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**SENATE BILL 5541**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senator Hill; by request of Department of Revenue

Read first time 01/23/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to improving tax fairness for businesses engaged  
2 in electronic commerce by eliminating inconsistent tax treatment of  
3 digital business inputs, ensuring that prewritten computer software  
4 developers remain eligible for the manufacturing machinery and  
5 equipment sales and use tax exemption, and providing greater clarity  
6 for out-of-state sellers concerning their tax obligations; amending  
7 RCW 82.08.02087, 82.12.02087, 82.08.195, and 82.04.067; reenacting  
8 and amending RCW 82.08.02565; adding a new section to chapter 82.08  
9 RCW; adding a new section to chapter 82.32 RCW; creating new  
10 sections; providing an effective date; and declaring an emergency.

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

12

**Part I**

13

**Sales and use tax exemptions for digital automated services used**

14

**solely for business purposes**

15

**NEW SECTION.**

**Sec. 101.**

16

(1) In 2009 the legislature enacted comprehensive legislation addressing the excise taxation of digital products. The term "digital products" encompasses two categories of electronically transferred goods and services: "Digital goods," such as a digital music file or an e-book, and "digital automated services," such as an online research application.

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1 (2) In general, the legislation provided that retail sales of  
2 digital products are subject to retail sales tax, unless specifically  
3 exempted. One of the exemptions provided in the 2009 enactment, as  
4 modified by 2010 clean-up legislation, was for sales of digital goods  
5 used solely for business purposes. The legislature's purpose in  
6 enacting this exemption was to provide businesses with a meaningful  
7 sales and use tax exemption for digital business inputs. This  
8 exemption is not currently subject to an expiration date or to  
9 accountability reporting requirements.

10 (3) The legislature finds that there has been a significant  
11 migration of digital business inputs from digital goods to digital  
12 automated services in the past several years, which was not  
13 anticipated in 2009 and 2010. The legislature further finds that this  
14 migration has significantly undermined the effect of the  
15 legislature's policy choice to provide substantial sales and use tax  
16 relief for the acquisition of digital business inputs.

17 (4) Therefore, the legislature intends in sections 102 and 103 of  
18 this act to reaffirm and restore the policy choice it made in 2009 of  
19 providing substantial sales and use tax relief to businesses for  
20 their acquisition of digital business inputs. This intent is  
21 accomplished by providing prospectively a sales and use tax exemption  
22 for digital automated services used solely for business  
23 purposes. Because this exemption provides parity for digital goods  
24 and digital automated services used solely for business purposes and  
25 functions to restore the legislature's goal of exempting digital  
26 business inputs from sales and use tax, sections 102 and 103 of this  
27 act are exempt from the provisions of RCW 82.32.805 and 82.32.808.

28 **Sec. 102.** RCW 82.08.02087 and 2010 c 111 s 402 are each amended  
29 to read as follows:

30 (1) The tax imposed by RCW 82.08.020 does not apply to the sale  
31 to a business of digital ~~((goods))~~ products, and services rendered in  
32 respect to digital goods, where the digital ~~((goods))~~ products, and  
33 services rendered in respect to digital goods are purchased solely  
34 for business purposes. The exemption provided by this section also  
35 applies to the sale to a business of a digital code if all of the  
36 digital ~~((goods))~~ products to be obtained through the use of the code  
37 will be used solely for business purposes.

38 (2) ~~((The exemption is available only when the buyer provides the  
39 seller with))~~ Sellers making tax-exempt sales under this section must

1 obtain from the purchaser an exemption certificate in a form and  
2 manner prescribed by the department. The seller must retain a copy of  
3 the certificate for the seller's files.

4 (3) The exemption in this section is not subject to the  
5 provisions of RCW 82.32.805 and 82.32.808.

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

8 (a) "Business purposes" means any purpose relevant to the  
9 business needs of the taxpayer claiming an exemption under this  
10 section. Business purposes do not include any personal, family, or  
11 household purpose. The term also does not include any activity  
12 conducted by a government entity as that term is defined in RCW  
13 7.25.005; and

14 (b) "Services rendered in respect to digital goods" means those  
15 services defined as a retail sale in RCW 82.04.050(2)(g).

16 **Sec. 103.** RCW 82.12.02087 and 2010 c 111 s 502 are each amended  
17 to read as follows:

18 (1) The provisions of this chapter do not apply to the use by a  
19 business of digital (~~goods~~) products, and services rendered in  
20 respect to digital goods, where the digital (~~goods~~) products and  
21 services rendered in respect to digital goods are used solely for  
22 business purposes. The exemption provided by this section also  
23 applies to the use by a business of a digital code if all of the  
24 digital (~~goods~~) products to be obtained through the use of the code  
25 will be used solely for business purposes.

26 (2) The exemption in this section is not subject to the  
27 provisions of RCW 82.32.805 and 82.32.808.

28 (3) For purposes of this section, the definitions in RCW  
29 82.08.02087 apply.

30 **Sec. 104.** RCW 82.08.195 and 2010 c 111 s 601 are each amended to  
31 read as follows:

32 (1) Except as provided in subsection (6) of this section, a  
33 bundled transaction is subject to the tax imposed by RCW 82.08.020 if  
34 the retail sale of any of its component products would be subject to  
35 the tax imposed by RCW 82.08.020.

36 (2) The transactions described in RCW 82.08.190(4) (a) and (b)  
37 are subject to the tax imposed by RCW 82.08.020 if the service that  
38 is the true object of the transaction is subject to the tax imposed

1 by RCW 82.08.020. If the service that is the true object of the  
2 transaction is not subject to the tax imposed by RCW 82.08.020, the  
3 transaction is not subject to the tax imposed by RCW 82.08.020.

4 (3) The transaction described in RCW 82.08.190(4)(c) is not  
5 subject to the tax imposed by RCW 82.08.020.

6 (4) The transaction described in RCW 82.08.190(4)(d) is not  
7 subject to the tax imposed by RCW 82.08.020.

8 (5) In the case of a bundled transaction that includes any of the  
9 following: Telecommunications service, ancillary service, internet  
10 access, or audio or video programming service:

11 (a) If the price is attributable to products that are taxable and  
12 products that are not taxable, the portion of the price attributable  
13 to the nontaxable products are subject to the tax imposed by RCW  
14 82.08.020 unless the seller can identify by reasonable and verifiable  
15 standards the portion from its books and records that are kept in the  
16 regular course of business for other purposes including, but not  
17 limited to, nontax purposes;

18 (b) If the price is attributable to products that are subject to  
19 tax at different tax rates, the total price is attributable to the  
20 products subject to the tax at the highest tax rate unless the seller  
21 can identify by reasonable and verifiable standards the portion of  
22 the price attributable to the products subject to the tax imposed by  
23 RCW 82.08.020 at the lower rate from its books and records that are  
24 kept in the regular course of business for other purposes including,  
25 but not limited to, nontax purposes.

26 (6) The tax imposed by RCW 82.08.020 does not apply in respect to  
27 a bundled transaction consisting entirely of the sale of services or  
28 of services and prepared food, if the sale is to a resident, sixty-  
29 two years of age or older, of a qualified low-income senior housing  
30 facility by the lessor or operator of the facility. A single bundled  
31 transaction involving both spouses of a marital community or both  
32 domestic partners of a domestic partnership meets the age requirement  
33 in this subsection if at least one of the spouses or domestic  
34 partners is at least sixty-two years of age. For purposes of this  
35 subsection, "qualified low-income senior housing facility" has the  
36 same meaning as in RCW 82.08.0293.

37 (7) In the case of the sale of a code that provides a purchaser  
38 with the right to obtain more than one digital product or one or more  
39 digital products and other products or services, and all of the  
40 products and services, digital or otherwise, to be obtained through

1 the use of the code do not have the same sales and use tax treatment,  
2 for purposes of the tax imposed by RCW 82.08.020:

3 (a) The transaction is deemed to be the sale of the products and  
4 services to be obtained through the use of the code; and

5 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire  
6 selling price of the code, except as provided in (b)(ii) of this  
7 subsection (7).

8 (ii) If the seller can identify by reasonable and verifiable  
9 standards the portion of the selling price attributable to the  
10 products and services that are not subject to the tax imposed by RCW  
11 82.08.020 from its books and records that are kept in the regular  
12 course of business for other purposes including, but not limited to,  
13 nontax purposes, the tax imposed by RCW 82.08.020 does not apply to  
14 that portion of the selling price of the code attributable to the  
15 products and services that are not subject to the tax imposed by RCW  
16 82.08.020 nor to that portion of the selling price of the code  
17 attributable to any digital (~~goods~~) products, the sale of which is  
18 exempt under RCW 82.08.02087.

## 19 Part II

### 20 Clarifying the sales and use tax exemption for machinery equipment 21 used in manufacturing, research and development, or testing 22 operations

23 NEW SECTION. **Sec. 201.** (1) The legislature in 1995 established  
24 sales and use tax exemptions for manufacturing machinery and  
25 equipment, commonly referred to as the "M&E exemption." In 1996, the  
26 legislature expanded the exemption to include machinery and equipment  
27 used by a manufacturer in a research and development operation.

28 (2) The legislature finds that software developers that created  
29 and produced prewritten computer software have historically qualified  
30 for this exemption because the production of prewritten computer  
31 software contained on a disc or other tangible storage media provided  
32 to the buyer is considered to be a manufacturing activity. The  
33 legislature further finds that changes in the software industry have  
34 resulted in most prewritten computer software sold today being  
35 delivered to buyers electronically. As a result of this change,  
36 questions have been raised about the continued applicability of the  
37 machinery and equipment exemption to the development and production  
38 of prewritten computer software.

1 (3) Therefore, the legislature intends in section 202 of this act  
2 to clarify its intent that the machinery and equipment exemption  
3 applies to developers of prewritten computer software, regardless of  
4 how the software is delivered to buyers. As a clarification of its  
5 intent, the legislature does not intend section 202 of this act to be  
6 considered the expansion of an existing tax preference for purposes  
7 of RCW 82.32.805 and 82.32.808.

8 **Sec. 202.** RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s  
9 13 are each reenacted and amended to read as follows:

10 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to  
11 a manufacturer or processor for hire of machinery and equipment used  
12 directly in a manufacturing operation or research and development  
13 operation, to sales to a person engaged in testing for a manufacturer  
14 or processor for hire of machinery and equipment used directly in a  
15 testing operation, or to sales of or charges made for labor and  
16 services rendered in respect to installing, repairing, cleaning,  
17 altering, or improving the machinery and equipment.

18 (b) Except as provided in (c) of this subsection, sellers making  
19 tax-exempt sales under this section must obtain from the purchaser an  
20 exemption certificate in a form and manner prescribed by the  
21 department by rule. The seller must retain a copy of the certificate  
22 for the seller's files.

23 (c)(i) The exemption under this section is in the form of a  
24 remittance for a gas distribution business, as defined in RCW  
25 82.16.010, claiming the exemption for machinery and equipment used  
26 for the production of compressed natural gas or liquefied natural gas  
27 for use as a transportation fuel.

28 (ii) A gas distribution business claiming an exemption from state  
29 and local tax in the form of a remittance under this section must pay  
30 the tax under RCW 82.08.020 and all applicable local sales taxes.  
31 Beginning July 1, 2017, the gas distribution business may then apply  
32 to the department for remittance of state and local sales and use  
33 taxes. A gas distribution business may not apply for a remittance  
34 more frequently than once a quarter. The gas distribution business  
35 must specify the amount of exempted tax claimed and the qualifying  
36 purchases for which the exemption is claimed. The gas distribution  
37 business must retain, in adequate detail, records to enable the  
38 department to determine whether the business is entitled to an

1 exemption under this section, including: Invoices; proof of tax paid;  
2 and documents describing the machinery and equipment.

3 (iii) The department must determine eligibility under this  
4 section based on the information provided by the gas distribution  
5 business, which is subject to audit verification by the department.  
6 The department must on a quarterly basis remit exempted amounts to  
7 qualifying businesses who submitted applications during the previous  
8 quarter.

9 (iv) Beginning July 1, 2028, a gas distribution business may not  
10 apply for a refund under this section or RCW 82.12.02565.

11 (2) For purposes of this section and RCW 82.12.02565:

12 (a) "Machinery and equipment" means industrial fixtures, devices,  
13 and support facilities, and tangible personal property that becomes  
14 an ingredient or component thereof, including repair parts and  
15 replacement parts. "Machinery and equipment" includes pollution  
16 control equipment installed and used in a manufacturing operation,  
17 testing operation, or research and development operation to prevent  
18 air pollution, water pollution, or contamination that might otherwise  
19 result from the manufacturing operation, testing operation, or  
20 research and development operation. "Machinery and equipment" also  
21 includes digital goods.

22 (b) "Machinery and equipment" does not include:

23 (i) Hand-powered tools;

24 (ii) Property with a useful life of less than one year;

25 (iii) Buildings, other than machinery and equipment that is  
26 permanently affixed to or becomes a physical part of a building; and

27 (iv) Building fixtures that are not integral to the manufacturing  
28 operation, testing operation, or research and development operation  
29 that are permanently affixed to and become a physical part of a  
30 building, such as utility systems for heating, ventilation, air  
31 conditioning, communications, plumbing, or electrical.

32 (c) Machinery and equipment is "used directly" in a manufacturing  
33 operation, testing operation, or research and development operation  
34 if the machinery and equipment:

35 (i) Acts upon or interacts with an item of tangible personal  
36 property;

37 (ii) Conveys, transports, handles, or temporarily stores an item  
38 of tangible personal property at the manufacturing site or testing  
39 site;

1 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
2 tests tangible personal property at the site or away from the site;

3 (iv) Provides physical support for or access to tangible personal  
4 property;

5 (v) Produces power for, or lubricates machinery and equipment;

6 (vi) Produces another item of tangible personal property for use  
7 in the manufacturing operation, testing operation, or research and  
8 development operation;

9 (vii) Places tangible personal property in the container,  
10 package, or wrapping in which the tangible personal property is  
11 normally sold or transported; or

12 (viii) Is integral to research and development as defined in RCW  
13 82.63.010.

14 (d) "Manufacturer" means a person that qualifies as a  
15 manufacturer under RCW 82.04.110. "Manufacturer" also includes a  
16 person that:

17 (i) Prints newspapers or other materials; or

18 (ii) Is engaged in the development of prewritten computer  
19 software that is not transferred to purchasers by means of tangible  
20 storage media.

21 (e) "Manufacturing" means only those activities that come within  
22 the definition of "to manufacture" in RCW 82.04.120 and are taxed as  
23 manufacturing or processing for hire under chapter 82.04 RCW, or  
24 would be taxed as such if such activity were conducted in this state  
25 or if not for an exemption or deduction. "Manufacturing" also  
26 includes printing newspapers or other materials. An activity is not  
27 taxed as manufacturing or processing for hire under chapter 82.04 RCW  
28 if the activity is within the purview of chapter 82.16 RCW.

29 (f) "Manufacturing operation" means the manufacturing of  
30 articles, substances, or commodities for sale as tangible personal  
31 property. A manufacturing operation begins at the point where the raw  
32 materials enter the manufacturing site and ends at the point where  
33 the processed material leaves the manufacturing site. With respect to  
34 the production of class A or exceptional quality biosolids by a  
35 wastewater treatment facility, the manufacturing operation begins at  
36 the point where class B biosolids undergo additional processing to  
37 achieve class A or exceptional quality standards. Notwithstanding  
38 anything to the contrary in this section, the term also includes that  
39 portion of a cogeneration project that is used to generate power for  
40 consumption within the manufacturing site of which the cogeneration



1 project is an integral part. The term does not include the  
2 preparation of food products on the premises of a person selling food  
3 products at retail.

4 (g) "Cogeneration" means the simultaneous generation of  
5 electrical energy and low-grade heat from the same fuel.

6 (h) "Research and development operation" means engaging in  
7 research and development as defined in RCW 82.63.010 by a  
8 manufacturer or processor for hire.

9 (i) "Testing" means activities performed to establish or  
10 determine the properties, qualities, and limitations of tangible  
11 personal property.

12 (j) "Testing operation" means the testing of tangible personal  
13 property for a manufacturer or processor for hire. A testing  
14 operation begins at the point where the tangible personal property  
15 enters the testing site and ends at the point where the tangible  
16 personal property leaves the testing site. The term also includes the  
17 testing of tangible personal property for use in that portion of a  
18 cogeneration project that is used to generate power for consumption  
19 within the manufacturing site of which the cogeneration project is an  
20 integral part. The term does not include the testing of tangible  
21 personal property for use in the production of electricity by a light  
22 and power business as defined in RCW 82.16.010 or the preparation of  
23 food products on the premises of a person selling food products at  
24 retail.

25 (3) This section does not apply (a) to sales of machinery and  
26 equipment used directly in the manufacturing, research and  
27 development, or testing of marijuana, useable marijuana, or  
28 marijuana-infused products, or (b) to sales of or charges made for  
29 labor and services rendered in respect to installing, repairing,  
30 cleaning, altering, or improving such machinery and equipment.

31 **Part III**  
32 **Remote sellers**

33 NEW SECTION. **Sec. 301.** (1) The commerce clause of the United  
34 States Constitution as currently interpreted by the United States  
35 supreme court prohibits states from imposing sales or use tax  
36 collection obligations on out-of-state businesses unless the business  
37 has a substantial nexus with the taxing state.

1 (2) The legislature recognizes that under the United States  
2 supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298  
3 (1992), a substantial nexus for sales and use tax collection purposes  
4 requires that the taxpayer have a physical presence in the taxing  
5 state.

6 (3) The legislature further recognizes that the requisite  
7 physical presence can be established directly through a taxpayer's  
8 own activities in the taxing state, or indirectly, through  
9 independent contractors, agents, or other representatives who act on  
10 behalf of the taxpayer in the taxing state.

11 (4) However, the legislature finds that because the United States  
12 supreme court has not clearly defined the circumstances under which a  
13 physical presence is sufficient to establish a substantial nexus for  
14 tax purposes, frequent conflicts have arisen throughout the country  
15 among state taxing authorities, taxpayers, tax practitioners, and  
16 courts.

17 (5) Therefore, the legislature intends to provide more clarity  
18 for out-of-state sellers that compensate Washington residents for  
19 referring customers to the out-of-state seller by providing clear  
20 statutory guidelines for determining when these out-of-state sellers  
21 are required to collect Washington's retail sales tax.

22 (6) Nothing in Part III of this act may be construed as relieving  
23 in-state businesses and other businesses having a substantial nexus  
24 with Washington through a direct physical presence in this state from  
25 their Washington sales and use tax collection obligations.

26 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.08  
27 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as  
28 follows:

29 (1) For purposes of this chapter, a remote seller is presumed to  
30 have a substantial nexus with this state and is obligated to collect  
31 retail sales tax if the remote seller enters into an agreement with a  
32 resident of this state under which the resident, for a commission or  
33 other consideration, directly or indirectly refers potential  
34 customers, whether by a link on an internet web site or otherwise, to  
35 the remote seller, if the cumulative gross receipts from sales by the  
36 remote seller to customers in this state who are referred to the  
37 remote seller by all residents with this type of an agreement with  
38 the remote seller exceed ten thousand dollars during the preceding  
39 calendar year. This presumption may be rebutted by proof that the

1 resident with whom the remote seller has an agreement did not engage  
2 in any solicitation in this state on behalf of the remote seller that  
3 would satisfy the nexus requirement of the United States Constitution  
4 during the calendar year in question.

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

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

13 (4) This section is subject to section 304 of this act.

14 **Sec. 303.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each  
15 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

1 tax purposes, the portion of the loan or credit card receivable  
2 charged off is deducted from the outstanding principal balance.

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

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

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

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

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

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

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

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

3 (e) Notwithstanding anything else to the contrary in this  
4 subsection, property counting toward the thresholds in subsection  
5 (1)(c)(i) and (iv) of this section does not include a person's  
6 ownership of, or rights in, computer software as defined in RCW  
7 82.04.215, including computer software used in providing a digital  
8 automated service; master copies of software; and digital goods and  
9 digital codes residing on servers located in this state.

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

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

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

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

30 (4) Receipts counting toward the thresholds in subsection  
31 (1)(c)(iii) and (iv) of this section are those amounts included in  
32 the numerator of the receipts factor under RCW 82.04.462 and, for  
33 financial institutions, those amounts included in the numerator of  
34 the receipts factor under the rule adopted by the department as  
35 authorized in RCW 82.04.460(2).

36 (5)(a) Each December, the department must review the cumulative  
37 percentage change in the consumer price index. The department must  
38 adjust the thresholds in subsection (1)(c)(i) through (iii) of this  
39 section if the consumer price index has changed by five percent or  
40 more since the later of June 1, 2010, or the date that the thresholds

1 were last adjusted under this subsection. For purposes of determining  
2 the cumulative percentage change in the consumer price index, the  
3 department must compare the consumer price index available as of  
4 December 1st of the current year with the consumer price index as of  
5 the later of June 1, 2010, or the date that the thresholds were last  
6 adjusted under this subsection. The thresholds must be adjusted to  
7 reflect that cumulative percentage change in the consumer price  
8 index. The adjusted thresholds must be rounded to the nearest one  
9 thousand dollars. Any adjustment will apply to tax periods that begin  
10 after the adjustment is made.

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

15 (6)(a) Subsections (1) through (5) of this section only apply  
16 with respect to the taxes imposed under this chapter on apportionable  
17 activities as defined in RCW 82.04.460. For purposes of the taxes  
18 imposed under this chapter on any activity not included in the  
19 definition of apportionable activities in RCW 82.04.460, a person is  
20 deemed to have a substantial nexus with this state if the person has  
21 a physical presence in this state, which need only be demonstrably  
22 more than a slightest presence.

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

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

31 (ii) A remote seller as defined in section 302 of this act is  
32 presumed to be engaged in activities in this state that are  
33 significantly associated with the remote seller's ability to  
34 establish or maintain a market for its products in this state if the  
35 remote seller is presumed to have a substantial nexus with this state  
36 under section 302 of this act. The presumption in this subsection  
37 (6)(c)(ii) may be rebutted as provided in section 302 of this act. To  
38 the extent that the presumption in section 302 of this act is no  
39 longer operative pursuant to section 304 of this act, the presumption  
40 in this subsection (6)(c)(ii) is no longer operative. Nothing in this

1 section may be construed to affect in any way RCW 82.04.424,  
2 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms  
3 "agent" or "other representative" in this subsection (6)(c).

4 NEW SECTION. Sec. 304. A new section is added to chapter 82.32  
5 RCW to read as follows:

6 (1) If the department determines that a change, taking effect  
7 after the effective date of this section, in the streamlined sales  
8 and use tax agreement or federal law creates a conflict with any  
9 provision of section 302 of this act, such conflicting provision or  
10 provisions of section 302 of this act, including any related  
11 provisions that would not function as originally intended, have no  
12 further force and effect as of the date the change in the streamlined  
13 sales and use tax agreement or federal law becomes effective.

14 (2) For purposes of this section:

15 (a) A change in federal law conflicts with section 302 of this  
16 act if the change clearly allows states to impose greater sales and  
17 use tax collection obligations on remote sellers than provided for,  
18 or clearly prevents states from imposing sales and use tax collection  
19 obligations on remote sellers to the extent provided for, under  
20 section 302 of this act.

21 (b) A change in the streamlined sales and use tax agreement  
22 conflicts with section 302 of this act if one or more provisions of  
23 section 302 of this act causes this state to be found out of  
24 compliance with the streamlined sales and use tax agreement by its  
25 governing board.

26 (3) If the department makes a determination under this section  
27 that a change in federal law or the streamlined sales and use tax  
28 agreement conflicts with one or more provisions of section 302 of  
29 this act, the department:

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

34 (b) Must include information on its web site informing taxpayers  
35 and the public (i) of the provision or provisions of section 302 of  
36 this act that will have no further force and effect, (ii) when such  
37 change will become effective, and (iii) about how to participate in  
38 any rule making conducted by the department in accordance with (a) of  
39 this subsection (3).

1 (4) For purposes of this section, "remote seller" has the same  
2 meaning as in section 302 of this act.

3 **Part IV**  
4 **Miscellaneous**

5 NEW SECTION. **Sec. 401.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 402.** Section 202 of this act applies  
10 prospectively and retroactively.

11 NEW SECTION. **Sec. 403.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of  
13 the state government and its existing public institutions, and takes  
14 effect July 1, 2015.

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