

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5167

Chapter 174, Laws of 2011

62nd Legislature
2011 Regular Session

TAXES--TECHNICAL CHANGES--CAR RENTAL TAXES

EFFECTIVE DATE: 07/22/11 - Except section 206, which becomes effective 07/01/12.

Passed by the Senate March 23, 2011
YEAS 46 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House April 11, 2011
YEAS 95 NAYS 1

FRANK CHOPP

Speaker of the House of Representatives

Approved April 27, 2011, 2:06 p.m.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5167** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 27, 2011

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5167

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

**By Senate Ways & Means (originally sponsored by Senators Schoesler,
Murray, Honeyford, Pridemore, Kilmer, and Tom)**

READ FIRST TIME 02/25/11.

1 AN ACT Relating to tax statute clarifications and technical
2 corrections, including for the purposes of local rental car taxes;
3 amending RCW 82.04.290, 82.04.645, 82.08.0297, 82.12.0297, 84.36.381,
4 84.36.385, 82.14.049, 35.102.150, 82.04.460, 82.08.806, 82.08.820,
5 82.08.820, 82.32.665, and 82.32.117; amending 2010 1st sp.s. c 23 s 101
6 (uncodified); reenacting and amending RCW 82.04.050 and 82.32.330;
7 reenacting RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.022, 82.12.805,
8 and 82.32.590; creating a new section; repealing RCW 82.32.115;
9 providing an effective date; and providing an expiration date.

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

PART I

MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS

13 **Sec. 101.** RCW 82.04.290 and 2008 c 81 s 6 are each amended to read
14 as follows:

15 (1) Upon every person engaging within this state in the business of
16 providing international investment management services, as to such
17 persons, the amount of tax with respect to such business shall be equal

1 to the gross income or gross proceeds of sales of the business
2 multiplied by a rate of 0.275 percent.

3 (2)(a) Upon every person engaging within this state in any business
4 activity other than or in addition to an activity taxed explicitly
5 under another section in this chapter or subsection (1) or (3) of this
6 section; as to such persons the amount of tax on account of such
7 activities shall be equal to the gross income of the business
8 multiplied by the rate of 1.5 percent.

9 (b) This subsection (2) includes, among others, and without
10 limiting the scope hereof (whether or not title to materials used in
11 the performance of such business passes to another by accession,
12 confusion or other than by outright sale), persons engaged in the
13 business of rendering any type of service which does not constitute a
14 "sale at retail" or a "sale at wholesale." The value of advertising,
15 demonstration, and promotional supplies and materials furnished to an
16 agent by his principal or supplier to be used for informational,
17 educational and promotional purposes shall not be considered a part of
18 the agent's remuneration or commission and shall not be subject to
19 taxation under this section.

20 (3)(a) Until July 1, 2024, upon every person engaging within this
21 state in the business of performing aerospace product development for
22 others, as to such persons, the amount of tax with respect to such
23 business shall be equal to the gross income of the business multiplied
24 by a rate of 0.9 percent.

25 (b) "Aerospace product development" has the meaning as provided in
26 RCW 82.04.4461.

27 **Sec. 102.** RCW 82.04.645 and 2010 1st sp.s. c 23 s 110 are each
28 amended to read as follows:

29 (1) This chapter does not apply to amounts received by a financial
30 institution from an affiliated person if the amounts are received from
31 transactions that are required to be at arm's length under sections 23A
32 or 23B of the federal reserve act as existing on June 1, 2010, or such
33 subsequent date as may be provided by the department by rule,
34 consistent with the purposes of this section. For purposes of this
35 subsection, "financial institution" has the same meaning as in RCW
36 82.04.080.

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

6 **Sec. 103.** RCW 82.08.0297 and 1998 c 79 s 18 are each amended to
7 read as follows:

8 (1) The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to
9 sales of eligible foods (~~(which)~~) that are purchased with (~~(coupons~~
10 ~~issued under the food stamp act of 1977 or food stamp or coupon~~
11 ~~benefits transferred electronically)~~) benefits under the supplemental
12 nutrition assistance program or successor program, notwithstanding
13 anything to the contrary in RCW 82.08.0293.

14 (2) When a purchase of eligible foods is made with a combination of
15 (~~(coupons issued under the food stamp act of 1977 or food stamp or~~
16 ~~coupon benefits transferred electronically)~~) benefits under the
17 supplemental nutrition assistance program or successor program and
18 cash, check, or similar payment, the cash, check, or similar payment
19 (~~(shall)~~) must be applied first to food products exempt from tax under
20 RCW 82.08.0293 whenever possible.

21 (3) As used in this section(~~(τ)~~):

22 (a) "Eligible foods" (~~(shall have the same meaning as that~~
23 ~~established under federal law for purposes of the food stamp act of~~
24 ~~1977)~~) means foods that are eligible for purchase with benefits under
25 the supplemental nutrition assistance program or successor program.

26 (b) "Supplemental nutrition assistance program" refers to a food
27 assistance program that is administered, at the federal level, by the
28 United States department of agriculture, and was formerly known as the
29 food stamp program.

30 **Sec. 104.** RCW 82.12.0297 and 1998 c 79 s 19 are each amended to
31 read as follows:

32 (1) The provisions of this chapter (~~(shall)~~) do not apply with
33 respect to the use of eligible foods (~~(which)~~) that are purchased with
34 (~~(coupons issued under the food stamp act of 1977 or food stamp or~~
35 ~~coupon benefits transferred electronically)~~) benefits under the

1 supplemental nutrition assistance program or successor program,
2 notwithstanding anything to the contrary in RCW 82.12.0293.

3 ~~((As used in this section, "eligible foods" shall have the same~~
4 ~~meaning as that established under federal law for purposes of the food~~
5 ~~stamp act of 1977.))~~ (2) The definitions in RCW 82.08.0297 apply to
6 this section.

7 **Sec. 105.** RCW 84.36.381 and 2010 c 106 s 306 are each amended to
8 read as follows:

9 A person is exempt from any legal obligation to pay all or a
10 portion of the amount of excess and regular real property taxes due and
11 payable in the year following the year in which a claim is filed, and
12 thereafter, in accordance with the following:

13 (1) The property taxes must have been imposed upon a residence
14 which was occupied by the person claiming the exemption as a principal
15 place of residence as of the time of filing. However, any person who
16 sells, transfers, or is displaced from his or her residence may
17 transfer his or her exemption status to a replacement residence, but no
18 claimant may receive an exemption on more than one residence in any
19 year. Moreover, confinement of the person to a hospital, nursing home,
20 boarding home, or adult family home does not disqualify the claim of
21 exemption if:

- 22 (a) The residence is temporarily unoccupied;
- 23 (b) The residence is occupied by a spouse or a domestic partner
24 and/or a person financially dependent on the claimant for support; or
- 25 (c) The residence is rented for the purpose of paying nursing home,
26 hospital, boarding home, or adult family home costs;

27 (2) The person claiming the exemption must have owned, at the time
28 of filing, in fee, as a life estate, or by contract purchase, the
29 residence on which the property taxes have been imposed or if the
30 person claiming the exemption lives in a cooperative housing
31 association, corporation, or partnership, such person must own a share
32 therein representing the unit or portion of the structure in which he
33 or she resides. For purposes of this subsection, a residence owned by
34 a marital community or state registered domestic partnership or owned
35 by cotenants is deemed to be owned by each spouse or each domestic
36 partner or each cotenant, and any lease for life is deemed a life
37 estate;

1 (3)(a) The person claiming the exemption must be ~~((a))~~:

2 (i) Sixty-one years of age or older on December 31st of the year in
3 which the exemption claim is filed, or must have been, at the time of
4 filing, retired from regular gainful employment by reason of
5 disability~~((τ))~~; or

6 ~~((b))~~ (ii) A veteran of the armed forces of the United States
7 ~~((with one hundred percent service connected disability as provided in
8 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005, or
9 such subsequent date as the department may provide by rule consistent
10 with the purpose of this section))~~ entitled to and receiving
11 compensation from the United States department of veterans affairs at
12 a total disability rating for a service-connected disability.

13 (b) However, any surviving spouse or surviving domestic partner of
14 a person who was receiving an exemption at the time of the person's
15 death will qualify if the surviving spouse or surviving domestic
16 partner is fifty-seven years of age or older and otherwise meets the
17 requirements of this section;

18 (4) The amount that the person is exempt from an obligation to pay
19 is calculated on the basis of combined disposable income, as defined in
20 RCW 84.36.383. If the person claiming the exemption was retired for
21 two months or more of the assessment year, the combined disposable
22 income of such person must be calculated by multiplying the average
23 monthly combined disposable income of such person during the months
24 such person was retired by twelve. If the income of the person
25 claiming exemption is reduced for two or more months of the assessment
26 year by reason of the death of the person's spouse or the person's
27 domestic partner, or when other substantial changes occur in disposable
28 income that are likely to continue for an indefinite period of time,
29 the combined disposable income of such person must be calculated by
30 multiplying the average monthly combined disposable income of such
31 person after such occurrences by twelve. If it is necessary to
32 estimate income to comply with this subsection, the assessor may
33 require confirming documentation of such income prior to May 31 of the
34 year following application;

35 (5)(a) A person who otherwise qualifies under this section and has
36 a combined disposable income of thirty-five thousand dollars or less is
37 exempt from all excess property taxes; and

1 (b)(i) A person who otherwise qualifies under this section and has
2 a combined disposable income of thirty thousand dollars or less but
3 greater than twenty-five thousand dollars is exempt from all regular
4 property taxes on the greater of fifty thousand dollars or thirty-five
5 percent of the valuation of his or her residence, but not to exceed
6 seventy thousand dollars of the valuation of his or her residence; or

7 (ii) A person who otherwise qualifies under this section and has a
8 combined disposable income of twenty-five thousand dollars or less is
9 exempt from all regular property taxes on the greater of sixty thousand
10 dollars or sixty percent of the valuation of his or her residence;

11 (6)(a) For a person who otherwise qualifies under this section and
12 has a combined disposable income of thirty-five thousand dollars or
13 less, the valuation of the residence is the assessed value of the
14 residence on the later of January 1, 1995, or January 1st of the
15 assessment year the person first qualifies under this section. If the
16 person subsequently fails to qualify under this section only for one
17 year because of high income, this same valuation must be used upon
18 requalification. If the person fails to qualify for more than one year
19 in succession because of high income or fails to qualify for any other
20 reason, the valuation upon requalification is the assessed value on
21 January 1st of the assessment year in which the person requalifies. If
22 the person transfers the exemption under this section to a different
23 residence, the valuation of the different residence is the assessed
24 value of the different residence on January 1st of the assessment year
25 in which the person transfers the exemption.

26 (b) In no event may the valuation under this subsection be greater
27 than the true and fair value of the residence on January 1st of the
28 assessment year.

29 (c) This subsection does not apply to subsequent improvements to
30 the property in the year in which the improvements are made.
31 Subsequent improvements to the property must be added to the value
32 otherwise determined under this subsection at their true and fair value
33 in the year in which they are made.

34 **Sec. 106.** RCW 84.36.385 and 2010 c 106 s 308 are each amended to
35 read as follows:

36 (1) A claim for exemption under RCW 84.36.381 as now or hereafter
37 amended, may be made and filed at any time during the year for

1 exemption from taxes payable the following year and thereafter and
2 solely upon forms as prescribed and furnished by the department of
3 revenue. However, an exemption from tax under RCW 84.36.381 continues
4 for no more than six years unless a renewal application is filed as
5 provided in subsection (3) of this section. (~~The county assessor may
6 also require, by written notice, a renewal application following an
7 amendment of the income requirements set forth in RCW 84.36.381.
8 Renewal applications must be on forms prescribed and furnished by the
9 department of revenue.~~)

10 (2) A person granted an exemption under RCW 84.36.381 must inform
11 the county assessor of any change in status affecting the person's
12 entitlement to the exemption on forms prescribed and furnished by the
13 department of revenue.

14 (3) Each person exempt from taxes under RCW 84.36.381 in 1993 and
15 thereafter, must file with the county assessor a renewal application
16 not later than December 31 of the year the assessor notifies such
17 person of the requirement to file the renewal application. Renewal
18 applications must be on forms prescribed and furnished by the
19 department of revenue.

20 (4) (~~Beginning in 1992 and in each of the three succeeding~~
21 ~~years,~~) At least once every six years, the county assessor must notify
22 (~~approximately one fourth of~~) those persons (~~exempt~~) receiving an
23 exemption from taxes under RCW 84.36.381 (~~in the current year who have~~
24 ~~not filed a renewal application within the previous four years,~~) of
25 the requirement to file a renewal application. The county assessor may
26 also require a renewal application following an amendment of the income
27 requirements set forth in RCW 84.36.381.

28 (5) If the assessor finds that the applicant does not meet the
29 qualifications as set forth in RCW 84.36.381, as now or hereafter
30 amended, the claim or exemption must be denied but such denial is
31 subject to appeal under the provisions of RCW 84.48.010 and in
32 accordance with the provisions of RCW 84.40.038. If the applicant had
33 received exemption in prior years based on erroneous information, the
34 taxes must be collected subject to penalties as provided in RCW
35 84.40.130 for a period of not to exceed five years.

36 (6) The department and each local assessor is hereby directed to
37 publicize the qualifications and manner of making claims under RCW
38 84.36.381 through 84.36.389, through communications media, including

1 such paid advertisements or notices as it deems appropriate. Notice of
2 the qualifications, method of making applications, the penalties for
3 not reporting a change in status, and availability of further
4 information must be included on or with property tax statements and
5 revaluation notices for all residential property including mobile
6 homes, except rental properties.

7 **Sec. 107.** RCW 82.14.049 and 2008 c 264 s 4 are each amended to
8 read as follows:

9 (1) The legislative authority of any county may impose a sales and
10 use tax, in addition to the tax authorized by RCW 82.14.030, upon
11 retail car rentals within the county that are taxable by the state
12 under chapters 82.08 and 82.12 RCW. The rate of tax (~~(shall be)~~) is
13 one percent of the selling price in the case of a sales tax or rental
14 value of the vehicle in the case of a use tax. Proceeds of the tax
15 (~~shall~~) may not be used to subsidize any professional sports team and
16 (~~shall~~) must be used solely for the following purposes:

17 ~~((1))~~ (a) Acquiring, constructing, maintaining, or operating
18 public sports stadium facilities;

19 ~~((2))~~ (b) Engineering, planning, financial, legal, or
20 professional services incidental to public sports stadium facilities;

21 ~~((3))~~ (c) Youth or amateur sport activities or facilities; or

22 ~~((4))~~ (d) Debt or refinancing debt issued for the purposes of
23 subsection (1) of this section.

24 ~~((At least seventy-five percent of the tax imposed under this
25 section shall be used for the purposes of subsections (1), (2), and (4)
26 of this section.))~~ (2) In a county of one million or more, at least
27 seventy-five percent of the tax imposed under this section (~~shall~~)
28 must be used to retire the debt on the stadium under RCW
29 67.28.180(2)(b)(ii), until that debt is fully retired.

30 **PART II**

31 **UPDATING STATUTORY REFERENCES**

32 **Sec. 201.** RCW 35.102.150 and 2010 1st sp.s. c 23 s 519 are each
33 amended to read as follows:

34 Notwithstanding RCW 35.102.130, a city that imposes a business and
35 occupation tax must allocate a person's gross income from the

1 activities of printing, and of publishing newspapers, periodicals, or
2 magazines, to the principal place in this state from which the
3 taxpayer's business is directed or managed. As used in this section,
4 the activities of printing, and of publishing newspapers, periodicals,
5 or magazines are those activities to which the tax rates in RCW
6 82.04.260(13) and 82.04.280(1)(a) apply.

7 **Sec. 202.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
8 2010 c 106 s 202 are each reenacted and amended to read as follows:

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

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

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

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

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

36 (v) Purchases for the purpose of providing the property to

1 consumers as part of competitive telephone service, as defined in RCW
2 82.04.065; or

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

8 (b) The term includes every sale of tangible personal property that
9 is used or consumed or to be used or consumed in the performance of any
10 activity defined as a "sale at retail" or "retail sale" even though
11 such property is resold or used as provided in (a)(i) through (vi) of
12 this subsection following such use.

13 (c) The term also means every sale of tangible personal property to
14 persons engaged in any business that is taxable under RCW 82.04.280
15 (1)(~~(, (2), and (7))~~) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

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

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

34 (c) The constructing, repairing, or improving of any structure
35 upon, above, or under any real property owned by an owner who conveys
36 the property by title, possession, or any other means to the person
37 performing such construction, repair, or improvement for the purpose of

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

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

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

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

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

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

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

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

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

10 (c) Credit bureau services;

11 (d) Automobile parking and storage garage services;

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

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

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

22 (4)(a) The term also includes the renting or leasing of tangible
23 personal property to consumers.

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

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

30 (6)(a) The term also includes the sale of prewritten computer
31 software to a consumer, regardless of the method of delivery to the end
32 user. For purposes of this subsection (6)(a), the sale of prewritten
33 computer software includes the sale of or charge made for a key or an
34 enabling or activation code, where the key or code is required to
35 activate prewritten computer software and put the software into use.
36 There is no separate sale of the key or code from the prewritten
37 computer software, regardless of how the sale may be characterized by
38 the vendor or by the purchaser.

1 The term "retail sale" does not include the sale of or charge made
2 for:

3 (i) Custom software; or

4 (ii) The customization of prewritten computer software.

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

10 (ii)(A) The service described in (b)(i) of this subsection (6)
11 includes the right to access and use prewritten computer software to
12 perform data processing.

13 (B) For purposes of this subsection (6)(b)(ii), "data processing"
14 means the systematic performance of operations on data to extract the
15 required information in an appropriate form or to convert the data to
16 usable information. Data processing includes check processing, image
17 processing, form processing, survey processing, payroll processing,
18 claim processing, and similar activities.

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

33 (8)(a) The term also includes the following sales to consumers of
34 digital goods, digital codes, and digital automated services:

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

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

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

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

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

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

16 (9) The term also includes the charge made for providing tangible
17 personal property along with an operator for a fixed or indeterminate
18 period of time. A consideration of this is that the operator is
19 necessary for the tangible personal property to perform as designed.
20 For the purpose of this subsection (9), an operator must do more than
21 maintain, inspect, or set up the tangible personal property.

22 (10) The term does not include the sale of or charge made for labor
23 and services rendered in respect to the building, repairing, or
24 improving of any street, place, road, highway, easement, right-of-way,
25 mass public transportation terminal or parking facility, bridge,
26 tunnel, or trestle which is owned by a municipal corporation or
27 political subdivision of the state or by the United States and which is
28 used or to be used primarily for foot or vehicular traffic including
29 mass transportation vehicles of any kind.

30 (11) The term also does not include sales of chemical sprays or
31 washes to persons for the purpose of postharvest treatment of fruit for
32 the prevention of scald, fungus, mold, or decay, nor does it include
33 sales of feed, seed, seedlings, fertilizer, agents for enhanced
34 pollination including insects such as bees, and spray materials to:

35 (a) Persons who participate in the federal conservation reserve
36 program, the environmental quality incentives program, the wetlands
37 reserve program, and the wildlife habitat incentives program, or their
38 successors administered by the United States department of agriculture;

1 (b) farmers for the purpose of producing for sale any agricultural
2 product; and (c) farmers acting under cooperative habitat development
3 or access contracts with an organization exempt from federal income tax
4 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
5 the Washington state department of fish and wildlife to produce or
6 improve wildlife habitat on land that the farmer owns or leases.

7 (12) The term does not include the sale of or charge made for labor
8 and services rendered in respect to the constructing, repairing,
9 decorating, or improving of new or existing buildings or other
10 structures under, upon, or above real property of or for the United
11 States, any instrumentality thereof, or a county or city housing
12 authority created pursuant to chapter 35.82 RCW, including the
13 installing, or attaching of any article of tangible personal property
14 therein or thereto, whether or not such personal property becomes a
15 part of the realty by virtue of installation. Nor does the term
16 include the sale of services or charges made for the clearing of land
17 and the moving of earth of or for the United States, any
18 instrumentality thereof, or a county or city housing authority. Nor
19 does the term include the sale of services or charges made for cleaning
20 up for the United States, or its instrumentalities, radioactive waste
21 and other by-products of weapons production and nuclear research and
22 development.

23 (13) The term does not include the sale of or charge made for
24 labor, services, or tangible personal property pursuant to agreements
25 providing maintenance services for bus, rail, or rail fixed guideway
26 equipment when a regional transit authority is the recipient of the
27 labor, services, or tangible personal property, and a transit agency,
28 as defined in RCW 81.104.015, performs the labor or services.

29 (14) The term does not include the sale for resale of any service
30 described in this section if the sale would otherwise constitute a
31 "sale at retail" and "retail sale" under this section.

32 **Sec. 203.** RCW 82.04.460 and 2010 1st sp.s. c 23 s 108 are each
33 amended to read as follows:

34 (1) Except as otherwise provided in this section, any person
35 earning apportionable income taxable under this chapter and also
36 taxable in another state((τ)) must, for the purpose of computing tax

1 liability under this chapter, apportion to this state, in accordance
2 with RCW 82.04.462, that portion of the person's apportionable income
3 derived from business activities performed within this state.

4 (2) The department must by rule provide a method of apportioning
5 the apportionable income of financial institutions, where such
6 apportionable income is taxable under RCW 82.04.290. The rule adopted
7 by the department must, to the extent feasible, be consistent with the
8 multistate tax commission's recommended formula for the apportionment
9 and allocation of net income of financial institutions as existing on
10 June 1, 2010, or such subsequent date as may be provided by the
11 department by rule, consistent with the purposes of this section,
12 except that:

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

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

19 (3) The department may by rule provide a method or methods of
20 apportioning or allocating gross income derived from sales of
21 telecommunications service and competitive telephone service taxed
22 under this chapter, if the gross proceeds of sales subject to tax under
23 this chapter do not fairly represent the extent of the taxpayer's
24 income attributable to this state. The rule must provide for an
25 equitable and constitutionally permissible division of the tax base.

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

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

35 (i) RCW 82.04.255;

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

37 (iii) RCW 82.04.280(~~(+5)~~) (1)(e);

38 (iv) RCW 82.04.285;

1 (v) RCW 82.04.286;

2 (vi) RCW 82.04.290;

3 (vii) RCW 82.04.2907;

4 (viii) RCW 82.04.2908;

5 (ix) RCW 82.04.263, but only to the extent of any activity that
6 would be taxable under any of the provisions enumerated under (a)(i)
7 through (viii) of this subsection (4) if the tax classification in RCW
8 82.04.263 did not exist; and

9 (x) RCW 82.04.260(13) and 82.04.280(1)(a), but only with respect to
10 advertising.

11 (b)(i) "Taxable in another state" means that the taxpayer is
12 subject to a business activities tax by another state on its income
13 received from engaging in apportionable activities; or the taxpayer is
14 not subject to a business activities tax by another state on its income
15 received from engaging in apportionable activities, but any other state
16 has jurisdiction to subject the taxpayer to a business activities tax
17 on such income under the substantial nexus standards in RCW
18 82.04.067(1).

19 (ii) For purposes of this subsection (4)(b), "business activities
20 tax" and "state" have the same meaning as in RCW 82.04.462.

21 **Sec. 204.** RCW 82.08.806 and 2010 1st sp.s. c 23 s 516 are each
22 amended to read as follows:

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

31 (2) A person taking the exemption under this section must keep
32 records necessary for the department to verify eligibility under this
33 section. This exemption is available only when the purchaser provides
34 the seller with an exemption certificate in a form and manner
35 prescribed by the department. The seller must retain a copy of the
36 certificate for the seller's files.

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

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

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

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

11 (d) "Primarily" means greater than fifty percent as measured by
12 time.

13 (e) "Printer or publisher" means a person, as defined in RCW
14 82.04.030, who is subject to tax under RCW 82.04.260(13) or
15 82.04.280(1)(a).

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

24 **Sec. 205.** RCW 82.08.820 and 2006 c 354 s 11 are each amended to
25 read as follows:

26 (1) Wholesalers or third-party warehouse owners who own or operate
27 warehouses or grain elevators and retailers who own or operate
28 distribution centers, and who have paid the tax levied by RCW 82.08.020
29 on:

30 (a) Material-handling and racking equipment, and labor and services
31 rendered in respect to installing, repairing, cleaning, altering, or
32 improving the equipment; or

33 (b) Construction of a warehouse or grain elevator, including
34 materials, and including service and labor costs,
35 are eligible for an exemption in the form of a remittance. The amount
36 of the remittance is computed under subsection (3) of this section and
37 is based on the state share of sales tax.

1 (2) For purposes of this section and RCW 82.12.820:

2 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

3 (b) "Cold storage warehouse" has the meaning provided in RCW
4 82.74.010;

5 (c) "Construction" means the actual construction of a warehouse or
6 grain elevator that did not exist before the construction began.
7 "Construction" includes expansion if the expansion adds at least
8 twenty-five thousand square feet of additional space to an existing
9 cold storage warehouse, at least two hundred thousand square feet of
10 additional space to an existing warehouse other than a cold storage
11 warehouse, or additional storage capacity of at least one million
12 bushels to an existing grain elevator. "Construction" does not include
13 renovation, remodeling, or repair;

14 (d) "Department" means the department of revenue;

15 (e) "Distribution center" means a warehouse that is used
16 exclusively by a retailer solely for the storage and distribution of
17 finished goods to retail outlets of the retailer. "Distribution
18 center" does not include a warehouse at which retail sales occur;

19 (f) "Finished goods" means tangible personal property intended for
20 sale by a retailer or wholesaler. "Finished goods" does not include
21 agricultural products stored by wholesalers, third-party warehouses, or
22 retailers if the storage takes place on the land of the person who
23 produced the agricultural product. "Finished goods" does not include
24 logs, minerals, petroleum, gas, or other extracted products stored as
25 raw materials or in bulk;

26 (g) "Grain elevator" means a structure used for storage and
27 handling of grain in bulk;

28 (h) "Material-handling equipment and racking equipment" means
29 equipment in a warehouse or grain elevator that is primarily used to
30 handle, store, organize, convey, package, or repackage finished goods.
31 The term includes tangible personal property with a useful life of one
32 year or more that becomes an ingredient or component of the equipment,
33 including repair and replacement parts. The term does not include
34 equipment in offices, lunchrooms, restrooms, and other like space,
35 within a warehouse or grain elevator, or equipment used for
36 nonwarehousing purposes. "Material-handling equipment" includes but is
37 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
38 place units, cranes, hoists, mechanical arms, and robots; mechanized

1 systems, including containers that are an integral part of the system,
2 whose purpose is to lift or move tangible personal property; and
3 automated handling, storage, and retrieval systems, including computers
4 that control them, whose purpose is to lift or move tangible personal
5 property; and forklifts and other off-the-road vehicles that are used
6 to lift or move tangible personal property and that cannot be operated
7 legally on roads and streets. "Racking equipment" includes, but is not
8 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
9 pallets, and other containers and storage devices that form a necessary
10 part of the storage system;

11 (i) "Person" has the meaning given in RCW 82.04.030;

12 (j) "Retailer" means a person who makes "sales at retail" as
13 defined in chapter 82.04 RCW of tangible personal property;

14 (k) "Square footage" means the product of the two horizontal
15 dimensions of each floor of a specific warehouse. The entire footprint
16 of the warehouse shall be measured in calculating the square footage,
17 including space that juts out from the building profile such as loading
18 docks. "Square footage" does not mean the aggregate of the square
19 footage of more than one warehouse at a location or the aggregate of
20 the square footage of warehouses at more than one location;

21 (l) "Third-party warehouse" means a person taxable under RCW
22 82.04.280(~~(+4)~~) (1)(d);

23 (m) "Warehouse" means an enclosed building or structure in which
24 finished goods are stored. A warehouse building or structure may have
25 more than one storage room and more than one floor. Office space,
26 lunchrooms, restrooms, and other space within the warehouse and
27 necessary for the operation of the warehouse are considered part of the
28 warehouse as are loading docks and other such space attached to the
29 building and used for handling of finished goods. Landscaping and
30 parking lots are not considered part of the warehouse. A storage yard
31 is not a warehouse, nor is a building in which manufacturing takes
32 place; and

33 (n) "Wholesaler" means a person who makes "sales at wholesale" as
34 defined in chapter 82.04 RCW of tangible personal property, but
35 "wholesaler" does not include a person who makes sales exempt under RCW
36 82.04.330.

37 (3)(a) A person claiming an exemption from state tax in the form of
38 a remittance under this section must pay the tax imposed by RCW

1 82.08.020. The buyer may then apply to the department for remittance
2 of all or part of the tax paid under RCW 82.08.020. For grain
3 elevators with bushel capacity of one million but less than two
4 million, the remittance is equal to fifty percent of the amount of tax
5 paid. For warehouses with square footage of two hundred thousand or
6 more, other than cold storage warehouses, and for grain elevators with
7 bushel capacity of two million or more, the remittance is equal to one
8 hundred percent of the amount of tax paid for qualifying construction,
9 materials, service, and labor, and fifty percent of the amount of tax
10 paid for qualifying material-handling equipment and racking equipment,
11 and labor and services rendered in respect to installing, repairing,
12 cleaning, altering, or improving the equipment. For cold storage
13 warehouses with square footage of twenty-five thousand or more, the
14 remittance is equal to one hundred percent of the amount of tax paid
15 for qualifying construction, materials, service, and labor, and one
16 hundred percent of the amount of tax paid for qualifying material-
17 handling equipment and racking equipment, and labor and services
18 rendered in respect to installing, repairing, cleaning, altering, or
19 improving the equipment.

20 (b) The department shall determine eligibility under this section
21 based on information provided by the buyer and through audit and other
22 administrative records. The buyer shall on a quarterly basis submit an
23 information sheet, in a form and manner as required by the department
24 by rule, specifying the amount of exempted tax claimed and the
25 qualifying purchases or acquisitions for which the exemption is
26 claimed. The buyer shall retain, in adequate detail to enable the
27 department to determine whether the equipment or construction meets the
28 criteria under this section: Invoices; proof of tax paid; documents
29 describing the material-handling equipment and racking equipment;
30 location and size of warehouses and grain elevators; and construction
31 invoices and documents.

32 (c) The department shall on a quarterly basis remit exempted
33 amounts to qualifying persons who submitted applications during the
34 previous quarter.

35 (4) Warehouses, grain elevators, and material-handling equipment
36 and racking equipment for which an exemption, credit, or deferral has
37 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
38 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance

1 under this section. Warehouses and grain elevators upon which
2 construction was initiated before May 20, 1997, are not eligible for a
3 remittance under this section.

4 (5) The lessor or owner of a warehouse or grain elevator is not
5 eligible for a remittance under this section unless the underlying
6 ownership of the warehouse or grain elevator and the material-handling
7 equipment and racking equipment vests exclusively in the same person,
8 or unless the lessor by written contract agrees to pass the economic
9 benefit of the remittance to the lessee in the form of reduced rent
10 payments.

11 **Sec. 206.** RCW 82.08.820 and 2006 c 354 s 12 are each amended to
12 read as follows:

13 (1) Wholesalers or third-party warehouseurs who own or operate
14 warehouses or grain elevators and retailers who own or operate
15 distribution centers, and who have paid the tax levied by RCW 82.08.020
16 on:

17 (a) Material-handling and racking equipment, and labor and services
18 rendered in respect to installing, repairing, cleaning, altering, or
19 improving the equipment; or

20 (b) Construction of a warehouse or grain elevator, including
21 materials, and including service and labor costs,
22 are eligible for an exemption in the form of a remittance. The amount
23 of the remittance is computed under subsection (3) of this section and
24 is based on the state share of sales tax.

25 (2) For purposes of this section and RCW 82.12.820:

26 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

27 (b) "Construction" means the actual construction of a warehouse or
28 grain elevator that did not exist before the construction began.
29 "Construction" includes expansion if the expansion adds at least two
30 hundred thousand square feet of additional space to an existing
31 warehouse or additional storage capacity of at least one million
32 bushels to an existing grain elevator. "Construction" does not include
33 renovation, remodeling, or repair;

34 (c) "Department" means the department of revenue;

35 (d) "Distribution center" means a warehouse that is used
36 exclusively by a retailer solely for the storage and distribution of

1 finished goods to retail outlets of the retailer. "Distribution
2 center" does not include a warehouse at which retail sales occur;

3 (e) "Finished goods" means tangible personal property intended for
4 sale by a retailer or wholesaler. "Finished goods" does not include
5 agricultural products stored by wholesalers, third-party warehouses, or
6 retailers if the storage takes place on the land of the person who
7 produced the agricultural product. "Finished goods" does not include
8 logs, minerals, petroleum, gas, or other extracted products stored as
9 raw materials or in bulk;

10 (f) "Grain elevator" means a structure used for storage and
11 handling of grain in bulk;

12 (g) "Material-handling equipment and racking equipment" means
13 equipment in a warehouse or grain elevator that is primarily used to
14 handle, store, organize, convey, package, or repackage finished goods.
15 The term includes tangible personal property with a useful life of one
16 year or more that becomes an ingredient or component of the equipment,
17 including repair and replacement parts. The term does not include
18 equipment in offices, lunchrooms, restrooms, and other like space,
19 within a warehouse or grain elevator, or equipment used for
20 nonwarehousing purposes. "Material-handling equipment" includes but is
21 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
22 place units, cranes, hoists, mechanical arms, and robots; mechanized
23 systems, including containers that are an integral part of the system,
24 whose purpose is to lift or move tangible personal property; and
25 automated handling, storage, and retrieval systems, including computers
26 that control them, whose purpose is to lift or move tangible personal
27 property; and forklifts and other off-the-road vehicles that are used
28 to lift or move tangible personal property and that cannot be operated
29 legally on roads and streets. "Racking equipment" includes, but is not
30 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
31 pallets, and other containers and storage devices that form a necessary
32 part of the storage system;

33 (h) "Person" has the meaning given in RCW 82.04.030;

34 (i) "Retailer" means a person who makes "sales at retail" as
35 defined in chapter 82.04 RCW of tangible personal property;

36 (j) "Square footage" means the product of the two horizontal
37 dimensions of each floor of a specific warehouse. The entire footprint
38 of the warehouse shall be measured in calculating the square footage,

1 including space that juts out from the building profile such as loading
2 docks. "Square footage" does not mean the aggregate of the square
3 footage of more than one warehouse at a location or the aggregate of
4 the square footage of warehouses at more than one location;

5 (k) "Third-party warehouser" means a person taxable under RCW
6 82.04.280(~~(+4)~~) (1)(d);

7 (l) "Warehouse" means an enclosed building or structure in which
8 finished goods are stored. A warehouse building or structure may have
9 more than one storage room and more than one floor. Office space,
10 lunchrooms, restrooms, and other space within the warehouse and
11 necessary for the operation of the warehouse are considered part of the
12 warehouse as are loading docks and other such space attached to the
13 building and used for handling of finished goods. Landscaping and
14 parking lots are not considered part of the warehouse. A storage yard
15 is not a warehouse, nor is a building in which manufacturing takes
16 place; and

17 (m) "Wholesaler" means a person who makes "sales at wholesale" as
18 defined in chapter 82.04 RCW of tangible personal property, but
19 "wholesaler" does not include a person who makes sales exempt under RCW
20 82.04.330.

21 (3)(a) A person claiming an exemption from state tax in the form of
22 a remittance under this section must pay the tax imposed by RCW
23 82.08.020. The buyer may then apply to the department for remittance
24 of all or part of the tax paid under RCW 82.08.020. For grain
25 elevators with bushel capacity of one million but less than two
26 million, the remittance is equal to fifty percent of the amount of tax
27 paid. For warehouses with square footage of two hundred thousand or
28 more and for grain elevators with bushel capacity of two million or
29 more, the remittance is equal to one hundred percent of the amount of
30 tax paid for qualifying construction, materials, service, and labor,
31 and fifty percent of the amount of tax paid for qualifying material-
32 handling equipment and racking equipment, and labor and services
33 rendered in respect to installing, repairing, cleaning, altering, or
34 improving the equipment.

35 (b) The department shall determine eligibility under this section
36 based on information provided by the buyer and through audit and other
37 administrative records. The buyer shall on a quarterly basis submit an
38 information sheet, in a form and manner as required by the department

1 by rule, specifying the amount of exempted tax claimed and the
2 qualifying purchases or acquisitions for which the exemption is
3 claimed. The buyer shall retain, in adequate detail to enable the
4 department to determine whether the equipment or construction meets the
5 criteria under this section: Invoices; proof of tax paid; documents
6 describing the material-handling equipment and racking equipment;
7 location and size of warehouses and grain elevators; and construction
8 invoices and documents.

9 (c) The department shall on a quarterly basis remit exempted
10 amounts to qualifying persons who submitted applications during the
11 previous quarter.

12 (4) Warehouses, grain elevators, and material-handling equipment
13 and racking equipment for which an exemption, credit, or deferral has
14 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
15 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
16 under this section. Warehouses and grain elevators upon which
17 construction was initiated before May 20, 1997, are not eligible for a
18 remittance under this section.

19 (5) The lessor or owner of a warehouse or grain elevator is not
20 eligible for a remittance under this section unless the underlying
21 ownership of the warehouse or grain elevator and the material-handling
22 equipment and racking equipment vests exclusively in the same person,
23 or unless the lessor by written contract agrees to pass the economic
24 benefit of the remittance to the lessee in the form of reduced rent
25 payments.

26 **Sec. 207.** RCW 82.32.665 and 2010 1st sp.s. c 23 s 204 are each
27 amended to read as follows:

28 There is hereby created a joint tax avoidance review committee
29 which is a bipartisan committee consisting of three members of the
30 senate, two from the majority caucus and one from the minority caucus,
31 and three members of the house of representatives, two from the
32 majority caucus and one from the minority caucus. The senate members
33 of the committee must be appointed by the majority leader of the
34 senate, and the house members of the committee must be appointed by the
35 speaker of the house. The appointing authorities must also appoint one
36 alternate member from each of the two largest caucuses of each
37 legislative chamber.

1 (1)(a) Members and alternates must be appointed as soon as possible
2 after May 1, 2010, and their terms continue until such persons no
3 longer wish to serve on the committee or no longer serve in the
4 legislature, whichever occurs first.

5 (b) A vacancy must be filled by the appointment of a legislator
6 from the same legislative chamber and caucus as the original
7 appointment. The appropriate appointing authority must make the
8 appointment within thirty days of the vacancy occurring. Former
9 committee members and alternates may be reappointed to the committee.

10 (2) The committee must choose its chair and vice-chair from among
11 its membership. The committee meets at the call of the chair. The
12 chair of the committee must cause all meeting notices and committee
13 documents to be sent to the committee members and alternates.

14 (3) Staff support for the committee must be provided by the senate
15 committee services and the house of representatives office of program
16 research.

17 (4) The committee must:

18 (a) Generally monitor the department's implementation of Part II,
19 chapter 23, Laws of 2010 1st sp. sess., providing timely advice to the
20 department in any rule making undertaken pursuant to the authority
21 granted under RCW 82.32.655;

22 (b) Seek input from stakeholders and other legislators as the
23 committee may determine is desirable and useful in the furtherance of
24 its mission herein described;

25 (c) Review other cases, identified by the department, of tax
26 avoidance transactions not described in RCW 82.32.655 that may
27 represent examples of arrangements that circumvent the policies of this
28 state and thus unfairly avoid taxes;

29 (d) Consider the need for an explicit statutory construction
30 standard to provide direction to the courts on the interpretation of
31 Part II, chapter 23, Laws of 2010 1st sp. sess.; and

32 (e) Provide a report to the fiscal committees of the house of
33 representatives and senate by December 31, 2010, which must include:

34 (i) Recommended legislation on any matters that the committee deems
35 advisable, including amendments to RCW 82.32.090, 82.32.655, and
36 82.32.660; and

37 (ii) Recommendations for future legislative oversight of the
38 department's implementation of RCW 82.32.090, 82.32.655, and 82.32.660.

1 (5) For the purposes of this section, the disclosure of otherwise
2 confidential tax information to the members of the committee is deemed
3 to fall within the exception provided by RCW 82.32.330(3)((~~d~~)) (e).

4 (6) This section expires July 1, 2011.

5 **Sec. 208.** 2010 1st sp.s. c 23 s 101 (uncodified) is amended to
6 read as follows:

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

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

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

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))~~) (1)(b),
7 (d), (f), and (g), and any other activity not specifically included in
8 the definition of apportionable activities in RCW 82.04.460.

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

12 PART III

13 MERGING MULTIPLE AMENDMENTS TO STATUTES FROM 2010 LEGISLATION

14 **Sec. 301.** RCW 82.04.2909 and 2010 1st sp.s. c 2 s 1 and 2010 c 114
15 s 108 are each reenacted to read as follows:

16 (1) Upon every person who is an aluminum smelter engaging within
17 this state in the business of manufacturing aluminum; as to such
18 persons the amount of tax with respect to such business is, in the case
19 of manufacturers, equal to the value of the product manufactured, or in
20 the case of processors for hire, equal to the gross income of the
21 business, multiplied by the rate of .2904 percent.

22 (2) Upon every person who is an aluminum smelter engaging within
23 this state in the business of making sales at wholesale of aluminum
24 manufactured by that person, as to such persons the amount of tax with
25 respect to such business is equal to the gross proceeds of sales of the
26 aluminum multiplied by the rate of .2904 percent.

27 (3) A person reporting under the tax rate provided in this section
28 must file a complete annual report with the department under RCW
29 82.32.534.

30 (4) This section expires January 1, 2017.

31 **Sec. 302.** RCW 82.04.4481 and 2010 1st sp.s. c 2 s 2 and 2010 c 114
32 s 118 are each reenacted to read as follows:

33 (1) In computing the tax imposed under this chapter, a credit is
34 allowed for all property taxes paid during the calendar year on

1 property owned by a direct service industrial customer and reasonably
2 necessary for the purposes of an aluminum smelter.

3 (2) A person claiming the credit under this section is subject to
4 all the requirements of chapter 82.32 RCW. A credit earned during one
5 calendar year may be carried over to be credited against taxes incurred
6 in the subsequent calendar year, but may not be carried over a second
7 year. Credits carried over must be applied to tax liability before new
8 credits. No refunds may be granted for credits under this section.

9 (3) Credits may not be claimed under this section for property
10 taxes levied for collection in 2017 and thereafter.

11 (4) A person claiming the credit provided in this section must file
12 a complete annual report with the department under RCW 82.32.534.

13 **Sec. 303.** RCW 82.08.805 and 2010 1st sp.s. c 2 s 3 and 2010 c 114
14 s 122 are each reenacted to read as follows:

15 (1) A person who has paid tax under RCW 82.08.020 for personal
16 property used at an aluminum smelter, tangible personal property that
17 will be incorporated as an ingredient or component of buildings or
18 other structures at an aluminum smelter, or for labor and services
19 rendered with respect to such buildings, structures, or personal
20 property, is eligible for an exemption from the state share of the tax
21 in the form of a credit, as provided in this section. A person
22 claiming an exemption must pay the tax and may then take a credit equal
23 to the state share of retail sales tax paid under RCW 82.08.020. The
24 person must submit information, in a form and manner prescribed by the
25 department, specifying the amount of qualifying purchases or
26 acquisitions for which the exemption is claimed and the amount of
27 exempted tax.

28 (2) For the purposes of this section, "aluminum smelter" has the
29 same meaning as provided in RCW 82.04.217.

30 (3) A person claiming the tax preference provided in this section
31 must file a complete annual report with the department under RCW
32 82.32.534.

33 (4) Credits may not be claimed under this section for taxable
34 events occurring on or after January 1, 2017.

35 **Sec. 304.** RCW 82.12.022 and 2010 1st sp.s. c 2 s 5 and 2010 c 114
36 s 127 are each reenacted to read as follows:

1 (1) A use tax is levied on every person in this state for the
2 privilege of using natural gas or manufactured gas within this state as
3 a consumer.

4 (2) The tax must be levied and collected in an amount equal to the
5 value of the article used by the taxpayer multiplied by the rate in
6 effect for the public utility tax on gas distribution businesses under
7 RCW 82.16.020. The "value of the article used" does not include any
8 amounts that are paid for the hire or use of a gas distribution
9 business as defined in RCW 82.16.010(2) in transporting the gas subject
10 to tax under this subsection if those amounts are subject to tax under
11 that chapter.

12 (3) The tax levied in this section does not apply to the use of
13 natural or manufactured gas delivered to the consumer by other means
14 than through a pipeline.

15 (4) The tax levied in this section does not apply to the use of
16 natural or manufactured gas if the person who sold the gas to the
17 consumer has paid a tax under RCW 82.16.020 with respect to the gas for
18 which exemption is sought under this subsection.

19 (5)(a) The tax levied in this section does not apply to the use of
20 natural or manufactured gas by an aluminum smelter as that term is
21 defined in RCW 82.04.217 before January 1, 2017.

22 (b) A person claiming the exemption provided in this subsection (5)
23 must file a complete annual report with the department under RCW
24 82.32.534.

25 (6) There is a credit against the tax levied under this section in
26 an amount equal to any tax paid by:

27 (a) The person who sold the gas to the consumer when that tax is a
28 gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by
29 another state with respect to the gas for which a credit is sought
30 under this subsection; or

31 (b) The person consuming the gas upon which a use tax similar to
32 the tax imposed by this section was paid to another state with respect
33 to the gas for which a credit is sought under this subsection.

34 (7) The use tax imposed in this section must be paid by the
35 consumer to the department.

36 (8) There is imposed a reporting requirement on the person who
37 delivered the gas to the consumer to make a quarterly report to the

1 department. Such report must contain the volume of gas delivered, name
2 of the consumer to whom delivered, and such other information as the
3 department may require by rule.

4 (9) The department may adopt rules under chapter 34.05 RCW for the
5 administration and enforcement of sections 1 through 6, chapter 384,
6 Laws of 1989.

7 **Sec. 305.** RCW 82.12.805 and 2010 1st sp.s. c 2 s 4 and 2010 c 114
8 s 128 are each reenacted to read as follows:

9 (1) A person who is subject to tax under RCW 82.12.020 for personal
10 property used at an aluminum smelter, or for tangible personal property
11 that will be incorporated as an ingredient or component of buildings or
12 other structures at an aluminum smelter, or for labor and services
13 rendered with respect to such buildings, structures, or personal
14 property, is eligible for an exemption from the state share of the tax
15 in the form of a credit, as provided in this section. The amount of
16 the credit equals the state share of use tax computed to be due under
17 RCW 82.12.020. The person must submit information, in a form and
18 manner prescribed by the department, specifying the amount of
19 qualifying purchases or acquisitions for which the exemption is claimed
20 and the amount of exempted tax.

21 (2) For the purposes of this section, "aluminum smelter" has the
22 same meaning as provided in RCW 82.04.217.

23 (3) A person reporting under the tax rate provided in this section
24 must file a complete annual report with the department under RCW
25 82.32.534.

26 (4) Credits may not be claimed under this section for taxable
27 events occurring on or after January 1, 2017.

28 **Sec. 306.** RCW 82.32.590 and 2010 c 137 s 1 and 2010 c 114 s 135
29 are each reenacted to read as follows:

30 (1) If the department finds that the failure of a taxpayer to file
31 an annual survey under RCW 82.32.585 or annual report under RCW
32 82.32.534 by the due date was the result of circumstances beyond the
33 control of the taxpayer, the department must extend the time for filing
34 the survey or report. The extension is for a period of thirty days
35 from the date the department issues its written notification to the

1 taxpayer that it qualifies for an extension under this section. The
2 department may grant additional extensions as it deems proper.

3 (2) In making a determination whether the failure of a taxpayer to
4 file an annual survey or annual report by the due date was the result
5 of circumstances beyond the control of the taxpayer, the department
6 must be guided by rules adopted by the department for the waiver or
7 cancellation of penalties when the underpayment or untimely payment of
8 any tax was due to circumstances beyond the control of the taxpayer.

9 (3)(a) Subject to the conditions in this subsection (3), a taxpayer
10 who fails to file an annual report or annual survey required under
11 subsection (1) of this section by the due date of the report or survey
12 is entitled to an extension of the due date. A request for an
13 extension under this subsection (3) must be made in writing to the
14 department.

15 (b) To qualify for an extension under this subsection (3), a
16 taxpayer must have filed all annual reports and surveys, if any, due in
17 prior years under subsection (1) of this section by their respective
18 due dates, beginning with annual reports and surveys due in calendar
19 year 2010.

20 (c) An extension under this subsection (3) is for ninety days from
21 the original due date of the annual report or survey.

22 (d) No taxpayer may be granted more than one ninety-day extension
23 under this subsection (3).

24 PART IV

25 COMBINING TWO SUBPOENA STATUTES INTO A SINGLE SUBPOENA STATUTE

26 **Sec. 401.** RCW 82.32.117 and 2010 c 22 s 4 are each amended to read
27 as follows:

28 (1) The department or its duly authorized agent may apply for and
29 obtain a superior court order approving and authorizing a subpoena in
30 advance of its issuance. The application may be made in the county
31 where the subpoenaed person resides or is found, or the county where
32 the subpoenaed records or documents are located, or in Thurston county.
33 The application must:

34 (a) State that an order is sought pursuant to this subsection;

35 (b) Adequately specify the records, documents, or testimony; and

1 (c) Declare under oath that an investigation is being conducted for
2 a lawfully authorized purpose related to an investigation within the
3 department's authority and that the subpoenaed documents or testimony
4 are reasonably related to an investigation within the department's
5 authority.

6 (2) Where the application under this subsection is made to the
7 satisfaction of the court, the court must issue an order approving the
8 subpoena. An order under this subsection constitutes authority of law
9 for the agency to subpoena the records or testimony.

10 (3) The department or its duly authorized agent may seek approval
11 and a court may issue an order under this subsection without prior
12 notice to any person, including the person to whom the subpoena is
13 directed and the person who is the subject of an investigation.

14 (4) This section does not preclude the use of other legally
15 authorized means of obtaining records, nor preclude the assertion of
16 any legally recognized privileges.

17 (5) The department may not disclose any return or tax information,
18 as defined in RCW 82.32.330, obtained in response to a subpoena issued
19 under this section, except as authorized in RCW 82.32.330.

20 (6) A third party may not be held civilly liable for any harm
21 resulting from that person's compliance with a subpoena issued under
22 the authority of this section.

23 (7) The entire court file of any proceeding instituted under this
24 section must be sealed and is not open to public inspection by any
25 person except upon order of the court as authorized by law.

26 NEW SECTION. Sec. 402. RCW 82.32.115 (Records in possession of a
27 third party--Subpoenas) and 2009 c 309 s 1 are each repealed.

28 NEW SECTION. Sec. 403. The repeal in section 402 of this act does
29 not affect any existing right acquired or liability or obligation
30 incurred under the statute repealed or under any rule or order adopted
31 under that statute nor does it affect any proceedings instituted under
32 it.

33 **Sec. 404.** RCW 82.32.330 and 2010 c 112 s 13 and 2010 c 106 s 104
34 are each reenacted and amended to read as follows:

35 (1) For purposes of this section:

1 (a) "Disclose" means to make known to any person in any manner
2 whatever a return or tax information;

3 (b) "Return" means a tax or information return or claim for refund
4 required by, or provided for or permitted under, the laws of this state
5 which is filed with the department of revenue by, on behalf of, or with
6 respect to a person, and any amendment or supplement thereto, including
7 supporting schedules, attachments, or lists that are supplemental to,
8 or part of, the return so filed;

9 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
10 nature, source, or amount of the taxpayer's income, payments, receipts,
11 deductions, exemptions, credits, assets, liabilities, net worth, tax
12 liability deficiencies, overassessments, or tax payments, whether taken
13 from the taxpayer's books and records or any other source, (iii)
14 whether the taxpayer's return was, is being, or will be examined or
15 subject to other investigation or processing, (iv) a part of a written
16 determination that is not designated as a precedent and disclosed
17 pursuant to RCW 82.32.410, or a background file document relating to a
18 written determination, and (v) other data received by, recorded by,
19 prepared by, furnished to, or collected by the department of revenue
20 with respect to the determination of the existence, or possible
21 existence, of liability, or the amount thereof, of a person under the
22 laws of this state for a tax, penalty, interest, fine, forfeiture, or
23 other imposition, or offense. However, data, material, or documents
24 that do not disclose information related to a specific or identifiable
25 taxpayer do not constitute tax information under this section. Except
26 as provided by RCW 82.32.410, nothing in this chapter requires any
27 person possessing data, material, or documents made confidential and
28 privileged by this section to delete information from such data,
29 material, or documents so as to permit its disclosure;

30 (d) "State agency" means every Washington state office, department,
31 division, bureau, board, commission, or other state agency;

32 (e) "Taxpayer identity" means the taxpayer's name, address,
33 telephone number, registration number, or any combination thereof, or
34 any other information disclosing the identity of the taxpayer; and

35 (f) "Department" means the department of revenue or its officer,
36 agent, employee, or representative.

37 (2) Returns and tax information are confidential and privileged,

1 and except as authorized by this section, neither the department of
2 revenue nor any other person may disclose any return or tax
3 information.

4 (3) This section does not prohibit the department of revenue from:

5 (a) Disclosing such return or tax information in a civil or
6 criminal judicial proceeding or an administrative proceeding:

7 (i) In respect of any tax imposed under the laws of this state if
8 the taxpayer or its officer or other person liable under this title or
9 chapter 83.100 RCW is a party in the proceeding;

10 (ii) In which the taxpayer about whom such return or tax
11 information is sought and another state agency are adverse parties in
12 the proceeding; or

13 (iii) Brought by the department under RCW 18.27.040 or 19.28.071;

14 (b) Disclosing, subject to such requirements and conditions as the
15 director prescribes by rules adopted pursuant to chapter 34.05 RCW,
16 such return or tax information regarding a taxpayer to such taxpayer or
17 to such person or persons as that taxpayer may designate in a request
18 for, or consent to, such disclosure, or to any other person, at the
19 taxpayer's request, to the extent necessary to comply with a request
20 for information or assistance made by the taxpayer to such other
21 person. However, tax information not received from the taxpayer must
22 not be so disclosed if the director determines that such disclosure
23 would compromise any investigation or litigation by any federal, state,
24 or local government agency in connection with the civil or criminal
25 liability of the taxpayer or another person, or that such disclosure
26 would identify a confidential informant, or that such disclosure is
27 contrary to any agreement entered into by the department that provides
28 for the reciprocal exchange of information with other government
29 agencies which agreement requires confidentiality with respect to such
30 information unless such information is required to be disclosed to the
31 taxpayer by the order of any court;

32 (c) Disclosing the name of a taxpayer against whom a warrant under
33 RCW 82.32.210 has been either issued or filed and remains outstanding
34 for a period of at least ten working days. The department is not
35 required to disclose any information under this subsection if a
36 taxpayer has entered a deferred payment arrangement with the department
37 for the payment of a warrant that has not been filed and is making

1 payments upon such deficiency that will fully satisfy the indebtedness
2 within twelve months;

3 (d) Publishing statistics so classified as to prevent the
4 identification of particular returns or reports or items thereof;

5 (e) Disclosing such return or tax information, for official
6 purposes only, to the governor or attorney general, or to any state
7 agency, or to any committee or subcommittee of the legislature dealing
8 with matters of taxation, revenue, trade, commerce, the control of
9 industry or the professions;

10 (f) Permitting the department of revenue's records to be audited
11 and examined by the proper state officer, his or her agents and
12 employees;

13 (g) Disclosing any such return or tax information to a peace
14 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
15 official purposes. The disclosure may be made only in response to a
16 search warrant, subpoena, or other court order, unless the disclosure
17 is for the purpose of criminal tax enforcement. A peace officer or
18 county prosecuting attorney who receives the return or tax information
19 may disclose that return or tax information only for use in the
20 investigation and a related court proceeding, or in the court
21 proceeding for which the return or tax information originally was
22 sought;

23 (h) Disclosing any such return or tax information to the proper
24 officer of the internal revenue service of the United States, the
25 Canadian government or provincial governments of Canada, or to the
26 proper officer of the tax department of any state or city or town or
27 county, for official purposes, but only if the statutes of the United
28 States, Canada or its provincial governments, or of such other state or
29 city or town or county, as the case may be, grants substantially
30 similar privileges to the proper officers of this state;

31 (i) Disclosing any such return or tax information to the United
32 States department of justice, including the bureau of alcohol, tobacco,
33 firearms and explosives, the department of defense, the immigration and
34 customs enforcement and the customs and border protection agencies of
35 the United States department of homeland security, the United States
36 coast guard, the alcohol and tobacco tax and trade bureau of the United
37 States department of treasury, and the United States department of

1 transportation, or any authorized representative of these federal
2 agencies, for official purposes;

3 (j) Publishing or otherwise disclosing the text of a written
4 determination designated by the director as a precedent pursuant to RCW
5 82.32.410;

6 (k) Disclosing, in a manner that is not associated with other tax
7 information, the taxpayer name, entity type, business address, mailing
8 address, revenue tax registration numbers, reseller permit numbers and
9 the expiration date and status of such permits, North American industry
10 classification system or standard industrial classification code of a
11 taxpayer, and the dates of opening and closing of business. This
12 subsection may not be construed as giving authority to the department
13 to give, sell, or provide access to any list of taxpayers for any
14 commercial purpose;

15 (l) Disclosing such return or tax information that is also
16 maintained by another Washington state or local governmental agency as
17 a public record available for inspection and copying under the
18 provisions of chapter 42.56 RCW or is a document maintained by a court
19 of record and is not otherwise prohibited from disclosure;

20 (m) Disclosing such return or tax information to the United States
21 department of agriculture for the limited purpose of investigating food
22 stamp fraud by retailers;

23 (n) Disclosing to a financial institution, escrow company, or title
24 company, in connection with specific real property that is the subject
25 of a real estate transaction, current amounts due the department for a
26 filed tax warrant, judgment, or lien against the real property;

27 (o) Disclosing to a person against whom the department has asserted
28 liability as a successor under RCW 82.32.140 return or tax information
29 pertaining to the specific business of the taxpayer to which the person
30 has succeeded;

31 (p) Disclosing real estate excise tax affidavit forms filed under
32 RCW 82.45.150 in the possession of the department, including real
33 estate excise tax affidavit forms for transactions exempt or otherwise
34 not subject to tax;

35 (q) Disclosing to local taxing jurisdictions the identity of
36 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
37 which relief is granted;

1 (r) Disclosing such return or tax information to the court in
2 respect to the department's application for a subpoena under RCW
3 (~~82.32.115~~) 82.32.117;

4 (s) Disclosing to a person against whom the department has asserted
5 liability under RCW 83.100.120 return or tax information pertaining to
6 that person's liability for tax under chapter 83.100 RCW;

7 (t) Disclosing such return or tax information to the streamlined
8 sales tax governing board, member states of the streamlined sales tax
9 governing board, or authorized representatives of such board or states,
10 for the limited purposes of:

11 (i) Conducting on behalf of member states sales and use tax audits
12 of taxpayers; or

13 (ii) Auditing certified service providers or certified automated
14 systems providers; or

15 (u) Disclosing any such return or tax information when the
16 disclosure is specifically authorized under any other section of the
17 Revised Code of Washington.

18 (4)(a) The department may disclose return or taxpayer information
19 to a person under investigation or during any court or administrative
20 proceeding against a person under investigation as provided in this
21 subsection (4). The disclosure must be in connection with the
22 department's official duties relating to an audit, collection activity,
23 or a civil or criminal investigation. The disclosure may occur only
24 when the person under investigation and the person in possession of
25 data, materials, or documents are parties to the return or tax
26 information to be disclosed. The department may disclose return or tax
27 information such as invoices, contracts, bills, statements, resale or
28 exemption certificates, or checks. However, the department may not
29 disclose general ledgers, sales or cash receipt journals, check
30 registers, accounts receivable/payable ledgers, general journals,
31 financial statements, expert's workpapers, income tax returns, state
32 tax returns, tax return workpapers, or other similar data, materials,
33 or documents.

34 (b) Before disclosure of any tax return or tax information under
35 this subsection (4), the department must, through written
36 correspondence, inform the person in possession of the data, materials,
37 or documents to be disclosed. The correspondence must clearly identify
38 the data, materials, or documents to be disclosed. The department may

1 not disclose any tax return or tax information under this subsection
2 (4) until the time period allowed in (c) of this subsection has expired
3 or until the court has ruled on any challenge brought under (c) of this
4 subsection.

5 (c) The person in possession of the data, materials, or documents
6 to be disclosed by the department has twenty days from the receipt of
7 the written request required under (b) of this subsection to petition
8 the superior court of the county in which the petitioner resides for
9 injunctive relief. The court must limit or deny the request of the
10 department if the court determines that:

11 (i) The data, materials, or documents sought for disclosure are
12 cumulative or duplicative, or are obtainable from some other source
13 that is more convenient, less burdensome, or less expensive;

14 (ii) The production of the data, materials, or documents sought
15 would be unduly burdensome or expensive, taking into account the needs
16 of the department, the amount in controversy, limitations on the
17 petitioner's resources, and the importance of the issues at stake; or

18 (iii) The data, materials, or documents sought for disclosure
19 contain trade secret information that, if disclosed, could harm the
20 petitioner.

21 (d) The department must reimburse reasonable expenses for the
22 production of data, materials, or documents incurred by the person in
23 possession of the data, materials, or documents to be disclosed.

24 (e) Requesting information under (b) of this subsection that may
25 indicate that a taxpayer is under investigation does not constitute a
26 disclosure of tax return or tax information under this section.

27 (5) Service of a subpoena issued under RCW (~~(82.32.115)~~) 82.32.117
28 does not constitute a disclosure of return or tax information under
29 this section. Notwithstanding anything else to the contrary in this
30 section, a person served with a subpoena under RCW (~~(82.32.115)~~)
31 82.32.117 may disclose the existence or content of the subpoena to that
32 person's legal counsel.

33 (6) Any person acquiring knowledge of any return or tax information
34 in the course of his or her employment with the department of revenue
35 and any person acquiring knowledge of any return or tax information as
36 provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this
37 section, who discloses any such return or tax information to another
38 person not entitled to knowledge of such return or tax information

1 under the provisions of this section, is guilty of a misdemeanor. If
2 the person guilty of such violation is an officer or employee of the
3 state, such person must forfeit such office or employment and is
4 incapable of holding any public office or employment in this state for
5 a period of two years thereafter.

6 **PART V**
7 **MISCELLANEOUS**

8 NEW SECTION. **Sec. 501.** Section 206 of this act takes effect July
9 1, 2012.

10 NEW SECTION. **Sec. 502.** Section 205 of this act expires July 1,
11 2012.

Passed by the Senate March 23, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.