support or maintenance
26 thereof. This subsection may not be construed to exempt service
27 charges which are spread on the property tax rolls and collected as
28 taxes;

29 (2) Amounts derived from the sale of commodities to persons in the
30 same public service business as the seller, for resale as such within
31 this state. This deduction is allowed only with respect to water
32 distribution, gas distribution or other public service businesses which
33 furnish water, gas or any other commodity in the performance of public
34 service businesses;

35 (3) Amounts actually paid by a taxpayer to another person taxable
36 under this chapter as the latter's portion of the consideration due for

1 services furnished jointly by both, if the total amount has been
2 credited to and appears in the gross income reported for tax by the
3 former;

4 (4) The amount of cash discount actually taken by the purchaser or
5 customer;

6 (5) The amount of bad debts, as that term is used in 26 U.S.C. Sec.
7 166 of the federal internal revenue code, as amended (~~(or renumbered)~~)
8 as of January 1, 2003, on which tax was previously paid under this
9 chapter;

10 (6) Amounts derived from business which the state is prohibited
11 from taxing under the Constitution of this state or the Constitution or
12 laws of the United States;

13 (7) Amounts derived from the distribution of water through an
14 irrigation system, for irrigation purposes;

15 (8) Until July 1, 2010, amounts derived from the transportation of
16 commodities from points of origin in this state to final destination
17 outside this state, or from points of origin outside this state to
18 final destination in this state, with respect to which the carrier
19 grants to the shipper the privilege of stopping the shipment in transit
20 at some point in this state for the purpose of storing, manufacturing,
21 milling, or other processing, and thereafter forwards the same
22 commodity, or its equivalent, in the same or converted form, under a
23 through freight rate from point of origin to final destination;

24 (9) Amounts derived from the transportation of commodities from
25 points of origin in the state to an export elevator, wharf, dock or
26 ship side on tidewater or its navigable tributaries to be forwarded,
27 without intervening transportation, by vessel, in their original form,
28 to interstate or foreign destinations. No deduction is allowed under
29 this subsection when the point of origin and the point of delivery to
30 the export elevator, wharf, dock, or ship side are located within the
31 corporate limits of the same city or town;

32 (10) Amounts derived from the transportation of agricultural
33 commodities, not including manufactured substances or articles, from
34 points of origin in the state to interim storage facilities in this
35 state for transshipment, without intervening transportation, to an
36 export elevator, wharf, dock, or ship side on tidewater or its
37 navigable tributaries to be forwarded, without intervening
38 transportation, by vessel, in their original form, to interstate or

1 foreign destinations. If agricultural commodities are transshipped
2 from interim storage facilities in this state to storage facilities at
3 a port on tidewater or its navigable tributaries, the same agricultural
4 commodity dealer must operate both the interim storage facilities and
5 the storage facilities at the port.

6 (a) The deduction under this subsection is available only when the
7 person claiming the deduction obtains a certificate from the
8 agricultural commodity dealer operating the interim storage facilities,
9 in a form and manner prescribed by the department, certifying that:

10 (i) More than ninety-six percent of all of the type of agricultural
11 commodity delivered by the person claiming the deduction under this
12 subsection and delivered by all other persons to the dealer's interim
13 storage facilities during the preceding calendar year was shipped by
14 vessel in original form to interstate or foreign destinations; and

15 (ii) Any of the agricultural commodity that is transshipped to
16 ports on tidewater or its navigable tributaries will be received at
17 storage facilities operated by the same agricultural commodity dealer
18 and will be shipped from such facilities, without intervening
19 transportation, by vessel, in their original form, to interstate or
20 foreign destinations.

21 (b) As used in this subsection, "agricultural commodity" has the
22 same meaning as agricultural product in RCW 82.04.213;

23 (11) Amounts derived from the production, sale, or transfer of
24 electrical energy for resale within or outside the state or for
25 consumption outside the state;

26 (12) Amounts derived from the distribution of water by a nonprofit
27 water association and used for capital improvements by that nonprofit
28 water association;

29 (13) Amounts paid by a sewerage collection business taxable under
30 RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the
31 treatment or disposal of sewage;

32 (14) Amounts derived from fees or charges imposed on persons for
33 transit services provided by a public transportation agency. For the
34 purposes of this subsection, "public transportation agency" means a
35 municipality, as defined in RCW 35.58.272, and urban public
36 transportation systems, as defined in RCW 47.04.082. Public
37 transportation agencies (~~shall~~) must spend an amount equal to the
38 reduction in tax provided by this tax deduction solely to adjust routes

1 to improve access for citizens using food banks and senior citizen
2 services or to extend or add new routes to assist low-income citizens
3 and seniors;

4 (15) Until July 1, 2010, amounts received from interstate
5 transportation. For purposes of this subsection, "interstate
6 transportation" means transporting persons or property between states
7 or between a state and a foreign country. "State" means a state of the
8 United States, the District of Columbia, the Commonwealth of Puerto
9 Rico, and any territory or possession of the United States.

10 NEW SECTION. Sec. 1003. A new section is added to chapter 82.16
11 RCW to read as follows:

12 (1) Persons taxable both within and without this state on the
13 business of transporting persons or property for hire must apportion to
14 this state that portion of gross income as provided in this section.

15 (2)(a) Except as otherwise provided in this section, gross income
16 must be apportioned to this state based on the ratio that revenue miles
17 of the person in this state during the tax period bear to the revenue
18 miles of the person everywhere during the tax period.

19 (b)(i) If both property and passengers are transported, a person
20 must determine the portion of gross income apportioned to this state by
21 first computing separate percentages as provided in (a) of this
22 subsection for property transported and for passengers transported.

23 (ii) Then separately divide gross income for each activity by the
24 total gross income from transporting persons and property for hire.

25 (iii) Then multiply the percentage for property transported as
26 determined under (a) of this subsection by the percentage of gross
27 income from transporting property as determined under (b)(ii) of this
28 subsection, and multiply the percentage for persons transported as
29 determined under (a) of this subsection by the percentage of gross
30 income from transporting persons as determined under (b)(ii) of this
31 subsection.

32 (iv) Then sum the results of both calculations in (b)(iii) of this
33 subsection and use this percentage to determine the portion of gross
34 income apportioned to this state from transporting persons and property
35 for hire.

36 (3) For persons that transport gas, oil, petroleum products, or
37 other products by pipeline, gross income must be apportioned to this

1 state based on the ratio that the total number of traffic units in this
2 state during the tax period bear to the total number of traffic units
3 everywhere during the tax period.

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

5 (a) "Revenue mile" means the transportation of one net ton of
6 property or one passenger, for the distance of one mile.

7 (b)(i) "Traffic unit" means the movement of one unit of product for
8 a distance of one mile.

9 (ii) For purposes of this subsection (4)(b), "one unit" means one
10 barrel consisting of forty-two United States gallons, except that for
11 natural gas and manufactured gas, "one unit" means one thousand cubic
12 feet of gas.

13 **Sec. 1004.** RCW 82.12.0254 and 2009 c 503 s 2 are each amended to
14 read as follows:

15 (1) The provisions of this chapter do not apply in respect to the
16 use of:

17 (a) Any airplane used primarily in (i) conducting interstate or
18 foreign commerce or (ii) providing intrastate air transportation by a
19 commuter air carrier as defined in RCW 82.08.0262;

20 (b) Any locomotive, railroad car, or watercraft used primarily in
21 conducting interstate or foreign commerce by transporting therein or
22 therewith property and persons for hire or used primarily in commercial
23 deep sea fishing operations outside the territorial waters of the
24 state;

25 (c) Tangible personal property that becomes a component part of any
26 such airplane, locomotive, railroad car, or watercraft in the course of
27 repairing, cleaning, altering, or improving the same; and

28 (d) Labor and services rendered in respect to such repairing,
29 cleaning, altering, or improving.

30 (2) The provisions of this chapter do not apply in respect to the
31 use by a nonresident of this state of any motor vehicle or trailer used
32 exclusively in transporting persons or property across the boundaries
33 of this state and in intrastate operations incidental thereto when such
34 motor vehicle or trailer is registered and licensed in a foreign state
35 and in respect to the use by a nonresident of this state of any motor
36 vehicle or trailer so registered and licensed and used within this
37 state for a period not exceeding fifteen consecutive days under such

1 rules as the department must adopt. However, under circumstances
2 determined to be justifiable by the department a second fifteen day
3 period may be authorized consecutive with the first fifteen day period;
4 and for the purposes of this exemption the term "nonresident" as used
5 herein includes a user who has one or more places of business in this
6 state as well as in one or more other states, but the exemption for
7 nonresidents applies only to those vehicles which are most frequently
8 dispatched, garaged, serviced, maintained, and operated from the user's
9 place of business in another state.

10 (3) The provisions of this chapter do not apply in respect to the
11 use of:

12 (a) Any motor vehicle or trailer, whether owned by the holder of a
13 carrier permit issued by the interstate commerce commission or its
14 successor agency (~~((of any motor vehicle or trailer whether owned by))~~)
15 or leased with or without driver to the permit holder and used (~~((in~~
16 ~~substantial part))~~) in the normal and ordinary course of the user's
17 business primarily for transporting therein persons or property for
18 hire across the boundaries of this state; (~~((and in respect to the use~~
19 ~~of))~~)

20 (b) Any motor vehicle or trailer while being operated under the
21 authority of a one-transit permit issued by the director of licensing
22 pursuant to RCW 46.16.160 and moving upon the highways from the point
23 of delivery in this state to a point outside this state; (~~((and in~~
24 ~~respect to the use of))~~)

25 (c) Tangible personal property ((which)) that becomes a component
26 part of any motor vehicle or trailer (~~((used by the holder of a carrier~~
27 ~~permit issued by the interstate commerce commission or its successor~~
28 ~~agency authorizing transportation by motor vehicle across the~~
29 ~~boundaries of this state whether such motor vehicle or trailer is owned~~
30 ~~by or leased with or without driver to the permit holder)) that is~~
31 exempt under (a) of this subsection, in the course of repairing,
32 cleaning, altering, or improving the same; (~~((also the use of))~~) and

33 (d) Labor and services rendered in respect to such repairing,
34 cleaning, altering, or improving any motor vehicle or trailer that is
35 exempt under (a) of this subsection.

36 **PART XI**

1 **Foreclosure Exemption**

2 **Sec. 1101.** RCW 82.45.010 and 2010 c ... s 206 (section 206 of this
3 act) are each amended to read as follows:

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

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

21 (b) For the sole purpose of determining whether, pursuant to the
22 exercise of an option, a controlling interest was transferred or
23 acquired within a twelve-month period, the date that the option
24 agreement was executed is the date on which the transfer or acquisition
25 of the controlling interest is deemed to occur. For all other purposes
26 under this chapter, the date upon which the option is exercised is the
27 date of the transfer or acquisition of the controlling interest.

28 (c) For purposes of this subsection, all acquisitions of persons
29 acting in concert must be aggregated for purposes of determining
30 whether a transfer or acquisition of a controlling interest has taken
31 place. The department must adopt standards by rule to determine when
32 persons are acting in concert. In adopting a rule for this purpose,
33 the department must consider the following:

34 (i) Persons must be treated as acting in concert when they have a
35 relationship with each other such that one person influences or
36 controls the actions of another through common ownership; and

37 (ii) When persons are not commonly owned or controlled, they must
38 be treated as acting in concert only when the unity with which the

1 purchasers have negotiated and will consummate the transfer of
2 ownership interests supports a finding that they are acting as a single
3 entity. If the acquisitions are completely independent, with each
4 purchaser buying without regard to the identity of the other
5 purchasers, then the acquisitions are considered separate acquisitions.

6 (3) The term "sale" does not include:

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

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

10 (c) A cancellation or forfeiture of a vendee's interest in a
11 contract for the sale of real property, whether or not such contract
12 contains a forfeiture clause, or deed in lieu of foreclosure of a
13 mortgage.

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

16 (e) The assignment of property or interest in property from one
17 spouse or one domestic partner to the other spouse or other domestic
18 partner in accordance with the terms of a decree of dissolution of
19 marriage or state registered domestic partnership or in fulfillment of
20 a property settlement agreement.

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

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

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

29 (i) ~~((Any))~~ A transfer or conveyance made (i) to the beneficiary of
30 a deed of trust pursuant to a trustee's sale in the nonjudicial
31 foreclosure of a deed of trust ((or)); (ii) to the mortgagee,
32 beneficiary of the deed of trust, or lienholder pursuant to an order of
33 sale by the court in the judicial foreclosure of any mortgage, deed of
34 trust, or lien ((foreclosure proceeding or upon execution of a
35 judgment, or)); (iii) to the mortgagee by the mortgagor or to the
36 beneficiary of a deed of trust by the grantor pursuant to deed in lieu
37 of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the

1 judgment creditor pursuant to a writ of execution to enforce a
2 judgment.

3 (j) A conveyance to the federal housing administration or veterans
4 administration by an authorized mortgagee made pursuant to a contract
5 of insurance or guaranty with the federal housing administration or
6 veterans administration.

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

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

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

14 (n) A sale to a regional transit authority or public corporation
15 under RCW 81.112.320 under a sale/leaseback agreement under RCW
16 81.112.300.

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

1 the subsequent transfer has not been paid within sixty days of becoming
2 due, excise taxes become due and payable on the original transfer as
3 otherwise provided by law.

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

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

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

30 **Sec. 1102.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
31 read as follows:

32 (1) The tax levied under this chapter (~~((shall be))~~) is the
33 obligation of the seller and the department (~~((of revenue))~~) may, at the
34 department's option, enforce the obligation through an action of debt
35 against the seller or the department may proceed in the manner
36 prescribed for the foreclosure of mortgages (~~((and resort to))~~). The

1 department's use of one course of enforcement ((shall)) is not ((be))
2 an election not to pursue the other.

3 (2) For purposes of this section and notwithstanding any other
4 provisions of law, in a sale involving a judicial or nonjudicial
5 foreclosure or enforcement of a judgment, the seller is the:

6 (a) Beneficiary of a deed of trust in any transfer or conveyance to
7 any party other than such beneficiary pursuant to a trustee's sale in
8 the nonjudicial foreclosure of the deed of trust;

9 (b) Mortgagee, beneficiary of a deed of trust, or lienholder in any
10 transfer or conveyance to any party other than such mortgagee,
11 beneficiary, or lienholder pursuant to an order of sale by the court in
12 the judicial foreclosure of any mortgage, deed of trust, or lien; and

13 (c) Judgment creditor in any transfer or conveyance to any party
14 other than such creditor pursuant to a writ of execution to enforce a
15 judgment.

16 **PART XII**

17 **Tax Debts**

18 **Sec. 1201.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
19 read as follows:

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

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

35 ~~(2) The officer, member or manager, or other person shall be liable~~
36 ~~only for taxes collected which) Whenever the department has issued a~~

1 warrant under RCW 82.32.210 for the collection of unpaid taxes from a
2 limited liability business entity and that business entity has been
3 terminated, dissolved, or abandoned, or is insolvent, the department
4 may pursue collection of the entity's unpaid taxes, including penalties
5 and interest on those taxes, against any or all of the responsible
6 individuals. For purposes of this subsection, "insolvent" means the
7 condition that results when the sum of the entity's debts exceeds the
8 fair market value of its assets. The department may presume that an
9 entity is insolvent if the entity refuses to disclose to the department
10 the nature of its assets and liabilities.

11 (2) Personal liability under this section may be imposed for state
12 and local sales and use taxes, state business and occupation taxes, and
13 any other state and local taxes collected by the department in respect
14 to which the provisions of this chapter apply, regardless of whether
15 the tax is denominated a tax, fee, charge, or some other term.

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

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

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

37 (b) All other responsible individuals are liable under this section
38 only for tax liability that became due during the period he or she had

1 the ~~((control, supervision,))~~ responsibility~~((,))~~ or duty to ~~((act for~~
2 ~~the corporation described in subsection (1) of this section, plus~~
3 ~~interest and penalties on those taxes.~~

4 ~~(3))~~ remit payment of the limited liability business entity's
5 taxes to the department.

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

11 ~~((+4))~~ (6) Any person having been issued a notice of assessment
12 under this section is entitled to the appeal procedures under RCW
13 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

17 ~~(6))~~ (7) This section does not relieve the ((corporation or))
18 limited liability ((company)) business entity of ((other tax
19 liabilities)) its tax liability or otherwise impair other tax
20 collection remedies afforded by law.

21 ~~((+7))~~ (8) Collection authority and procedures prescribed in this
22 chapter apply to collections under this section.

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

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

30 (b) "Chief financial officer" means: The treasurer of a
31 corporation; or for entities or organizations other than corporations
32 or if a corporation does not have a treasurer as one of its officers,
33 the highest senior manager who is responsible for overseeing the
34 financial activities of the entire company or organization.

35 (c) "Limited liability business entity" means a type of business
36 entity that generally shields its owners from personal liability for
37 the debts, obligations, and liabilities of the entity, or a business
38 entity that is managed or owned in whole or in part by an entity that

1 generally shields its owners from personal liability for the debts,
2 obligations, and liabilities of the entity. Limited liability business
3 entities include corporations, limited liability companies, limited
4 liability partnerships, trusts, general partnerships and joint ventures
5 in which one or more of the partners or parties are also limited
6 liability business entities, and limited partnerships in which one or
7 more of the general partners are also limited liability business
8 entities.

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

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

13 (f) "Officer" means any officer or assistant officer of a
14 corporation, including the president, vice-president, secretary, and
15 treasurer.

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

19 (ii) "Responsible individual" also includes any current or former
20 employee or other individual, but only if the individual had the
21 responsibility or duty to remit payment of the limited liability
22 business entity's unpaid tax liability reflected in a tax warrant
23 issued by the department.

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

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

PART XIII

Repealing the Business and Occupation Tax Credit for New Employment for

1 **International Service Activities**

2 NEW SECTION. **Sec. 1301.** RCW 82.04.44525 (Credit--New employment
3 for international service activities in eligible areas--Designation of
4 census tracts for eligibility--Records--Tax due upon ineligibility--
5 Interest assessment--Information from employment security department)
6 and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each
7 repealed.

8 **PART XIV**

9 **Repealing the Sales and Use Tax Exemptions**
10 **for Candy and Bakery Items**

11 **Sec. 1401.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
12 read as follows:

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

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

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

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

27 (a) "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

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

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

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

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

5 (e) "Candy" means a preparation of sugar, honey, or other natural
6 or artificial sweeteners in combination with chocolate, fruits, nuts,
7 or other ingredients or flavorings in the form of bars, drops, or
8 pieces. "Candy" does not include any preparation containing flour and
9 does not require refrigeration.

10 (3) Notwithstanding anything in this section to the contrary, the
11 exemption of "food and food ingredients" provided in this section shall
12 apply to food and food ingredients that are furnished, prepared, or
13 served as meals:

14 (a) Under a state administered nutrition program for the aged as
15 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
16 74.38.040(6);

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

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

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

31 (ii) That has been partially funded under ((Title)) 42 U.S.C. Sec.
32 1485 ((of the federal internal revenue code)); and

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

36 (4)(a) Subsection (1) of this section notwithstanding, the retail
37 sale of food and food ingredients is subject to sales tax under RCW

1 82.08.020 if the food and food ingredients are sold through a vending
2 machine, and in this case the selling price for purposes of RCW
3 82.08.020 is fifty-seven percent of the gross receipts.

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

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

10 **Sec. 1402.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
11 read as follows:

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

15 (2) The exemption of "food and food ingredients" provided for in
16 subsection (1) of this section (~~shall~~) does not apply to prepared
17 food, soft drinks, candy, or dietary supplements. "Prepared food,"
18 "soft drinks," (~~and~~) "dietary supplements," and "candy" have the same
19 meanings as in RCW 82.08.0293.

20 (3) Notwithstanding anything in this section to the contrary, the
21 exemption of "food and food ingredients" provided in this section
22 (~~shall~~) apply to food and food ingredients which are furnished,
23 prepared, or served as meals:

24 (a) Under a state administered nutrition program for the aged as
25 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
26 74.38.040(6);

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

30 (c) That are provided to residents, sixty-two years of age or
31 older, of a qualified low-income senior housing facility by the lessor
32 or operator of the facility. The sale of a meal that is billed to both
33 spouses of a marital community or both domestic partners of a domestic
34 partnership meets the age requirement in this subsection (3)(c) if at
35 least one of the spouses or domestic partners is at least sixty-two
36 years of age. For purposes of this subsection, "qualified low-income
37 senior housing facility" has the same meaning as in RCW 82.08.0293.

1 PART XV

2 Imposing Sales and Use Tax on the Sale of Custom Software

3 Sec. 1501. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
4 are each reenacted and amended to read as follows:

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

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

17 (b) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for consumers,
19 if such tangible personal property becomes an ingredient or component
20 of such real or personal property without intervening use by such
21 person; or

22 (c) Purchases for the purpose of consuming the property purchased
23 in producing for sale a new article of tangible personal property or
24 substance, of which such property becomes an ingredient or component or
25 is a chemical used in processing, when the primary purpose of such
26 chemical is to create a chemical reaction directly through contact with
27 an ingredient of a new article being produced for sale; or

28 (d) Purchases for the purpose of consuming the property purchased
29 in producing ferrosilicon which is subsequently used in producing
30 magnesium for sale, if the primary purpose of such property is to
31 create a chemical reaction directly through contact with an ingredient
32 of ferrosilicon; or

33 (e) Purchases for the purpose of providing the property to
34 consumers as part of competitive telephone service, as defined in RCW
35 82.04.065. The term (~~shall~~) includes every sale of tangible personal
36 property which is used or consumed or to be used or consumed in the
37 performance of any activity classified as a "sale at retail" or "retail
38 sale" even though such property is resold or utilized as provided in

1 (a), (b), (c), (d), or (e) of this subsection following such use. The
2 term also means every sale of tangible personal property to persons
3 engaged in any business which is taxable under RCW 82.04.280 (2) and
4 (7), 82.04.290, and 82.04.2908; or

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

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

13 (a) The installing, repairing, cleaning, altering, imprinting, or
14 improving of tangible personal property of or for consumers, including
15 charges made for the mere use of facilities in respect thereto, but
16 excluding charges made for the use of self-service laundry facilities,
17 and also excluding sales of laundry service to nonprofit health care
18 facilities, and excluding services rendered in respect to live animals,
19 birds and insects;

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

28 (c) The constructing, repairing, or improving of any structure
29 upon, above, or under any real property owned by an owner who conveys
30 the property by title, possession, or any other means to the person
31 performing such construction, repair, or improvement for the purpose of
32 performing such construction, repair, or improvement and the property
33 is then reconveyed by title, possession, or any other means to the
34 original owner;

35 (d) The cleaning, fumigating, razing, or moving of existing
36 buildings or structures, but may not include the charge made for
37 janitorial services; and for purposes of this section the term
38 "janitorial services" (~~shall~~) means those cleaning and caretaking

1 services ordinarily performed by commercial janitor service businesses
2 including, but not limited to, wall and window washing, floor cleaning
3 and waxing, and the cleaning in place of rugs, drapes and upholstery.
4 The term "janitorial services" does not include painting, papering,
5 repairing, furnace or septic tank cleaning, snow removal or
6 sandblasting;

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

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

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

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

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

37 (a) Amusement and recreation services including but not limited to

1 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
2 for sightseeing purposes, and others, when provided to consumers;

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

4 (c) Credit bureau services;

5 (d) Automobile parking and storage garage services;

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

11 (f) Service charges associated with tickets to professional
12 sporting events; and

13 (g) The following personal services: Physical fitness services,
14 tanning salon services, tattoo parlor services, steam bath services,
15 turkish bath services, escort services, and dating services.

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

17 (i) The renting or leasing of tangible personal property to
18 consumers; and

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

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

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

31 (6)(a) The term also includes the sale of prewritten computer
32 software other than a sale to a person who presents a seller's permit
33 or uniform exemption certificate in conformity with RCW 82.04.470,
34 regardless of the method of delivery to the end user. For purposes of
35 this subsection (6)(a), the sale of prewritten computer software
36 includes the sale of or charge made for a key or an enabling or
37 activation code, where the key or code is required to activate
38 prewritten computer software and put the software into use. There is

1 no separate sale of the key or code from the prewritten computer
2 software, regardless of how the sale may be characterized by the vendor
3 or by the purchaser.

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

- 6 ~~(i) Custom software; or~~
- 7 ~~(ii) The customization of prewritten computer software.))~~

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

13 (7)(a) The term also includes the sale of or charge made for
14 custom software and the customization of prewritten computer software,
15 other than a sale to a person who presents a resale certificate under
16 RCW 82.04.470, regardless of the method of delivery to the consumer.

17 (b) The term also includes the charge made to consumers for the
18 right to access and use custom software and customized prewritten
19 computer software, where possession of the software is maintained by
20 the seller or a third party.

21 (8) The term also includes the sale of or charge made for an
22 extended warranty to a consumer. For purposes of this subsection,
23 "extended warranty" means an agreement for a specified duration to
24 perform the replacement or repair of tangible personal property at no
25 additional charge or a reduced charge for tangible personal property,
26 labor, or both, or to provide indemnification for the replacement or
27 repair of tangible personal property, based on the occurrence of
28 specified events. The term "extended warranty" does not include an
29 agreement, otherwise meeting the definition of extended warranty in
30 this subsection, if no separate charge is made for the agreement and
31 the value of the agreement is included in the sales price of the
32 tangible personal property covered by the agreement. For purposes of
33 this subsection, "sales price" has the same meaning as in RCW
34 82.08.010.

35 ~~((+8))~~ (9)(a) The term also includes the following sales to
36 consumers of digital goods, digital codes, and digital automated
37 services:

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

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

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

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

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

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

20 (~~((+9+))~~) (10) The term does not include the sale of or charge made
21 for labor and services rendered in respect to the building, repairing,
22 or improving of any street, place, road, highway, easement, right-of-
23 way, mass public transportation terminal or parking facility, bridge,
24 tunnel, or trestle which is owned by a municipal corporation or
25 political subdivision of the state or by the United States and which is
26 used or to be used primarily for foot or vehicular traffic including
27 mass transportation vehicles of any kind.

28 (~~((+10+))~~) (11) The term also does not include sales of chemical
29 sprays or washes to persons for the purpose of postharvest treatment of
30 fruit for the prevention of scald, fungus, mold, or decay, nor does it
31 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
32 pollination including insects such as bees, and spray materials to:

33 (a) Persons who participate in the federal conservation reserve
34 program, the environmental quality incentives program, the wetlands
35 reserve program, and the wildlife habitat incentives program, or their
36 successors administered by the United States department of agriculture;

37 (b) farmers for the purpose of producing for sale any agricultural
38 product; and (c) farmers acting under cooperative habitat development

1 or access contracts with an organization exempt from federal income tax
2 under (~~(Title)~~) 26 U.S.C. Sec. 501(c)(3) of the federal internal
3 revenue code or the Washington state department of fish and wildlife to
4 produce or improve wildlife habitat on land that the farmer owns or
5 leases.

6 (~~(+11+)~~) (12) The term does not include the sale of or charge made
7 for labor and services rendered in respect to the constructing,
8 repairing, decorating, or improving of new or existing buildings or
9 other structures under, upon, or above real property of or for the
10 United States, any instrumentality thereof, or a county or city housing
11 authority created pursuant to chapter 35.82 RCW, including the
12 installing, or attaching of any article of tangible personal property
13 therein or thereto, whether or not such personal property becomes a
14 part of the realty by virtue of installation. Nor does the term
15 include the sale of services or charges made for the clearing of land
16 and the moving of earth of or for the United States, any
17 instrumentality thereof, or a county or city housing authority. Nor
18 does the term include the sale of services or charges made for cleaning
19 up for the United States, or its instrumentalities, radioactive waste
20 and other by-products of weapons production and nuclear research and
21 development.

22 (~~(+12+)~~) (13) The term does not include the sale of or charge made
23 for labor, services, or tangible personal property pursuant to
24 agreements providing maintenance services for bus, rail, or rail fixed
25 guideway equipment when a regional transit authority is the recipient
26 of the labor, services, or tangible personal property, and a transit
27 agency, as defined in RCW 81.104.015, performs the labor or services.

28 **Sec. 1502.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to
29 read as follows:

- 30 "Sale at wholesale" or "wholesale sale" means:
- 31 (1) Any sale, which is not a sale at retail, of:
 - 32 (a) Tangible personal property;
 - 33 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
34 (g);
 - 35 (c) Amusement or recreation services as defined in RCW
36 82.04.050(3)(a);
 - 37 (d) Prewritten computer software;

1 (e) Services described in RCW 82.04.050 (6)(b) or (7);

2 (f) Extended warranties as defined in RCW 82.04.050(7);

3 (g) Competitive telephone service, ancillary services, or
4 telecommunications service as those terms are defined in RCW 82.04.065;
5 or

6 (h) Digital goods, digital codes, or digital automated services;
7 and

8 (2) Any charge made for labor and services rendered for persons who
9 are not consumers, in respect to real or personal property, if such
10 charge is expressly defined as a retail sale by RCW 82.04.050 when
11 rendered to or for consumers. For the purposes of this subsection (2),
12 "real or personal property" does not include any natural products named
13 in RCW 82.04.100.

14 **Sec. 1503.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
15 read as follows:

16 "Consumer" means the following:

17 (1) Any person who purchases, acquires, owns, holds, or uses any
18 article of tangible personal property irrespective of the nature of the
19 person's business and including, among others, without limiting the
20 scope hereof, persons who install, repair, clean, alter, improve,
21 construct, or decorate real or personal property of or for consumers
22 other than for the purpose (a) of resale as tangible personal property
23 in the regular course of business or (b) of incorporating such property
24 as an ingredient or component of real or personal property when
25 installing, repairing, cleaning, altering, imprinting, improving,
26 constructing, or decorating such real or personal property of or for
27 consumers or (c) of consuming such property in producing for sale a new
28 article of tangible personal property or a new substance, of which such
29 property becomes an ingredient or component or as a chemical used in
30 processing, when the primary purpose of such chemical is to create a
31 chemical reaction directly through contact with an ingredient of a new
32 article being produced for sale or (d) of consuming the property
33 purchased in producing ferrosilicon which is subsequently used in
34 producing magnesium for sale, if the primary purpose of such property
35 is to create a chemical reaction directly through contact with an
36 ingredient of ferrosilicon or (e) of satisfying the person's
37 obligations under an extended warranty as defined in RCW 82.04.050(7),

1 if such tangible personal property replaces or becomes an ingredient or
2 component of property covered by the extended warranty without
3 intervening use by such person;

4 (2)(a) Any person engaged in any business activity taxable under
5 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
6 uses any competitive telephone service, ancillary services, or
7 telecommunications service as those terms are defined in RCW 82.04.065,
8 other than for resale in the regular course of business; (c) any person
9 who purchases, acquires, or uses any service defined in RCW
10 82.04.050(2) (a) or (g), other than for resale in the regular course of
11 business or for the purpose of satisfying the person's obligations
12 under an extended warranty as defined in RCW 82.04.050(7); (d) any
13 person who purchases, acquires, or uses any amusement and recreation
14 service defined in RCW 82.04.050(3)(a), other than for resale in the
15 regular course of business; (e) any person who purchases or acquires an
16 extended warranty as defined in RCW 82.04.050(7) other than for resale
17 in the regular course of business; and (f) any person who is an end
18 user of software. For purposes of this subsection (2)(f) and RCW
19 82.04.050(6), a person who purchases or otherwise acquires prewritten
20 computer software, who provides services described in RCW
21 82.04.050(6)(b) and who will charge consumers for the right to access
22 and use the prewritten computer software, is not an end user of the
23 prewritten computer software;

24 (3) Any person engaged in the business of contracting for the
25 building, repairing or improving of any street, place, road, highway,
26 easement, right-of-way, mass public transportation terminal or parking
27 facility, bridge, tunnel, or trestle which is owned by a municipal
28 corporation or political subdivision of the state of Washington or by
29 the United States and which is used or to be used primarily for foot or
30 vehicular traffic including mass transportation vehicles of any kind as
31 defined in RCW 82.04.280, in respect to tangible personal property when
32 such person incorporates such property as an ingredient or component of
33 such publicly owned street, place, road, highway, easement,
34 right-of-way, mass public transportation terminal or parking facility,
35 bridge, tunnel, or trestle by installing, placing or spreading the
36 property in or upon the right-of-way of such street, place, road,
37 highway, easement, bridge, tunnel, or trestle or in or upon the site of
38 such mass public transportation terminal or parking facility;

1 (4) Any person who is an owner, lessee or has the right of
2 possession to or an easement in real property which is being
3 constructed, repaired, decorated, improved, or otherwise altered by a
4 person engaged in business, excluding only (a) municipal corporations
5 or political subdivisions of the state in respect to labor and services
6 rendered to their real property which is used or held for public road
7 purposes, and (b) the United States, instrumentalities thereof, and
8 county and city housing authorities created pursuant to chapter 35.82
9 RCW in respect to labor and services rendered to their real property.
10 Nothing contained in this or any other subsection of this definition
11 shall be construed to modify any other definition of "consumer";

12 (5) Any person who is an owner, lessee, or has the right of
13 possession to personal property which is being constructed, repaired,
14 improved, cleaned, imprinted, or otherwise altered by a person engaged
15 in business;

16 (6) Any person engaged in the business of constructing, repairing,
17 decorating, or improving new or existing buildings or other structures
18 under, upon, or above real property of or for the United States, any
19 instrumentality thereof, or a county or city housing authority created
20 pursuant to chapter 35.82 RCW, including the installing or attaching of
21 any article of tangible personal property therein or thereto, whether
22 or not such personal property becomes a part of the realty by virtue of
23 installation; also, any person engaged in the business of clearing land
24 and moving earth of or for the United States, any instrumentality
25 thereof, or a county or city housing authority created pursuant to
26 chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within
27 the meaning of this subsection in respect to tangible personal property
28 incorporated into, installed in, or attached to such building or other
29 structure by such person, except that consumer does not include any
30 person engaged in the business of constructing, repairing, decorating,
31 or improving new or existing buildings or other structures under, upon,
32 or above real property of or for the United States, or any
33 instrumentality thereof, if the investment project would qualify for
34 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
35 private entity;

36 (7) Any person who is a lessor of machinery and equipment, the
37 rental of which is exempt from the tax imposed by RCW 82.08.020 under
38 RCW 82.08.02565, with respect to the sale of or charge made for

1 tangible personal property consumed in respect to repairing the
2 machinery and equipment, if the tangible personal property has a useful
3 life of less than one year. Nothing contained in this or any other
4 subsection of this section (~~shall~~) may be construed to modify any
5 other definition of "consumer";

6 (8) Any person engaged in the business of cleaning up for the
7 United States, or its instrumentalities, radioactive waste and other
8 by-products of weapons production and nuclear research and development;

9 (9) Any person who is an owner, lessee, or has the right of
10 possession of tangible personal property that, under the terms of an
11 extended warranty as defined in RCW 82.04.050(7), has been repaired or
12 is replacement property, but only with respect to the sale of or charge
13 made for the repairing of the tangible personal property or the
14 replacement property;

15 (10) Any person who purchases, acquires, or uses services described
16 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
17 course of business; and

18 (11)(a) Any end user of a digital product or digital code.

19 (b)(i) For purposes of this subsection, "end user" means any
20 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
21 by contract a digital product for further commercial broadcast,
22 rebroadcast, transmission, retransmission, licensing, relicensing,
23 distribution, redistribution or exhibition of the product, in whole or
24 in part, to others. A person that purchases digital products or
25 digital codes for the purpose of giving away such products or codes
26 will not be considered to have engaged in the distribution or
27 redistribution of such products or codes and will be treated as an end
28 user;

29 (ii) If a purchaser of a digital code does not receive the
30 contractual right to further redistribute, after the digital code is
31 redeemed, the underlying digital product to which the digital code
32 relates, then the purchaser of the digital code is an end user. If the
33 purchaser of the digital code receives the contractual right to further
34 redistribute, after the digital code is redeemed, the underlying
35 digital product to which the digital code relates, then the purchaser
36 of the digital code is not an end user. A purchaser of a digital code
37 who has the contractual right to further redistribute the digital code

1 is an end user if that purchaser does not have the right to further
2 redistribute, after the digital code is redeemed, the underlying
3 digital product to which the digital code relates.

4 **Sec. 1504.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to
5 read as follows:

6 (1) "Computer" means an electronic device that accepts information
7 in digital or similar form and manipulates it for a result based on a
8 sequence of instructions.

9 (2) "Computer software" means a set of coded instructions designed
10 to cause a computer or automatic data processing equipment to perform
11 a task. All software is classified as either prewritten or custom.
12 Consistent with this definition "computer software" includes only those
13 sets of coded instructions intended for use by an end user and
14 specifically excludes retained rights in software and master copies of
15 software.

16 (3) "Custom software" means computer software created for a single
17 person.

18 (4) "Customization of prewritten computer software" means any
19 alteration, modification, or development of applications using or
20 incorporating prewritten computer software for a specific person.
21 "Customization of prewritten computer software" includes individualized
22 configuration of software to work with other software and computer
23 hardware but does not include routine installation. Customization of
24 prewritten computer software does not change the underlying character
25 or taxability of the original prewritten computer software.

26 (5) "Master copies" of software means copies of software from which
27 a software developer, author, inventor, publisher, licensor,
28 sublicensor, or distributor makes copies for sale or license.

29 (6) "Prewritten computer software" means computer software,
30 including prewritten upgrades, that is not designed and developed by
31 the author or other creator to the specifications of a specific
32 purchaser. The combining of two or more prewritten computer software
33 programs or prewritten portions thereof does not cause the combination
34 to be other than prewritten computer software. Prewritten computer
35 software includes software designed and developed by the author or
36 other creator to the specifications of a specific purchaser when it is
37 sold to a person other than such purchaser. Where a person modifies or

1 enhances computer software of which such persons is not the author or
2 creator, the person (~~shall be~~) is deemed to be the author or creator
3 only of the person's modifications or enhancements. Prewritten
4 computer software or a prewritten portion thereof that is modified or
5 enhanced to any degree, where such modification or enhancement is
6 designed and developed to the specifications of a specific purchaser,
7 remains prewritten computer software; however where there is a
8 reasonable, separately stated charge or an invoice or other statement
9 of the price given to the purchaser for the modification or
10 enhancement, the modification or enhancement (~~shall~~) does not
11 constitute prewritten computer software.

12 (7) "Retained rights" means any and all rights, including
13 intellectual property rights such as those rights arising from
14 copyrights, patents, and trade secret laws, that are owned or are held
15 under contract or license by a software developer, author, inventor,
16 publisher, licensor, sublicensor, or distributor.

17 NEW SECTION. **Sec. 1505.** RCW 82.04.29001 (Creation and
18 distribution of custom software--Customization of prewritten computer
19 software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are
20 each repealed.

21 **Sec. 1506.** RCW 82.08.02088 and 2009 c 535 s 701 are each amended
22 to read as follows:

23 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
24 digital goods, digital codes, digital automated services, prewritten
25 computer software, or services defined as a retail sale in RCW
26 82.04.050 (6)(b) or (7) to a buyer that provides the seller with an
27 exemption certificate claiming multiple points of use. An exemption
28 certificate claiming multiple points of use must be in a form and
29 contain such information as required by the department.

30 (2) A buyer is entitled to use an exemption certificate claiming
31 multiple points of use only if the buyer is a business or other
32 organization and the digital goods or digital automated services
33 purchased, or the digital goods or digital automated services to be
34 obtained by the digital code purchased, or the prewritten computer
35 software or services defined as a retail sale in RCW 82.04.050 (6)(b)
36 or (7) purchased will be concurrently available for use within and

1 outside this state. A buyer is not entitled to use an exemption
2 certificate claiming multiple points of use for digital goods, digital
3 codes, digital automated services, prewritten computer software, or
4 services defined as a retail sale in RCW 82.04.050(6)(b) purchased for
5 personal use.

6 (3) A buyer claiming an exemption under this section must report
7 and pay the tax imposed in RCW 82.12.020 and any local use taxes
8 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
9 directly to the department in accordance with RCW 82.12.02088 and
10 82.14.457.

11 (4) For purposes of this section, "concurrently available for use
12 within and outside this state" means that employees or other agents of
13 the buyer may use the digital goods, digital automated services,
14 prewritten computer software, or services defined as a retail sale in
15 RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations
16 within this state and one or more locations outside this state. A
17 digital code is concurrently available for use within and outside this
18 state if employees or other agents of the buyer may use the digital
19 goods or digital automated services to be obtained by the code
20 simultaneously at one or more locations within this state and one or
21 more locations outside this state.

22 **Sec. 1507.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
23 read as follows:

24 For the purposes of this chapter:

25 (1) "Purchase price" means the same as sales price as defined in
26 RCW 82.08.010;

27 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
28 price for the article of tangible personal property, the use of which
29 is taxable under this chapter. The term also includes, in addition to
30 the purchase price, the amount of any tariff or duty paid with respect
31 to the importation of the article used. In case the article used is
32 acquired by lease or by gift or is extracted, produced, or manufactured
33 by the person using the same or is sold under conditions wherein the
34 purchase price does not represent the true value thereof, the value of
35 the article used (~~shall~~) must be determined as nearly as possible
36 according to the retail selling price at place of use of similar

1 products of like quality and character under such rules as the
2 department may prescribe.

3 (b) In case the articles used are acquired by bailment, the value
4 of the use of the articles so used (~~shall~~) must be in an amount
5 representing a reasonable rental for the use of the articles so bailed,
6 determined as nearly as possible according to the value of such use at
7 the places of use of similar products of like quality and character
8 under such rules as the department of revenue may prescribe. In case
9 any such articles of tangible personal property are used in respect to
10 the construction, repairing, decorating, or improving of, and which
11 become or are to become an ingredient or component of, new or existing
12 buildings or other structures under, upon, or above real property of or
13 for the United States, any instrumentality thereof, or a county or city
14 housing authority created pursuant to chapter 35.82 RCW, including the
15 installing or attaching of any such articles therein or thereto,
16 whether or not such personal property becomes a part of the realty by
17 virtue of installation, then the value of the use of such articles so
18 used (~~shall~~) must be determined according to the retail selling price
19 of such articles, or in the absence of such a selling price, as nearly
20 as possible according to the retail selling price at place of use of
21 similar products of like quality and character or, in the absence of
22 either of these selling price measures, such value may be determined
23 upon a cost basis, in any event under such rules as the department of
24 revenue may prescribe.

25 (c) In the case of articles owned by a user engaged in business
26 outside the state which are brought into the state for no more than one
27 hundred eighty days in any period of three hundred sixty-five
28 consecutive days and which are temporarily used for business purposes
29 by the person in this state, the value of the article used (~~shall~~)
30 must be an amount representing a reasonable rental for the use of the
31 articles, unless the person has paid tax under this chapter or chapter
32 82.08 RCW upon the full value of the article used, as defined in (a) of
33 this subsection.

34 (d) In the case of articles manufactured or produced by the user
35 and used in the manufacture or production of products sold or to be
36 sold to the department of defense of the United States, the value of
37 the articles used (~~shall~~) must be determined according to the value
38 of the ingredients of such articles.

1 (e) In the case of an article manufactured or produced for purposes
2 of serving as a prototype for the development of a new or improved
3 product, the value of the article used (~~(shall)~~) must be determined by:
4 (i) The retail selling price of such new or improved product when first
5 offered for sale; or (ii) the value of materials incorporated into the
6 prototype in cases in which the new or improved product is not offered
7 for sale.

8 (f) In the case of an article purchased with a direct pay permit
9 under RCW 82.32.087, the value of the article used (~~(shall be)~~) is
10 determined by the purchase price of such article if, but for the use of
11 the direct pay permit, the transaction would have been subject to sales
12 tax;

13 (3) "Value of the service used" means the purchase price for the
14 digital automated service or other service, the use of which is taxable
15 under this chapter. If the service is received by gift or under
16 conditions wherein the purchase price does not represent the true value
17 thereof, the value of the service used (~~(shall)~~) must be determined as
18 nearly as possible according to the retail selling price at place of
19 use of similar services of like quality and character under rules the
20 department may prescribe;

21 (4) "Value of the extended warranty used" means the purchase price
22 for the extended warranty, the use of which is taxable under this
23 chapter. If the extended warranty is received by gift or under
24 conditions wherein the purchase price does not represent the true value
25 of the extended warranty, the value of the extended warranty used
26 (~~(shall)~~) must be determined as nearly as possible according to the
27 retail selling price at place of use of similar extended warranties of
28 like quality and character under rules the department may prescribe;

29 (5) "Value of the digital good or digital code used" means the
30 purchase price for the digital good or digital code, the use of which
31 is taxable under this chapter. If the digital good or digital code is
32 acquired other than by purchase, the value of the digital good or
33 digital code must be determined as nearly as possible according to the
34 retail selling price at place of use of similar digital goods or
35 digital codes of like quality and character under rules the department
36 may prescribe;

37 (6) "Use," "used," "using," or "put to use" have their ordinary
38 meaning, and mean:

1 (a) With respect to tangible personal property, the first act
2 within this state by which the taxpayer takes or assumes dominion or
3 control over the article of tangible personal property (as a consumer),
4 and include installation, storage, withdrawal from storage,
5 distribution, or any other act preparatory to subsequent actual use or
6 consumption within this state;

7 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
8 first act within this state after the service has been performed by
9 which the taxpayer takes or assumes dominion or control over the
10 article of tangible personal property upon which the service was
11 performed (as a consumer), and includes installation, storage,
12 withdrawal from storage, distribution, or any other act preparatory to
13 subsequent actual use or consumption of the article within this state;

14 (c) With respect to an extended warranty, the first act within this
15 state after the extended warranty has been acquired by which the
16 taxpayer takes or assumes dominion or control over the article of
17 tangible personal property to which the extended warranty applies, and
18 includes installation, storage, withdrawal from storage, distribution,
19 or any other act preparatory to subsequent actual use or consumption of
20 the article within this state;

21 (d) With respect to a digital good or digital code, the first act
22 within this state by which the taxpayer, as a consumer, views,
23 accesses, downloads, possesses, stores, opens, manipulates, or
24 otherwise uses or enjoys the digital good or digital code;

25 (e) With respect to a digital automated service, the first act
26 within this state by which the taxpayer, as a consumer, uses, enjoys,
27 or otherwise receives the benefit of the service;

28 (f) With respect to a service defined as a retail sale in RCW
29 82.04.050 (6)(b) or (7), the first act within this state by which the
30 taxpayer, as a consumer, accesses the (~~prewritten~~) computer software;
31 and

32 (g) With respect to a service defined as a retail sale in RCW
33 82.04.050(2)(g), the first act within this state after the service has
34 been performed by which the taxpayer, as a consumer, views, accesses,
35 downloads, possesses, stores, opens, manipulates, or otherwise uses or
36 enjoys the digital good upon which the service was performed;

37 (7) "Taxpayer" and "purchaser" include all persons included within

1 the meaning of the word "buyer" and the word "consumer" as defined in
2 chapters 82.04 and 82.08 RCW;

3 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
4 "retailer" means every seller as defined in RCW 82.08.010 and every
5 person engaged in the business of selling tangible personal property at
6 retail and every person required to collect from purchasers the tax
7 imposed under this chapter.

8 (ii) "Retailer" does not include a professional employer
9 organization when a covered employee coemployed with the client under
10 the terms of a professional employer agreement engages in activities
11 that constitute a sale of tangible personal property, extended
12 warranty, digital good, digital code, or a sale of any digital
13 automated service or service defined as a retail sale in RCW 82.04.050
14 (2) (a) or (g), (3)(a), ~~((or))~~ (6)(b), or (7) that is subject to the
15 tax imposed by this chapter. In such cases, the client, and not the
16 professional employer organization, is deemed to be the retailer and is
17 responsible for collecting and remitting the tax imposed by this
18 chapter.

19 (b) For the purposes of (a) of this subsection, the terms "client,"
20 "covered employee," "professional employer agreement," and
21 "professional employer organization" have the same meanings as in RCW
22 82.04.540;

23 (9) "Extended warranty" has the same meaning as in RCW
24 82.04.050(7);

25 (10) The meaning ascribed to words and phrases in chapters 82.04
26 and 82.08 RCW, insofar as applicable, ~~((shall have))~~ has full force and
27 effect with respect to taxes imposed under the provisions of this
28 chapter. "Consumer," in addition to the meaning ascribed to it in
29 chapters 82.04 and 82.08 RCW insofar as applicable, ~~((shall))~~ also
30 means any person who distributes or displays, or causes to be
31 distributed or displayed, any article of tangible personal property,
32 except newspapers, the primary purpose of which is to promote the sale
33 of products or services. With respect to property distributed to
34 persons within this state by a consumer as defined in this subsection
35 (10), the use of the property ~~((shall be))~~ is deemed to be by such
36 consumer.

1 **Sec. 1508.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
2 read as follows:

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

6 (a) Article of tangible personal property purchased at retail, or
7 acquired by lease, gift, repossession, or bailment, or extracted or
8 produced or manufactured by the person so using the same, or otherwise
9 furnished to a person engaged in any business taxable under RCW
10 82.04.280 (2) or (7), including tangible personal property acquired at
11 a casual or isolated sale, and including by-products used by the
12 manufacturer thereof, except as otherwise provided in this chapter,
13 irrespective of whether the article or similar articles are
14 manufactured or are available for purchase within this state;

15 (b) Prewritten computer software, regardless of the method of
16 delivery, but excluding prewritten computer software that is either
17 provided free of charge or is provided for temporary use in viewing
18 information, or both;

19 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
20 (g), (3)(a), ~~((or))~~ (6)(b), or (7), excluding services defined as a
21 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

22 (d) Extended warranty; or

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

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

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

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

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

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

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

6 (2) The provisions of this chapter do not apply in respect to the
7 use of any article of tangible personal property, extended warranty,
8 digital good, digital code, digital automated service, or service
9 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), (~~(6)(b)~~) (6)(b), or
10 (7), if the sale to, or the use by, the present user or the present
11 user's bailor or donor has already been subjected to the tax under
12 chapter 82.08 RCW or this chapter and the tax has been paid by the
13 present user or by the present user's bailor or donor.

14 (3)(a) Except as provided in this section, payment of the tax
15 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
16 of tangible personal property, extended warranty, digital good, digital
17 code, digital automated service, or other service does not have the
18 effect of exempting any other purchaser or user of the same property,
19 extended warranty, digital good, digital code, digital automated
20 service, or other service from the taxes imposed by such chapters.

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

22 (i) If the sale to, or the use by, the present user or his or her
23 bailor or donor has already been subjected to the tax under chapter
24 82.08 RCW or this chapter and the tax has been paid by the present user
25 or by his or her bailor or donor;

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

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

35 (iv) To the use of digital goods or digital automated services,
36 which were obtained through the use of a digital code, if the sale of
37 the digital code to, or the use of the digital code by, the present

1 user or the present user's bailor or donor has already been subjected
2 to the tax under chapter 82.08 RCW or this chapter and the tax has been
3 paid by the present user or by the present user's bailor or donor.

4 (4)(a) Except as provided in (b) of this subsection (4), the tax is
5 levied and must be collected in an amount equal to the value of the
6 article used, value of the digital good or digital code used, value of
7 the extended warranty used, or value of the service used by the
8 taxpayer, multiplied by the applicable rates in effect for the retail
9 sales tax under RCW 82.08.020.

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

14 PART XVI

15 Increasing Tobacco Taxes

16 **Sec. 1601.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to
17 read as follows:

18 (1) There is levied and (~~(there shall be)~~) collected as provided in
19 this chapter, a tax upon the sale, use, consumption, handling,
20 possession, or distribution of all cigarettes, in an amount equal to
21 (~~(one and fifteen one hundredths)~~) 12.125 cents per cigarette.

22 (~~(2) (An additional tax is imposed upon the sale, use, consumption,~~
23 ~~handling, possession, or distribution of all cigarettes, in an amount~~
24 ~~equal to five hundred twenty five one thousandths of a cent per~~
25 ~~cigarette. All revenues collected during any month from this~~
26 ~~additional tax shall be deposited in the state general fund by the~~
27 ~~twenty fifth day of the following month.~~

28 (~~(3) An additional tax is imposed upon the sale, use, consumption,~~
29 ~~handling, possession, or distribution of all cigarettes, in an amount~~
30 ~~equal to two and five one hundredths cents per cigarette. All revenues~~
31 ~~collected during any month from this additional tax shall be deposited~~
32 ~~in the state general fund by the twenty fifth day of the following~~
33 ~~month.~~

34 (~~(4))~~) Wholesalers subject to the payment of this tax may, if they
35 wish, absorb five one-hundredths cents per cigarette of the tax and not

1 pass it on to purchasers without being in violation of this section or
2 any other act relating to the sale or taxation of cigarettes.

3 ~~((+5))~~ (3) For purposes of this chapter, "possession" ~~((shall))~~
4 means both (a) physical possession by the purchaser and, (b) when
5 cigarettes are being transported to or held for the purchaser or his or
6 her designee by a person other than the purchaser, constructive
7 possession by the purchaser or his or her designee, which constructive
8 possession ~~((shall-be))~~ is deemed to occur at the location of the
9 cigarettes being so transported or held.

10 ~~((+6))~~ (4) In accordance with federal law and rules prescribed by
11 the department, an enrolled member of a federally recognized Indian
12 tribe may purchase cigarettes from an Indian tribal organization under
13 the jurisdiction of the member's tribe for the member's own use exempt
14 from the applicable taxes imposed by this chapter. Except as provided
15 in subsection ~~((+7))~~ (5) of this section, any person, who purchases
16 cigarettes from an Indian tribal organization and who is not an
17 enrolled member of the federally recognized Indian tribe within whose
18 jurisdiction the sale takes place, is not exempt from the applicable
19 taxes imposed by this chapter.

20 ~~((+7))~~ (5) If the state enters into a cigarette tax contract or
21 agreement with a federally recognized Indian tribe under chapter 43.06
22 RCW, the terms of the contract or agreement ~~((shall))~~ take precedence
23 over any conflicting provisions of this chapter while the contract or
24 agreement is in effect.

25 (6) By July 1, 2011, and by July 1st of each year thereafter, the
26 state treasurer must transfer eighteen million dollars from the general
27 fund into the tobacco prevention and control account under RCW
28 43.79.480.

29 **Sec. 1602.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to
30 read as follows:

31 (1) In addition to the tax imposed upon the sale, use, consumption,
32 handling, possession, or distribution of cigarettes set forth in RCW
33 82.24.020, there is imposed a tax in an amount equal to three cents per
34 cigarette.

35 (2) The revenue collected under this section ~~((shall))~~ must be
36 deposited as follows:

1 (a) ((~~28.5~~)) 14 percent ((~~shall~~)) must be deposited into the
2 general fund.

3 (b) The remainder ((~~shall~~)) must be deposited into the education
4 legacy trust account.

5 **Sec. 1603.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
10 granulated, plug cut, crimp cut, ready rubbed, and other smoking
11 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
12 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
13 cuttings and sweepings of tobacco, and other kinds and forms of
14 tobacco, prepared in such manner as to be suitable for chewing or
15 smoking in a pipe or otherwise, or both for chewing and smoking, and
16 any other product, regardless of form, that contains tobacco and is
17 intended for human consumption or placement in the oral or nasal cavity
18 or absorption into the human body by any other means, but ((~~shall~~))
19 does not include cigarettes as defined in RCW 82.24.010.

20 (2) "Manufacturer" means a person who manufactures and sells
21 tobacco products.

22 (3) "Distributor" means (a) any person engaged in the business of
23 selling tobacco products in this state who brings, or causes to be
24 brought, into this state from without the state any tobacco products
25 for sale, (b) any person who makes, manufactures, fabricates, or stores
26 tobacco products in this state for sale in this state, (c) any person
27 engaged in the business of selling tobacco products without this state
28 who ships or transports tobacco products to retailers in this state, to
29 be sold by those retailers, (d) any person engaged in the business of
30 selling tobacco products in this state who handles for sale any tobacco
31 products that are within this state but upon which tax has not been
32 imposed.

33 (4) "Retailer" means any person engaged in the business of selling
34 tobacco products to ultimate consumers.

35 (5)(a) "Sale" means any transfer, exchange, or barter, in any
36 manner or by any means whatsoever, for a consideration, and includes
37 and means all sales made by any person.

1 (b) The term "sale" includes a gift by a person engaged in the
2 business of selling tobacco products, for advertising, promoting, or as
3 a means of evading the provisions of this chapter.

4 (6) "Business" means any trade, occupation, activity, or enterprise
5 engaged in for the purpose of selling or distributing tobacco products
6 in this state.

7 (7) "Place of business" means any place where tobacco products are
8 sold or where tobacco products are manufactured, stored, or kept for
9 the purpose of sale, including any vessel, vehicle, airplane, train, or
10 vending machine.

11 (8) "Retail outlet" means each place of business from which tobacco
12 products are sold to consumers.

13 (9) "Department" means the department of revenue.

14 (10) "Person" means any individual, receiver, administrator,
15 executor, assignee, trustee in bankruptcy, trust, estate, firm,
16 copartnership, joint venture, club, company, joint stock company,
17 business trust, municipal corporation, the state and its departments
18 and institutions, political subdivision of the state of Washington,
19 corporation, limited liability company, association, society, any group
20 of individuals acting as a unit, whether mutual, cooperative,
21 fraternal, nonprofit, or otherwise. The term excludes any person
22 immune from state taxation, including the United States or its
23 instrumentalities, and federally recognized Indian tribes and enrolled
24 tribal members, conducting business within Indian country.

25 (11) "Indian country" means the same as defined in chapter 82.24
26 RCW.

27 (12) "Actual price" means the total amount of consideration for
28 which tobacco products are sold, valued in money, whether received in
29 money or otherwise, including any charges by the seller necessary to
30 complete the sale such as charges for delivery, freight,
31 transportation, or handling.

32 (13) "Affiliated" means related in any way by virtue of any form or
33 amount of common ownership, control, operation, or management.

34 (14) "Board" means the liquor control board.

35 (15) "Cigar" means a roll for smoking that is of any size or shape
36 and that is made wholly or in part of tobacco, irrespective of whether
37 the tobacco is pure or flavored, adulterated or mixed with any other

1 ingredient, if the roll has a wrapper made wholly or in greater part of
2 tobacco. "Cigar" does not include a cigarette.

3 (16) "Cigarette" has the same meaning as in RCW 82.24.010.

4 (17) "Manufacturer's representative" means a person hired by a
5 manufacturer to sell or distribute the manufacturer's tobacco products,
6 and includes employees and independent contractors.

7 (18)(a) "Taxable sales price" means:

8 (i) In the case of a taxpayer that is not affiliated with the
9 manufacturer, distributor, or other person from whom the taxpayer
10 purchased tobacco products, the actual price for which the taxpayer
11 purchased the tobacco products;

12 (ii) In the case of a taxpayer that purchases tobacco products from
13 an affiliated manufacturer, affiliated distributor, or other affiliated
14 person, and that sells those tobacco products to unaffiliated
15 distributors, unaffiliated retailers, or ultimate consumers, the actual
16 price for which that taxpayer sells those tobacco products to
17 unaffiliated distributors, unaffiliated retailers, or ultimate
18 consumers;

19 (iii) In the case of a taxpayer that sells tobacco products only to
20 affiliated distributors or affiliated retailers, the price, determined
21 as nearly as possible according to the actual price, that other
22 distributors sell similar tobacco products of like quality and
23 character to unaffiliated distributors, unaffiliated retailers, or
24 ultimate consumers;

25 (iv) In the case of a taxpayer that is a manufacturer selling
26 tobacco products directly to ultimate consumers, the actual price for
27 which the taxpayer sells those tobacco products to ultimate consumers;

28 (v) In the case of a taxpayer that has acquired tobacco products
29 under a sale as defined in subsection (5)(b) of this section, the
30 price, determined as nearly as possible according to the actual price,
31 that the taxpayer or other distributors sell the same tobacco products
32 or similar tobacco products of like quality and character to
33 unaffiliated distributors, unaffiliated retailers, or ultimate
34 consumers; or

35 (vi) In any case where (a)(i) through (v) of this subsection do not
36 apply, the price, determined as nearly as possible according to the
37 actual price, that the taxpayer or other distributors sell the same

1 tobacco products or similar tobacco products of like quality and
2 character to unaffiliated distributors, unaffiliated retailers, or
3 ultimate consumers.

4 (b) For purposes of (a)(i) and (ii) of this subsection only,
5 "person" includes both persons as defined in subsection (10) of this
6 section and any person immune from state taxation, including the United
7 States or its instrumentalities, and federally recognized Indian tribes
8 and enrolled tribal members, conducting business within Indian country.

9 (c) The department may adopt rules regarding the determination of
10 taxable sales price under this subsection.

11 (19) "Taxpayer" means a person liable for the tax imposed by this
12 chapter.

13 (20) "Unaffiliated distributor" means a distributor that is not
14 affiliated with the manufacturer, distributor, or other person from
15 whom the distributor has purchased tobacco products.

16 (21) "Unaffiliated retailer" means a retailer that is not
17 affiliated with the manufacturer, distributor, or other person from
18 whom the retailer has purchased tobacco products.

19 (22) "Moist snuff" means tobacco that is finely cut, ground, or
20 powdered; is not for smoking; and is intended to be placed in the oral,
21 but not the nasal, cavity.

22 (23) "Little cigar" means a cigar that has an integrated filter.

23 **Sec. 1604.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to
24 read as follows:

25 (1) There is levied and (~~there shall be~~) collected a tax upon the
26 sale, handling, or distribution of all tobacco products in this state
27 at the following rate:

28 (a) (~~Seventy-five~~) For cigars except little cigars, ninety-five
29 percent of the taxable sales price of cigars, not to exceed (~~fifty~~
30 cents)) one dollar per cigar; (~~or~~)

31 (b) (~~Seventy-five~~) For all tobacco products except those covered
32 under separate provisions of this subsection, ninety-five percent of
33 the taxable sales price (~~of all tobacco products that are not~~
34 cigars));

35 (c) For moist snuff, as established in this subsection (1)(c) and
36 computed on the net weight listed by the manufacturer:

1 (i) On each single unit consumer-sized can or package whose net
2 weight is one and two-tenths ounces or less, a rate per single unit
3 that is equal to the greater of 3.025 dollars or the cigarette tax
4 under chapter 82.24 RCW multiplied by twenty; or

5 (ii) On each single unit consumer-sized can or package whose net
6 weight is more than one and two-tenths ounces, a proportionate tax at
7 the rate established in (c)(i) of this subsection (1) on each ounce or
8 fractional part of an ounce; and

9 (d) For little cigars, an amount per cigar equal to the cigarette
10 tax under chapter 82.24 RCW.

11 (2) Taxes under this section (~~shall~~) must be imposed at the time
12 the distributor (a) brings, or causes to be brought, into this state
13 from without the state tobacco products for sale, (b) makes,
14 manufactures, fabricates, or stores tobacco products in this state for
15 sale in this state, (c) ships or transports tobacco products to
16 retailers in this state, to be sold by those retailers, or (d) handles
17 for sale any tobacco products that are within this state but upon which
18 tax has not been imposed.

19 (3) The moneys collected under this section (~~shall~~) must be
20 deposited into the state general fund.

21 NEW SECTION. Sec. 1605. A new section is added to chapter 82.26
22 RCW to read as follows:

23 (1)(a) Within one year following the date on which the requirement
24 for a tobacco product code is effective, payment of, or exemption from,
25 the tax imposed in RCW 82.26.020 must be verifiable on each single-unit
26 consumer-sized can or package of moist snuff, as provided in (b) of
27 this subsection.

28 (b) Within thirty days following the date on which notice of
29 proposed rule making to require a tobacco product code is published in
30 the federal register, the department must commence to develop a method
31 for using a tobacco product code to verify payment of, or exemption
32 from, the tax imposed in RCW 82.26.020; to develop and implement a
33 pilot project to test the method; and to develop a plan for adoption of
34 rules to implement the method. The department must report to the
35 legislature on its progress annually by December 1st through the year
36 following the year in which the method is implemented.

1 (2) If notice of proposed rule making to require a tobacco product
2 code is not published in the federal register by July 1, 2011, the
3 department must determine and recommend to the legislature by November
4 1, 2014, a method to verify payment of, or exemption from, the tax
5 imposed in RCW 82.26.020, by means of stamping, use of manufacturers'
6 digitally readable product identifiers, or any other method, and must
7 complete and present to the legislature a study of compliance with the
8 tax imposed in RCW 82.26.020, the effect of noncompliance on state
9 revenue, and the effect of adopting a method to verify payment of, or
10 exemption from, the tax.

11 (3) For purposes of this section, "tobacco product code" means a
12 code that is required on the label of a tobacco product for purposes of
13 tracking or tracing the product through the distribution system under
14 final regulations adopted by the secretary of the United States
15 department of health and human services.

16 NEW SECTION. **Sec. 1606.** A new section is added to chapter 82.26
17 RCW to read as follows:

18 Beginning July 1, 2011, distributors subject to the provisions of
19 this chapter must provide information regarding their purchase of other
20 tobacco products as required by the department. Such information may
21 include product description; brand; number of packages; quantity of
22 product per package by weight, count, or other applicable measure;
23 purchase price per package; and other information as determined by the
24 department.

25 **Sec. 1607.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to
26 read as follows:

27 It is the intent and purpose of this chapter to levy a tax on all
28 tobacco products sold, used, consumed, handled, or distributed within
29 this state and to collect the tax from the distributor as defined in
30 RCW 82.26.010. It is the further intent and purpose of this chapter to
31 impose the tax once, and only once, on all tobacco products for sale in
32 this state, but nothing in this chapter (~~shall~~) may be construed to
33 exempt any person taxable under any other law or under any other tax
34 imposed under Title 82 RCW. It is the further intent and purpose of
35 this chapter that the distributor who first possesses the tobacco
36 product in this state (~~shall be~~) is the distributor liable for the

1 tax and that (1) for moist snuff the tax will be based on the net
2 weight listed by the manufacturer and (2) in most other instances the
3 tax will be based on the actual price that the distributor paid for the
4 tobacco product, unless the distributor is affiliated with the seller.

5 NEW SECTION. Sec. 1608. The legislature recognizes the role that
6 tax policy plays in the levels of consumption of moist snuff by youth
7 due to impacts on price. Discouraging youth access to moist snuff and
8 youth consumption is an important state policy. The legislature
9 directs the department of health, with the assistance of the department
10 of revenue and the office of financial management, to study this issue.
11 The study must examine the historic, current, and future trends and
12 data, including but not limited to which products are consumed, by
13 which age group, and how the products were acquired. The study should
14 cover the period beginning with the year 2000, if possible. The
15 department of health must report to the appropriate fiscal and health
16 care committees of the legislature by December 1, 2010. The department
17 of health may consult with academics, other experts, and industry
18 representatives in studying this issue and preparing any reports
19 required under this section.

20 NEW SECTION. Sec. 1609. The following acts or parts of acts are
21 each repealed:

22 (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the
23 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,
24 & 1986 c 3 s 12; and

25 (2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the
26 general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

27 **PART XVII**
28 **Imposing an Additional Hazardous Substance Tax**

29 NEW SECTION. Sec. 1701. Sections 1701 through 1707 of this act
30 may be known and cited as the clean water act of 2010.

31 NEW SECTION. Sec. 1702. (1) The legislature finds that nonpoint
32 water pollution and contaminated storm water runoff is a major problem

1 in the state creating a significant burden on the rivers, aquifers,
2 lakes, streams, and marine receiving waters across Washington.

3 (2) The legislature recognizes that the burden of nonpoint and
4 storm water pollution is caused by both increased volumes of water
5 runoff due to the expansion of impervious surfaces and the toxic
6 substances that pollute the runoff. The burden of storm water and
7 nonpoint pollution from hazardous substances is difficult to offset
8 because the source of pollution is not a single physical point, but
9 occurs wherever the toxic substances are manufactured, used, or
10 consumed.

11 (3) The legislature finds that the federal government and the state
12 of Washington have identified control of pollutants in storm water
13 runoff through national pollutant discharge elimination system phase I
14 and II municipal storm water permits as a requirement for the state and
15 local jurisdictions. Impacts from the polluted storm water may be
16 prevented or controlled through retrofit projects for existing
17 infrastructure as well as other means.

18 (4) The legislature finds that resources available to offset the
19 direct burdens of storm water pollution by hazardous substances are
20 insufficient to meet existing needs. Existing funding is raised
21 largely by local governments and is disproportionately borne by fees
22 levied on individuals and property owners.

23 (5) Finally, the legislature finds that increasing the tax on
24 hazardous substances is necessary to fund programs that will offset the
25 burdens that pollution places on the environment and the waters of the
26 state.

27 **Sec. 1703.** RCW 82.21.030 and 1989 c 2 s 10 are each amended to
28 read as follows:

29 (1)(a) A tax is imposed on the privilege of possession of hazardous
30 substances in this state. The rate of the tax (~~((shall be))~~) is seven-
31 tenths of one percent multiplied by the wholesale value of the
32 substance.

33 (b) Beginning May 1, 2010, an additional tax is imposed on the
34 privilege of possession of hazardous substances in this state. The
35 rate of the tax is equal to one and three-tenths percent multiplied by
36 the wholesale value of the substance.

1 (2)(a) ~~Moneys collected under ((this chapter shall))~~ subsection
2 (1)(a) of this section must be deposited in the toxics control accounts
3 under RCW 70.105D.070 and expended in accordance with the purposes
4 stated therein.

5 (b) Moneys collected under subsection (1)(b) of this section must
6 be deposited into the clean water legacy fund hereby created in the
7 custody of the state treasurer. The state treasurer must transfer the
8 funds deposited into the clean water legacy fund as follows:

9 (i) For taxes collected through June 30, 2011, twenty percent must
10 be deposited in the storm water account created in section 1704 of this
11 act to be used solely for the purposes of funding the items set forth
12 in section 1704(2)(a) of this act, two and forty-five one-hundredths
13 percent must be deposited in the state oil spill prevention account,
14 two and one-twentieth percent must be deposited into the Puget Sound
15 recovery account to be used as required under section 1706 of this act,
16 two and one-twentieth percent must be deposited into the water quality
17 action account to be used as required under section 1707 of this act,
18 five percent must be deposited into the motor vehicle account to be
19 used as required under section 1705 of this act, and the remainder must
20 be deposited into the general fund.

21 (ii) For taxes collected between July 1, 2011, and June 30, 2013,
22 twenty percent must be deposited into the storm water account created
23 in section 1704 of this act, one and four-fifths percent must be
24 deposited in the state oil spill prevention account, two and two-fifths
25 percent must be deposited into the Puget Sound recovery account to be
26 used as required under section 1706 of this act, two and two-fifths
27 percent must be deposited in the water quality action account to be
28 used as required under section 1707 of this act, five percent must be
29 deposited into the motor vehicle account to be used as required under
30 section 1705 of this act, and the remainder must be deposited into the
31 general fund.

32 (iii) For taxes collected between July 1, 2013, and June 30, 2015,
33 forty-five percent must be deposited into the storm water account
34 created in section 1704 of this act, one and four-fifths percent must
35 be deposited in the state oil spill prevention account, four and one-
36 half percent must be deposited into the Puget Sound recovery account to
37 be used as required under section 1706 of this act, four and two-fifths
38 percent must be deposited in the water quality action account to be

1 used as required under section 1707 of this act, ten percent must be
2 deposited into the motor vehicle account to be used as required under
3 section 1705 of this act, and the remainder must be deposited into the
4 general fund.

5 (iv) For taxes collected on or after July 1, 2015, one and four-
6 fifths percent must be deposited in the state oil spill prevention
7 account, nine and one-half percent must be deposited into the Puget
8 Sound recovery account to be used as required under section 1706 of
9 this act, nine and one-half percent must be deposited in the water
10 quality action account to be used as required under section 1707 of
11 this act, ten percent must be deposited into the motor vehicle account
12 to be used as required under section 1705 of this act, and the
13 remainder must be deposited into the storm water account created in
14 section 1704 of this act.

15 (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.
16 The tax due dates, reporting periods, and return requirements
17 applicable to chapter 82.04 RCW apply equally to the tax imposed in
18 this chapter.

19 NEW SECTION. Sec. 1704. A new section is added to chapter 90.48
20 RCW to read as follows:

21 (1) The storm water account is created in the state treasury.
22 Receipts from the tax imposed under RCW 82.21.030(1)(b) must be
23 deposited in the account as set forth in RCW 82.21.030. Moneys in the
24 account are allocated to the department and may be spent only after
25 appropriation. Expenditures from the account must be used on
26 activities or projects that mitigate or prevent storm water pollution.

27 (2) After deducting the department's administrative costs of no
28 more than four percent of the appropriations included in the omnibus
29 operating and capital appropriations acts associated with administering
30 a competitive grant process, moneys must be distributed annually based
31 on the following allocation:

32 (a) Fifty percent of the remaining moneys must be allocated through
33 the grant process to local governments covered by national pollutant
34 discharge elimination system municipal phase I or phase II permits to
35 fund local government projects or activities that mitigate or prevent
36 contamination of storm water or the recontamination of receiving waters
37 previously remediated under federal or state-approved activities. To

1 be eligible, local governments must provide fifty percent of project or
2 activity costs from other nonstate fund sources. Of the allocation in
3 this subsection, seventy-five thousand dollars must be provided to each
4 jurisdiction that is subject to the national pollutant discharge
5 elimination system phase I or phase II requirements.

6 (b) Forty percent of the remaining moneys must be allocated through
7 the grant process to local governments for retrofit projects that
8 address contamination of storm water, or projects that directly reduce
9 toxic diesel emissions that result in air deposition of storm water
10 pollutants. The moneys for retrofit projects must be prioritized for
11 projects that utilize low-impact development retrofit strategies, but
12 moneys may be awarded for other retrofit projects if the site does not
13 lend itself to low-impact development techniques or other retrofit
14 techniques that are shown to be more effective in terms of addressing
15 water quality problems associated with the site.

16 (c) Ten percent of the remaining moneys must be allocated through
17 either existing storm water grant programs or the grant process to
18 projects under (a) or (b) of this subsection and to the highest
19 priority projects based upon ecological and water quality benefits
20 determined by the department. For projects qualifying under this
21 subsection, moneys may be allocated to meet the matching requirements
22 under (a) of this subsection to jurisdictions that demonstrate economic
23 hardship in meeting the matching requirement.

24 (3) In consultation with stakeholders, the department must develop
25 criteria for administering the program and ranking projects for funding
26 based on water quality benefits. In developing criteria applicable to
27 projects in the Puget Sound basin, the department must consult with the
28 Puget Sound partnership. Consistent with RCW 90.71.340, when making
29 grants under this section that contribute to Puget Sound protection and
30 recovery, the department must consult with the Puget Sound partnership
31 to ensure that grants are for projects and activities that are
32 consistent with the prioritization of the 2020 action agenda. All
33 activities or capital projects approved for funding must demonstrate
34 the potential to achieve clear ecological or water quality benefits.
35 The department must endeavor to distribute the moneys within each
36 geographic region of the state in proportion to the severity of impacts
37 to waterways from storm water pollution.

1 (4) The department must initiate the grant application process by
2 July 1, 2010.

3 (5) By December 1, 2013, and every two years thereafter, the
4 department must report to the governor and the appropriate committees
5 of the legislature on the progress of the program and the suitability
6 of the percentage allocations specified in subsection (2)(a) through
7 (c) of this section.

8 (6) The definitions in this section apply throughout this section
9 unless the context clearly requires otherwise.

10 (a) "Department" means the department of ecology.

11 (b) "Low-impact development" means a storm water management and
12 land use strategy applied, where feasible, at the parcel and
13 subdivision, or drainage area, level that emphasizes conservation and
14 use of on-site natural features integrated with engineered, small-scale
15 hydrologic controls to more closely mimic predevelopment hydrologic
16 functions.

17 (c) "Retrofit" means the renovation of existing development to
18 improve or eliminate storm water problems associated with the site or
19 drainage area.

20 NEW SECTION. **Sec. 1705.** A new section is added to chapter 46.68
21 RCW to read as follows:

22 (1) The department of transportation must use taxes deposited in
23 the motor vehicle account under RCW 82.21.030(2)(b) to fund activities
24 or projects that address contamination of storm water related to
25 transportation infrastructure through the implementation of the
26 department of transportation's national pollutant discharge elimination
27 system programs permitted under chapter 90.48 RCW. Activities and
28 projects that may be supported with these funds include, but are not
29 limited to: Construction, operation, inspection, monitoring, and
30 maintenance of storm water facilities; purchase, operation, and
31 maintenance of vector trucks and vector decant facilities; purchase,
32 maintenance, and operation of storm water management inventory,
33 mapping, and information systems; storm water pollution prevention plan
34 development and implementation; and storm water training. For the
35 purposes of this section, "storm water facilities" includes, but is not
36 limited to, ponds, biofiltration swales, storm water treatment tanks,

1 detention vaults, oil water separators, dry wells, catch basins, and
2 filters.

3 (2) The taxes deposited in the motor vehicle account under RCW
4 82.21.030(2)(b) may not be used for construction of storm water
5 facilities associated with new road construction. For purposes of this
6 section, "new roads" includes roads that are new alignments. Roads
7 that add to or replace an existing roadway are not "new roads."

8 (3) Beginning January 1, 2011, the department of transportation
9 must deliver a biennial report describing the use of the funds to the
10 governor and the appropriate legislative committees.

11 NEW SECTION. **Sec. 1706.** A new section is added to chapter 90.71
12 RCW to read as follows:

13 Consistent with RCW 90.71.340, the Puget Sound partnership must use
14 taxes deposited in the Puget Sound recovery account as provided under
15 RCW 82.21.030(2)(b) to fund activities or capital projects that are
16 consistent with the prioritization of the 2020 action agenda.

17 NEW SECTION. **Sec. 1707.** A new section is added to chapter 90.48
18 RCW to read as follows:

19 (1) The water quality action account is created in the state
20 treasury. Receipts from the tax imposed under RCW 82.21.030(1)(b) must
21 be deposited in the account as provided in RCW 82.21.030. Moneys in
22 the water quality action account are allocated to the department of
23 ecology and may be spent only after appropriation. The account may not
24 be used to fund specific state activities that are required to be
25 funded through fees paid by state and federal water quality permittees.

26 (2) Moneys in the water quality action account may be used only for
27 state responsibilities to carry out the purposes of this chapter to:
28 Prevent pollution of streams, rivers, aquifers, marine receiving
29 waters, and drinking water; prevent beach and shellfish bed closures
30 due to polluted surface runoff; and protect fish and wildlife habitat
31 from polluted surface runoff. More specifically, moneys may be used
32 for, but not limited to, the following purposes:

33 (a) Creation and maintenance of a storm water technology center to
34 assist businesses and governmental entities by developing resources for
35 testing, monitoring, adopting, and implementing new clean water
36 practices and technologies;

- 1 (b) Improved storm water research, data management, and monitoring;
2 (c) Development of clean water guidance and best management
3 practices for nonpermitted surface runoff activities; and
4 (d) Improved source control actions, such as collaboration with
5 local governments to provide local source control inspectors.

6 **PART XVIII**

7 **Modifying the Sales Tax Exemption for**
8 **Certain Fertilizers, Sprays, and Washes**

9 **Sec. 1801.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
10 are each reenacted and amended to read as follows:

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

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

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

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

34 (d) Purchases for the purpose of consuming the property purchased
35 in producing ferrosilicon which is subsequently used in producing

1 magnesium for sale, if the primary purpose of such property is to
2 create a chemical reaction directly through contact with an ingredient
3 of ferrosilicon; or

4 (e) Purchases for the purpose of providing the property to
5 consumers as part of competitive telephone service, as defined in RCW
6 82.04.065. The term (~~shall~~) includes every sale of tangible personal
7 property which is used or consumed or to be used or consumed in the
8 performance of any activity classified as a "sale at retail" or "retail
9 sale" even though such property is resold or utilized as provided in
10 (a), (b), (c), (d), or (e) of this subsection following such use. The
11 term also means every sale of tangible personal property to persons
12 engaged in any business which is taxable under RCW 82.04.280 (2) and
13 (7), 82.04.290, and 82.04.2908; or

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

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

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

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

37 (c) The constructing, repairing, or improving of any structure
38 upon, above, or under any real property owned by an owner who conveys

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

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

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

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

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

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

1 subsection (~~shall~~) may be construed to modify subsection (1) of this
2 section and nothing contained in subsection (1) of this section may be
3 construed to modify this subsection.

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

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

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

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

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

20 (f) Service charges associated with tickets to professional
21 sporting events; and

22 (g) The following personal services: Physical fitness services,
23 tanning salon services, tattoo parlor services, steam bath services,
24 turkish bath services, escort services, and dating services.

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

26 (i) The renting or leasing of tangible personal property to
27 consumers; and

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

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

37 (5) The term also includes the providing of "competitive telephone

1 service," "telecommunications service," or "ancillary services," as
2 those terms are defined in RCW 82.04.065, to consumers.

3 (6)(a) The term also includes the sale of prewritten computer
4 software other than a sale to a person who presents a seller's permit
5 or uniform exemption certificate in conformity with RCW 82.04.470,
6 regardless of the method of delivery to the end user. For purposes of
7 this subsection (6)(a), the sale of prewritten computer software
8 includes the sale of or charge made for a key or an enabling or
9 activation code, where the key or code is required to activate
10 prewritten computer software and put the software into use. There is
11 no separate sale of the key or code from the prewritten computer
12 software, regardless of how the sale may be characterized by the vendor
13 or by the purchaser.

14 The term "retail sale" does not include the sale of or charge made
15 for:

16 (i) Custom software; or

17 (ii) The customization of prewritten computer software.

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

23 (7) The term also includes the sale of or charge made for an
24 extended warranty to a consumer. For purposes of this subsection,
25 "extended warranty" means an agreement for a specified duration to
26 perform the replacement or repair of tangible personal property at no
27 additional charge or a reduced charge for tangible personal property,
28 labor, or both, or to provide indemnification for the replacement or
29 repair of tangible personal property, based on the occurrence of
30 specified events. The term "extended warranty" does not include an
31 agreement, otherwise meeting the definition of extended warranty in
32 this subsection, if no separate charge is made for the agreement and
33 the value of the agreement is included in the sales price of the
34 tangible personal property covered by the agreement. For purposes of
35 this subsection, "sales price" has the same meaning as in RCW
36 82.08.010.

37 (8)(a) The term also includes the following sales to consumers of
38 digital goods, digital codes, and digital automated services:

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

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

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

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

9 (b) A retail sale of digital goods, digital codes, or digital
10 automated services under this subsection (8) includes any services
11 provided by the seller exclusively in connection with the digital
12 goods, digital codes, or digital automated services, whether or not a
13 separate charge is made for such services.

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

20 (9) The term does not include the sale of or charge made for labor
21 and services rendered in respect to the building, repairing, or
22 improving of any street, place, road, highway, easement, right-of-way,
23 mass public transportation terminal or parking facility, bridge,
24 tunnel, or trestle which is owned by a municipal corporation or
25 political subdivision of the state or by the United States and which is
26 used or to be used primarily for foot or vehicular traffic including
27 mass transportation vehicles of any kind.

28 (10) The term also does not include sales of:

29 (a) Chemical sprays or washes ((to persons for the purpose of
30 postharvest treatment of fruit for the prevention of scald, fungus,
31 mold, or decay, nor does it include sales of)), fertilizer, and spray
32 materials as provided in section 1803 of this act; and

33 (b) Feed, seed, seedlings, ((fertilizer,)) and agents for enhanced
34 pollination including insects such as bees((, and spray materials)) to:

35 ((a)) (i) Persons who participate in the federal conservation
36 reserve program, the environmental quality incentives program, the
37 wetlands reserve program, ((and)) or the wildlife habitat incentives

1 program, or their successors administered by the United States
2 department of agriculture;

3 ~~((b))~~ (ii) Farmers for the purpose of producing for sale any
4 agricultural product; and

5 ~~((e))~~ (iii) Farmers acting under cooperative habitat development
6 or access contracts with an organization exempt from federal income tax
7 under ~~((Title))~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal
8 revenue code or the Washington state department of fish and wildlife to
9 produce or improve wildlife habitat on land that the farmer owns or
10 leases.

11 (11) The term does not include the sale of or charge made for labor
12 and services rendered in respect to the constructing, repairing,
13 decorating, or improving of new or existing buildings or other
14 structures under, upon, or above real property of or for the United
15 States, any instrumentality thereof, or a county or city housing
16 authority created pursuant to chapter 35.82 RCW, including the
17 installing, or attaching of any article of tangible personal property
18 therein or thereto, whether or not such personal property becomes a
19 part of the realty by virtue of installation. Nor does the term
20 include the sale of services or charges made for the clearing of land
21 and the moving of earth of or for the United States, any
22 instrumentality thereof, or a county or city housing authority. Nor
23 does the term include the sale of services or charges made for cleaning
24 up for the United States, or its instrumentalities, radioactive waste
25 and other by-products of weapons production and nuclear research and
26 development.

27 (12) The term does not include the sale of or charge made for
28 labor, services, or tangible personal property pursuant to agreements
29 providing maintenance services for bus, rail, or rail fixed guideway
30 equipment when a regional transit authority is the recipient of the
31 labor, services, or tangible personal property, and a transit agency,
32 as defined in RCW 81.104.015, performs the labor or services.

33 **Sec. 1802.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
34 are each reenacted and amended to read as follows:

35 (1) "Sale at retail" or "retail sale" means every sale of tangible
36 personal property (including articles produced, fabricated, or
37 imprinted) to all persons irrespective of the nature of their business

1 and including, among others, without limiting the scope hereof, persons
2 who install, repair, clean, alter, improve, construct, or decorate real
3 or personal property of or for consumers other than a sale to a person
4 who presents a seller's permit or uniform exemption certificate in
5 conformity with RCW 82.04.470 and who:

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

10 (b) Installs, repairs, cleans, alters, imprints, improves,
11 constructs, or decorates real or personal property of or for consumers,
12 if such tangible personal property becomes an ingredient or component
13 of such real or personal property without intervening use by such
14 person; or

15 (c) Purchases for the purpose of consuming the property purchased
16 in producing for sale a new article of tangible personal property or
17 substance, of which such property becomes an ingredient or component or
18 is a chemical used in processing, when the primary purpose of such
19 chemical is to create a chemical reaction directly through contact with
20 an ingredient of a new article being produced for sale; or

21 (d) Purchases for the purpose of consuming the property purchased
22 in producing ferrosilicon which is subsequently used in producing
23 magnesium for sale, if the primary purpose of such property is to
24 create a chemical reaction directly through contact with an ingredient
25 of ferrosilicon; or

26 (e) Purchases for the purpose of providing the property to
27 consumers as part of competitive telephone service, as defined in RCW
28 82.04.065. The term shall include every sale of tangible personal
29 property which is used or consumed or to be used or consumed in the
30 performance of any activity classified as a "sale at retail" or "retail
31 sale" even though such property is resold or utilized as provided in
32 (a), (b), (c), (d), or (e) of this subsection following such use. The
33 term also means every sale of tangible personal property to persons
34 engaged in any business which is taxable under RCW 82.04.280 (2) and
35 (7), 82.04.290, and 82.04.2908; or

36 (f) Purchases for the purpose of satisfying the person's
37 obligations under an extended warranty as defined in subsection (7) of

1 this section, if such tangible personal property replaces or becomes an
2 ingredient or component of property covered by the extended warranty
3 without intervening use by such person.

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

7 (a) The installing, repairing, cleaning, altering, imprinting, or
8 improving of tangible personal property of or for consumers, including
9 charges made for the mere use of facilities in respect thereto, but
10 excluding charges made for the use of self-service laundry facilities,
11 and also excluding sales of laundry service to nonprofit health care
12 facilities, and excluding services rendered in respect to live animals,
13 birds and insects;

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

22 (c) The constructing, repairing, or improving of any structure
23 upon, above, or under any real property owned by an owner who conveys
24 the property by title, possession, or any other means to the person
25 performing such construction, repair, or improvement for the purpose of
26 performing such construction, repair, or improvement and the property
27 is then reconveyed by title, possession, or any other means to the
28 original owner;

29 (d) The cleaning, fumigating, razing, or moving of existing
30 buildings or structures, but may not include the charge made for
31 janitorial services; and for purposes of this section the term
32 "janitorial services" shall mean those cleaning and caretaking services
33 ordinarily performed by commercial janitor service businesses
34 including, but not limited to, wall and window washing, floor cleaning
35 and waxing, and the cleaning in place of rugs, drapes and upholstery.
36 The term "janitorial services" does not include painting, papering,
37 repairing, furnace or septic tank cleaning, snow removal or
38 sandblasting;

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

4 (f) The furnishing of lodging and all other services by a hotel,
5 rooming house, tourist court, motel, trailer camp, and the granting of
6 any similar license to use real property, as distinguished from the
7 renting or leasing of real property, and it is presumed that the
8 occupancy of real property for a continuous period of one month or more
9 constitutes a rental or lease of real property and not a mere license
10 to use or enjoy the same. For the purposes of this subsection, it
11 (~~shall be~~) is presumed that the sale of and charge made for the
12 furnishing of lodging for a continuous period of one month or more to
13 a person is a rental or lease of real property and not a mere license
14 to enjoy the same;

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

17 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
18 this subsection when such sales or charges are for property, labor and
19 services which are used or consumed in whole or in part by such persons
20 in the performance of any activity defined as a "sale at retail" or
21 "retail sale" even though such property, labor and services may be
22 resold after such use or consumption. Nothing contained in this
23 subsection (~~shall~~) may be construed to modify subsection (1) of this
24 section and nothing contained in subsection (1) of this section may be
25 construed to modify this subsection.

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

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

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

35 (c) Credit bureau services;

36 (d) Automobile parking and storage garage services;

37 (e) Landscape maintenance and horticultural services but excluding

38 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional
5 sporting events; and

6 (g) The following personal services: Physical fitness services,
7 tanning salon services, tattoo parlor services, steam bath services,
8 turkish bath services, escort services, and dating services.

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

10 (i) The renting or leasing of tangible personal property to
11 consumers; and

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

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

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

24 (6)(a) The term also includes the sale of prewritten computer
25 software other than a sale to a person who presents a seller's permit
26 or uniform exemption certificate in conformity with RCW 82.04.470,
27 regardless of the method of delivery to the end user. For purposes of
28 this subsection (6)(a), the sale of prewritten computer software
29 includes the sale of or charge made for a key or an enabling or
30 activation code, where the key or code is required to activate
31 prewritten computer software and put the software into use. There is
32 no separate sale of the key or code from the prewritten computer
33 software, regardless of how the sale may be characterized by the vendor
34 or by the purchaser.

35 The term "retail sale" does not include the sale of or charge made
36 for:

37 (i) Custom software; or

38 (ii) The customization of prewritten computer software.

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

6 (7) The term also includes the sale of or charge made for an
7 extended warranty to a consumer. For purposes of this subsection,
8 "extended warranty" means an agreement for a specified duration to
9 perform the replacement or repair of tangible personal property at no
10 additional charge or a reduced charge for tangible personal property,
11 labor, or both, or to provide indemnification for the replacement or
12 repair of tangible personal property, based on the occurrence of
13 specified events. The term "extended warranty" does not include an
14 agreement, otherwise meeting the definition of extended warranty in
15 this subsection, if no separate charge is made for the agreement and
16 the value of the agreement is included in the sales price of the
17 tangible personal property covered by the agreement. For purposes of
18 this subsection, "sales price" has the same meaning as in RCW
19 82.08.010.

20 (8)(a) The term also includes the following sales to consumers of
21 digital goods, digital codes, and digital automated services:

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

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

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

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

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

35 (c) For purposes of this subsection, "permanent" means perpetual or
36 for an indefinite or unspecified length of time. A right of permanent
37 use is presumed to have been granted unless the agreement between the

1 seller and the purchaser specifies or the circumstances surrounding the
2 transaction suggest or indicate that the right to use terminates on the
3 occurrence of a condition subsequent.

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

12 (10) The term also does not include sales of:

13 (a) Chemical sprays or washes ((to persons for the purpose of
14 postharvest treatment of fruit for the prevention of scald, fungus,
15 mold, or decay, nor does it include sales of)), fertilizer, and spray
16 materials as provided in section 1804 of this act; and

17 (b) Feed, seed, seedlings, ((fertilizer,)) and agents for enhanced
18 pollination including insects such as bees(, and spray materials)) to:

19 ((a)) (i) Persons who participate in the federal conservation
20 reserve program, the environmental quality incentives program, the
21 wetlands reserve program, ((and)) or the wildlife habitat incentives
22 program, or their successors administered by the United States
23 department of agriculture;

24 ((b)) (ii) Farmers for the purpose of producing for sale any
25 agricultural product; and

26 ((c)) (iii) Farmers acting under cooperative habitat development
27 or access contracts with an organization exempt from federal income tax
28 under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal
29 revenue code or the Washington state department of fish and wildlife to
30 produce or improve wildlife habitat on land that the farmer owns or
31 leases.

32 (11) The term does not include the sale of or charge made for labor
33 and services rendered in respect to the constructing, repairing,
34 decorating, or improving of new or existing buildings or other
35 structures under, upon, or above real property of or for the United
36 States, any instrumentality thereof, or a county or city housing
37 authority created pursuant to chapter 35.82 RCW, including the
38 installing, or attaching of any article of tangible personal property

1 therein or thereto, whether or not such personal property becomes a
2 part of the realty by virtue of installation. Nor does the term
3 include the sale of services or charges made for the clearing of land
4 and the moving of earth of or for the United States, any
5 instrumentality thereof, or a county or city housing authority. Nor
6 does the term include the sale of services or charges made for cleaning
7 up for the United States, or its instrumentalities, radioactive waste
8 and other by-products of weapons production and nuclear research and
9 development.

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

16 NEW SECTION. **Sec. 1803.** A new section is added to chapter 82.04
17 RCW to read as follows:

18 (1) As provided by RCW 82.04.050(10), the term "sale at retail" or
19 "retail sale" does not include sales of:

20 (a) Registered chemical sprays or washes to persons for the purpose
21 of postharvest treatment of fruit for the prevention of scald, fungus,
22 mold, or decay; and

23 (b) Registered fertilizer and spray materials to:

24 (i) Persons who participate in the federal conservation reserve
25 program, the environmental quality incentives program, the wetlands
26 reserve program, or the wildlife habitat incentives program, or their
27 successors administered by the United States department of agriculture;

28 (ii) Farmers for the purpose of producing for sale any agricultural
29 product; and

30 (iii) Farmers acting under cooperative habitat development or
31 access contracts with an organization exempt from federal income tax
32 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
33 the Washington state department of fish and wildlife to produce or
34 improve wildlife habitat on land that the farmer owns or leases.

35 (2) The definitions in this subsection apply to this section:

36 (a) "Brand name materials list" means a list established by the

1 state department of agriculture of materials allowed for use in organic
2 production, processing, or handling under standards of the national
3 organic program.

4 (b) "National organic program" means a program authorized by the
5 organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et
6 seq., and the rules adopted thereunder for agricultural products
7 marketed and labeled using the term "organic" or a derivative of the
8 term "organic."

9 (c) "Registered" means registration by the state department of
10 agriculture and inclusion in the brand name materials list as provided
11 under section 9, chapter . . . ([House Bill No. 2460] [Senate Bill No.
12 6228]), Laws of 2010.

13 NEW SECTION. **Sec. 1804.** A new section is added to chapter 82.04
14 RCW to read as follows:

15 (1) As provided by RCW 82.04.050(10), the term "sale at retail" or
16 "retail sale" does not include sales of:

17 (a) Listed chemical sprays or washes to persons for the purpose of
18 postharvest treatment of fruit for the prevention of scald, fungus,
19 mold, or decay; and

20 (b) Listed fertilizer and spray materials to:

21 (i) Persons who participate in the federal conservation reserve
22 program, the environmental quality incentives program, the wetlands
23 reserve program, or the wildlife habitat incentives program, or their
24 successors administered by the United States department of agriculture;

25 (ii) Farmers for the purpose of producing for sale any agricultural
26 product; and

27 (iii) Farmers acting under cooperative habitat development or
28 access contracts with an organization exempt from federal income tax
29 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
30 the Washington state department of fish and wildlife to produce or
31 improve wildlife habitat on land that the farmer owns or leases.

32 (2) The definitions in this subsection apply to this section:

33 (a) "Listed" means inclusion in the OMRI products list published by
34 the organic materials review institute as of July 1, 2010, or such
35 subsequent date as the department may provide by rule, consistent with
36 the purposes of this section.

1 (b) "National organic program" means a program authorized by the
2 organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et
3 seq., and the rules adopted thereunder for agricultural products
4 marketed and labeled using the term "organic" or a derivative of the
5 term "organic."

6 (c) "OMRI products list" means a directory of products that the
7 organic materials review institute has reviewed and determined are
8 allowed for use in organic production, processing, or handling under
9 standards of the national organic program.

10 (d) "Organic materials review institute" means an organization
11 exempt from tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal
12 revenue code that provides a third-party review of materials that are
13 allowed for use in organic production, processing, or handling under
14 standards of the national organic program.

15 **PART XIX**

16 **Repealing the Sales Tax Exemption for Coal Used at Coal-Fired Thermal**
17 **Electric Generation Facilities**

18 NEW SECTION. **Sec. 1901.** The following acts or parts of acts are
19 each repealed:

20 (1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
21 electric generation facility--Application--Demonstration of progress in
22 air pollution control--Notice of emissions violations--Reapplication--
23 Payments on cessation of operation) and 1997 c 368 s 4; and

24 (2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
25 electric generation facility--Application--Demonstration of progress in
26 air pollution control--Notice of emissions violations--Reapplication--
27 Payments on cessation of operation) and 1997 c 368 s 6.

28 **PART XX**

29 **Imposing a One Cent per Ounce Tax on Carbonated Beverages**

30 **Sec. 2001.** RCW 82.64.010 and 1994 sp.s. c 7 s 905 are each amended
31 to read as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

1 (1) "Carbonated beverage" has its ordinary meaning and includes any
2 nonalcoholic liquid intended for human consumption which contains
3 carbon dioxide, whether carbonation is obtained by natural or
4 artificial means.

5 (2) "Previously taxed carbonated beverage or syrup" means a
6 carbonated beverage or syrup in respect to which a tax has been paid
7 under this chapter. A "previously taxed carbonated beverage" includes
8 carbonated beverages in respect to which a tax has been paid under this
9 chapter on the carbonated beverage or on the syrup in the carbonated
10 beverage.

11 (3) "Syrup" means a concentrated liquid which is added to
12 carbonated water to produce a carbonated beverage.

13 (4) Except for terms defined in this section, the definitions in
14 chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

15 **Sec. 2002.** RCW 82.64.020 and 2009 c 479 s 72 are each amended to
16 read as follows:

17 (1) A tax is imposed on each sale at wholesale of a carbonated
18 beverage or syrup in this state. The rate of the tax (~~(shall be)~~) is
19 equal to 0.4167 cents per ounce for carbonated beverages and one dollar
20 per gallon. Fractional amounts (~~(shall)~~) must be taxed proportionally.

21 (2) A tax is imposed on each sale at retail of a carbonated
22 beverage or syrup in this state. The rate of the tax (~~(shall be)~~) is
23 equal to the rate imposed under subsection (1) of this section.

24 (3)(a) Moneys collected under this chapter (~~(shall)~~) on the sale of
25 syrup must be deposited in the state general fund.

26 (b) Moneys collected under this chapter on the sale of carbonated
27 beverages must be deposited in the general fund.

28 (4) Chapter 82.32 RCW applies to the taxes imposed in this chapter.
29 The tax due dates, reporting periods, and return requirements
30 applicable to chapter 82.04 RCW apply equally to the taxes imposed in
31 this chapter.

32 **Sec. 2003.** RCW 82.64.030 and 1994 sp.s. c 7 s 907 are each amended
33 to read as follows:

34 The following are exempt from the taxes imposed in this chapter:

35 (1) Any successive sale of a previously taxed carbonated beverage
36 or syrup.

1 (2) Any carbonated beverage or syrup that is transferred to a point
2 outside the state for use outside the state. The department (~~shall~~)
3 must provide by rule appropriate procedures and exemption certificates
4 for the administration of this exemption.

5 (3) Any sale at wholesale of a trademarked carbonated beverage or
6 syrup by any person to a person commonly known as a bottler who is
7 appointed by the owner of the trademark to manufacture, distribute, and
8 sell such trademarked carbonated beverage or syrup within a specified
9 geographic territory.

10 (~~(4) Any sale of syrup in respect to which a tax on the privilege~~
11 ~~of possession was paid under this chapter before June 1, 1991.~~)

12 **Sec. 2004.** RCW 82.64.040 and 1994 sp.s. c 7 s 908 are each amended
13 to read as follows:

14 (1) Credit (~~shall be~~) is allowed, in accordance with rules of the
15 department, against the taxes imposed in this chapter for any
16 carbonated beverage or syrup tax paid to another state with respect to
17 the same carbonated beverage or syrup. The amount of the credit
18 (~~shall~~) may not exceed the tax liability arising under this chapter
19 with respect to that carbonated beverage or syrup.

20 (2) For the purpose of this section:

21 (a) "Carbonated beverage or syrup tax" means a tax:

22 (i) That is imposed on the sale at wholesale of carbonated
23 beverages or syrup and that is not generally imposed on other
24 activities or privileges; and

25 (ii) That is measured by the volume of the carbonated beverage or
26 syrup.

27 (b) "State" means (i) a state of the United States other than
28 Washington, or any political subdivision of such other state, (ii) the
29 District of Columbia, and (iii) any foreign country or political
30 subdivision thereof.

31 PART XXI

32 Eliminating Tax Preferences for Bullion

33 NEW SECTION. **Sec. 2101.** RCW 82.04.062 ("Sale at wholesale," "sale
34 at retail" excludes sale of precious metal bullion and monetized
35 bullion--Computation of tax) and 1985 c 471 s 5 are each repealed.

1 NEW SECTION. Sec. 2102. The repeal in section 2101 of this act
2 does not affect any existing right acquired or liability or obligation
3 incurred under the statute repealed or under any rule or order adopted
4 under that statute nor does it affect any proceeding instituted under
5 the repealed statute.

6 NEW SECTION. Sec. 2103. A new section is added to chapter 82.08
7 RCW to read as follows:

8 (1) The tax levied by RCW 82.08.020 does not apply to the sale of
9 precious metal bullion or monetized bullion.

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

11 (a) "Precious metal bullion" means any precious metal that has been
12 put through a process of smelting or refining, including, but not
13 limited to, gold, silver, platinum, rhodium, and palladium, and which
14 is in such state or condition that its value depends upon its contents
15 and not upon its form.

16 (b) "Monetized bullion" means coins or other forms of money
17 manufactured from gold, silver, or other metals and used as a medium of
18 exchange under the laws of this state, the United States, or any
19 foreign nation, but does not include coins or money sold to be
20 manufactured into jewelry or works of art.

21 NEW SECTION. Sec. 2104. A new section is added to chapter 82.12
22 RCW to read as follows:

23 (1) The provisions of this chapter do not apply with respect to the
24 use of precious metal bullion or monetized bullion.

25 (2) The definitions in section 2103 of this act apply to this
26 section.

27 **PART XXII**

28 **Miscellaneous Provisions**

29 NEW SECTION. Sec. 2201. (1) Except as provided in subsection (2)
30 of this section, if any provision of sections 101 through 108 of this
31 act or its application to any person or circumstance is held invalid,
32 the remainder of sections 101 through 108 of this act or the
33 application of the provision to other persons or circumstances is not
34 affected.

1 (2) If a court of competent jurisdiction, in a final judgment not
2 subject to appeal, adjudges any provision of section 104(1)(c) of this
3 act unconstitutional or otherwise invalid, sections 101 through 108 of
4 this act are null and void in their entirety.

5 NEW SECTION. **Sec. 2202.** Sections 101 through 108 of this act
6 apply with respect to gross income of the business, as defined in RCW
7 82.04.080, including gross income from royalties as defined in RCW
8 82.04.2907, generated on and after July 1, 2010. For purposes of
9 calculating the thresholds in section 104(1)(c) of this act for the
10 2010 tax year, property, payroll, and receipts are based on the entire
11 2010 tax year.

12 NEW SECTION. **Sec. 2203.** Sections 201 through 213 of this act must
13 be construed liberally to effectuate the legislature's intent to ensure
14 that all businesses and individuals pay their fair share of taxes.

15 NEW SECTION. **Sec. 2204.** (1) Except as provided in subsection (2)
16 of this section, section 201 of this act applies to tax periods
17 beginning January 1, 2006.

18 (2) Section 201 of this act does not apply to any tax periods
19 ending before July 1, 2010, that were included in a completed field
20 audit conducted by the department.

21 NEW SECTION. **Sec. 2205.** Sections 502 and 802 of this act apply
22 both retroactively and prospectively.

23 NEW SECTION. **Sec. 2206.** In accordance with Article VIII, section
24 5 of the state Constitution, sections 802 and 2205 of this act do not
25 authorize refunds of business and occupation tax validly collected
26 before July 1, 2010, on amounts received by an individual from a
27 corporation as compensation for serving as a member of that
28 corporation's board of directors.

29 NEW SECTION. **Sec. 2207.** Section 502 of this act does not affect
30 any final judgments, not subject to appeal, entered by a court of
31 competent jurisdiction before the effective date of this section.

1 NEW SECTION. **Sec. 2208.** Sections 1101 and 1102 of this act apply
2 to transfers or conveyances as described in RCW 82.45.010(3)(i)
3 occurring on and after April 1, 2010.

4 NEW SECTION. **Sec. 2209.** Section 1601 of this act applies only
5 with respect to tax liability incurred under chapter 82.24 RCW on or
6 after July 1, 2010, for the sale, use, consumption, handling,
7 possession, or distribution of cigarettes.

8 NEW SECTION. **Sec. 2210.** Section 1604(1) (a), (b), and (d) of this
9 act applies only with respect to tax liability incurred under chapter
10 82.24 RCW on or after July 1, 2010, for the sale, handling, or
11 distribution of cigars, little cigars, and other tobacco products.

12 NEW SECTION. **Sec. 2211.** Section 1604(1)(c), chapter . . ., Laws
13 of 2010 (this act) applies only with respect to tax liability incurred
14 under chapter 82.24 RCW on or after October 1, 2010, for the sale,
15 handling, or distribution of moist snuff.

16 NEW SECTION. **Sec. 2212.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 2213.** Sections 501, 502, and 2205 of this act
21 are necessary for the immediate preservation of the public peace,
22 health, or safety, or support of the state government and its existing
23 public institutions, and take effect immediately.

24 NEW SECTION. **Sec. 2214.** Except for sections 501, 502, 606, 1701
25 through 1707, and 2205 of this act, this act is necessary for the
26 immediate preservation of the public peace, health, or safety, or
27 support of the state government and its existing public institutions,
28 and takes effect April 1, 2010.

29 NEW SECTION. **Sec. 2215.** Sections 1701 through 1707 of this act
30 are necessary for the immediate preservation of the public peace,

1 health, or safety, or support of the state government and its existing
2 public institutions, and take effect May 1, 2010.

3 NEW SECTION. **Sec. 2216.** Section 605 of this act expires July 1,
4 2011.

5 NEW SECTION. **Sec. 2217.** Section 606 of this act takes effect July
6 1, 2011.

7 NEW SECTION. **Sec. 2218.** Sections 1802 and 1804 of this act take
8 effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
9 Bill No. 6228]), Laws of 2010 is not enacted as of July 1, 2010.

10 NEW SECTION. **Sec. 2219.** Sections 1801 and 1803 of this act take
11 effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
12 Bill No. 6228]), Laws of 2010 is enacted as of July 1, 2010.

--- END ---