

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2163**

65th Legislature  
2017 3rd Special Session

Passed by the House June 30, 2017  
Yeas 51 Nays 42

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**Speaker of the House of Representatives**

Passed by the Senate June 30, 2017  
Yeas 33 Nays 16

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2163** as passed by House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED HOUSE BILL 2163**

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AS AMENDED BY THE SENATE

Passed Legislature - 2017 3rd Special Session

**State of Washington**                      **65th Legislature**                      **2017 Regular Session**  
**By Representative Ormsby**

1            AN ACT Relating to revenue; amending RCW 82.08.0293, 82.12.0293,  
2 82.12.0263, 82.08.050, 82.12.040, 82.12.040, 82.04.066, 82.04.067,  
3 82.04.220, 82.14.495, 82.14.500, 54.28.055, and 54.28.055; adding new  
4 sections to chapter 82.08 RCW; adding new sections to chapter 82.12  
5 RCW; adding new sections to chapter 82.32 RCW; adding a new chapter  
6 to Title 82 RCW; creating new sections; repealing RCW 82.04.424,  
7 82.14.495, and 82.14.500; repealing 2017 3rd sp.s. c ... s 403  
8 (uncodified); prescribing penalties; providing effective dates;  
9 providing expiration dates; and declaring an emergency.

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

11    **Part I**  
12    **Eliminating or Narrowing Tax Preferences**

13    **Subpart A**  
14    **Eliminating the Sales and Use Tax Exemption for Bottled Water**

15            **Sec. 101.** RCW 82.08.0293 and 2014 c 140 s 22 are each amended to  
16 read as follows:

17            (1) The tax levied by RCW 82.08.020 does not apply to sales of  
18 food and food ingredients. "Food and food ingredients" means  
19 substances, whether in liquid, concentrated, solid, frozen, dried, or

1 dehydrated form, that are sold for ingestion or chewing by humans and  
2 are consumed for their taste or nutritional value. "Food and food  
3 ingredients" does not include:

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

7 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
8 tobacco, or any other item that contains tobacco; and

9 (c) Marijuana, useable marijuana, or marijuana-infused products.

10 (2) The exemption of "food and food ingredients" provided for in  
11 subsection (1) of this section does not apply to prepared food, soft  
12 drinks, bottled water, or dietary supplements. (~~For purposes of this~~  
13 ~~subsection, the following definitions apply:~~) The definitions in  
14 this subsection apply throughout this section unless the context  
15 clearly requires otherwise.

16 (a) "Bottled water" means water that is placed in a safety sealed  
17 container or package for human consumption. Bottled water is calorie  
18 free and does not contain sweeteners or other additives except that  
19 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
20 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
21 (vi) preservatives; and (vii) only those flavors, extracts, or  
22 essences derived from a spice or fruit. "Bottled water" includes  
23 water that is delivered to the buyer in a reusable container that is  
24 not sold with the water.

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

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

28 (A) A vitamin;

29 (B) A mineral;

30 (C) An herb or other botanical;

31 (D) An amino acid;

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

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

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

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

5 ~~((b))~~ (c)(i) "Prepared food" means:

6 (A) Food sold in a heated state or heated by the seller;

7 (B) Food sold with eating utensils provided by the seller,  
8 including plates, knives, forks, spoons, glasses, cups, napkins, or  
9 straws. A plate does not include a container or packaging used to  
10 transport the food; or

11 (C) Two or more food ingredients mixed or combined by the seller  
12 for sale as a single item, except:

13 (I) Food that is only cut, repackaged, or pasteurized by the  
14 seller; or

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

21 (ii) "Prepared food" does not include the following food or food  
22 ingredients, if the food or food ingredients are sold without eating  
23 utensils provided by the seller:

24 (A) Food sold by a seller whose proper primary North American  
25 industry classification system (NAICS) classification is  
26 manufacturing in sector 311, except subsector 3118 (bakeries), as  
27 provided in the "North American industry classification system—United  
28 States, 2002";

29 (B) Food sold in an unheated state by weight or volume as a  
30 single item; or

31 (C) Bakery items. The term "bakery items" includes bread, rolls,  
32 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,  
33 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

34 ~~((e))~~ (d) "Soft drinks" means nonalcoholic beverages that  
35 contain natural or artificial sweeteners. Soft drinks do not include  
36 beverages that contain: Milk or milk products; soy, rice, or similar  
37 milk substitutes; or greater than fifty percent of vegetable or fruit  
38 juice by volume.

39 (3) Notwithstanding anything in this section to the contrary, the  
40 exemption of "food and food ingredients" provided in this section

1 applies to food and food ingredients that are furnished, prepared, or  
2 served as meals:

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

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

9 (c) That are provided to residents, sixty-two years of age or  
10 older, of a qualified low-income senior housing facility by the  
11 lessor or operator of the facility. The sale of a meal that is billed  
12 to both spouses of a marital community or both domestic partners of a  
13 domestic partnership meets the age requirement in this subsection  
14 (3)(c) if at least one of the spouses or domestic partners is at  
15 least sixty-two years of age. For purposes of this subsection,  
16 "qualified low-income senior housing facility" means a facility:

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

20 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;  
21 and

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

25 (4)(a) Subsection (1) of this section notwithstanding, the retail  
26 sale of food and food ingredients is subject to sales tax under RCW  
27 82.08.020 if the food and food ingredients are sold through a vending  
28 machine. Except as provided in (b) of this subsection, the selling  
29 price of food and food ingredients sold through a vending machine for  
30 purposes of RCW 82.08.020 is fifty-seven percent of the gross  
31 receipts.

32 (b) For soft drinks, bottled water, and hot prepared food and  
33 food ingredients, other than food and food ingredients which are  
34 heated after they have been dispensed from the vending machine, the  
35 selling price is the total gross receipts of such sales divided by  
36 the sum of one plus the sales tax rate expressed as a decimal.

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

1       **Sec. 102.** RCW 82.12.0293 and 2011 c 2 s 303 are each amended to  
2 read as follows:

3       (1) The provisions of this chapter do not apply in respect to the  
4 use of food and food ingredients for human consumption. "Food and  
5 food ingredients" has the same meaning as in RCW 82.08.0293.

6       (2) The exemption of "food and food ingredients" provided for in  
7 subsection (1) of this section does not apply to prepared food, soft  
8 drinks, bottled water, or dietary supplements. "Prepared food," "soft  
9 drinks," "bottled water," and "dietary supplements" have the same  
10 meanings as in RCW 82.08.0293.

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

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

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

21       (c) That are provided to residents, sixty-two years of age or  
22 older, of a qualified low-income senior housing facility by the  
23 lessor or operator of the facility. The sale of a meal that is billed  
24 to both spouses of a marital community or both domestic partners of a  
25 domestic partnership meets the age requirement in this subsection  
26 (3)(c) if at least one of the spouses or domestic partners is at  
27 least sixty-two years of age. For purposes of this subsection,  
28 "qualified low-income senior housing facility" has the same meaning  
29 as in RCW 82.08.0293.

30       NEW SECTION. **Sec. 103.** A new section is added to chapter 82.08  
31 RCW to read as follows:

32       (1) Subject to the conditions in this section, the tax levied by  
33 RCW 82.08.020 does not apply to sales of bottled water dispensed or  
34 to be dispensed to patients pursuant to a prescription for use in the  
35 cure, mitigation, treatment, or prevention of disease or medical  
36 condition.

37       (2) For purposes of this section, "prescription" means an order,  
38 formula, or recipe issued in any form of oral, written, electronic,

1 or other means of transmission by a duly licensed practitioner  
2 authorized by the laws of this state to prescribe.

3 (3) Except for sales of bottled water delivered to the buyer in a  
4 reusable container that is not sold with the water, sellers must  
5 collect tax on sales subject to this exemption. Any buyer that has  
6 paid at least twenty-five dollars in state and local sales taxes on  
7 purchases of bottled water subject to this exemption may apply for a  
8 refund of the taxes directly from the department in a form and manner  
9 prescribed by the department. The department must deny any refund  
10 application if the amount of the refund requested is less than  
11 twenty-five dollars. No refund may be made for taxes paid more than  
12 four years after the end of the calendar year in which the tax was  
13 paid to the seller.

14 (4) With respect to sales of bottled water delivered to the buyer  
15 in a reusable container that is not sold with the water, buyers  
16 claiming the exemption provided in this section must provide the  
17 seller with an exemption certificate in a form and manner prescribed  
18 by the department. The seller must retain a copy of the certificate  
19 for the seller's files.

20 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.12  
21 RCW to read as follows:

22 (1) The provisions of this chapter do not apply in respect to the  
23 use of bottled water dispensed or to be dispensed to patients  
24 pursuant to a prescription for use in the cure, mitigation,  
25 treatment, or prevention of disease or medical condition.

26 (2) For the purposes of this section, "prescription" has the same  
27 meaning as provided in section 103 of this act.

28 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.08  
29 RCW to read as follows:

30 (1)(a) Subject to the conditions in this section, the tax levied  
31 by RCW 82.08.020 does not apply to sales of bottled water to persons  
32 whose primary source of drinking water is unsafe.

33 (b) For purposes of this subsection and section 106 of this act,  
34 a person's primary source of drinking water is unsafe if:

35 (i) The public water system providing the drinking water has  
36 issued a public notification that the drinking water may pose a  
37 health risk, and the notification is still in effect on the date that  
38 the bottled water was purchased;

1 (ii) Test results on the person's drinking water, which are no  
2 more than twelve months old, from a laboratory certified to perform  
3 drinking water testing show that the person's drinking water does not  
4 meet safe drinking water standards applicable to public water  
5 systems; or

6 (iii) The person otherwise establishes, to the department's  
7 satisfaction, that the person's drinking water does not meet safe  
8 drinking water standards applicable to public water systems.

9 (2) Except for sales of bottled water delivered to the buyer in a  
10 reusable container that is not sold with the water, sellers must  
11 collect tax on sales subject to this exemption. Any buyer that has  
12 paid at least twenty-five dollars in state and local sales taxes on  
13 purchases of bottled water subject to this exemption may apply for a  
14 refund of the taxes directly from the department in a form and manner  
15 prescribed by the department. The department must deny any refund  
16 application if the amount of the refund requested is less than  
17 twenty-five dollars. No refund may be made for taxes paid more than  
18 four years after the end of the calendar year in which the tax was  
19 paid to the seller.

20 (3)(a) With respect to sales of bottled water delivered to the  
21 buyer in a reusable container that is not sold with the water, buyers  
22 claiming the exemption provided in this section must provide the  
23 seller with an exemption certificate in a form and manner prescribed  
24 by the department. The seller must retain a copy of the certificate  
25 for the seller's files.

26 (b) The department may waive the requirement for an exemption  
27 certificate in the event of disaster or similar circumstance.

28 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.12  
29 RCW to read as follows:

30 The provisions of this chapter do not apply in respect to the use  
31 of bottled water by persons whose primary source of drinking water is  
32 unsafe as provided in section 105 of this act.

### 33 **Subpart B**

#### 34 **Narrowing a Use Tax Exemption for Self-Produced Fuel**

35 **Sec. 107.** RCW 82.12.0263 and 1980 c 37 s 62 are each amended to  
36 read as follows:



1 The provisions of this chapter (~~shall~~) do not apply in respect  
2 to the use of biomass fuel by the extractor or manufacturer thereof  
3 when used directly in the operation of the particular extractive  
4 operation or manufacturing plant which produced or manufactured the  
5 same. For purposes of this section, "biomass fuel" means wood waste  
6 and other wood residuals, including forest derived biomass, but does  
7 not include firewood or wood pellets. "Biomass fuel" also includes  
8 partially organic by-products of pulp, paper, and wood manufacturing  
9 processes.

10 NEW SECTION. Sec. 108. A new section is added to chapter 82.12  
11 RCW to read as follows:

12 (1) The value of the article used with respect to refinery fuel  
13 gas under this chapter is the most recent monthly United States  
14 natural gas wellhead price, as published by the federal energy  
15 information administration.

16 (2) In lieu of the use tax rate provided in RCW 82.12.020,  
17 refinery fuel gas is subject to a rate of:

18 (a) 0.963 percent from January 1, 2018, through December 31,  
19 2018;

20 (b) 1.926 percent from January 1, 2019, through December 31,  
21 2019;

22 (c) 2.889 percent from January 1, 2020, through December 31,  
23 2020; and

24 (d) 3.852 percent from January 1, 2021, and thereafter.

25 (3) The use of fuel by the extractor or manufacturer thereof when  
26 used directly in the operation of the particular extractive operation  
27 or manufacturing plant that produced or manufactured the same is not  
28 subject to local use tax.

29 NEW SECTION. Sec. 109. Sections 107 through 109 of this act  
30 apply with respect to fuel, other than biomass fuel, consumed within  
31 this state on or after the effective date of this section, regardless  
32 of whether such fuel was produced or manufactured before the  
33 effective date of this section. For purposes of this section,  
34 "consumed" means the use of fuel resulting in the release of usable  
35 energy.

36 **Part II**  
37 **Remote Sellers, Referrers, and Marketplace Facilitators**

2        NEW SECTION.    **Sec. 201.**    (1) The legislature finds that states  
3 fail to collect more than twenty-three billion dollars annually in  
4 sales taxes from remote sales over the internet and through catalogs.  
5 The legislature further finds that Washington and its local  
6 governments will lose out on an estimated three hundred fifty-three  
7 million dollars in sales and use taxes in fiscal year 2018 from  
8 remote sales, reducing funds that would otherwise be available for  
9 the public education system, health care services, infrastructure,  
10 and other vital public services.

11        (2) The legislature finds that Colorado adopted a law requiring  
12 out-of-state retailers that do not collect Colorado's sales tax to  
13 report tax-related information to their Colorado customers and the  
14 Colorado department of revenue. The legislature further finds that in  
15 2016 the United States court of appeals for the tenth circuit upheld  
16 that law.

17        (3) The legislature intends by this act to address the  
18 significant harm and unfairness brought about by the physical  
19 presence nexus rule. To achieve this objective, this act adopts a new  
20 program. Under the new program, remote sellers meeting a specified  
21 threshold of gross receipts from retail sales into this state would  
22 have the option to either collect retail sales or use tax on taxable  
23 retail sales into this state or comply with certain sales and use tax  
24 notice and reporting provisions. This option is also available to  
25 other persons such as marketplace facilitators for facilitated sales  
26 on behalf of third-party remote sellers. The sales and use tax notice  
27 and reporting provisions in this act are similar to the multistate  
28 tax commission's draft model sales and use tax notice and reporting  
29 statute and Colorado's sales and use tax notice and reporting law.

30        NEW SECTION.    **Sec. 202.**    A new section is added to chapter 82.08  
31 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as  
32 follows:

33        (1)(a)(i) Except as provided in (a)(ii) of this subsection,  
34 beginning January 1, 2018, and for any calendar year thereafter,  
35 remote sellers, referrers, and marketplace facilitators meeting the  
36 criteria in subsection (2) of this section or that have a physical  
37 presence in this state, must elect to either collect and remit retail  
38 sales or use tax on all taxable retail sales into this state pursuant

1 to this chapter and chapters 82.12 and 82.32 RCW or comply with  
2 section 205 of this act.

3 (ii) Until January 1, 2020, the requirement under (a)(i) of this  
4 subsection (1) to collect and remit tax or comply with section 205 of  
5 this act does not apply with respect to the retail sale of digital  
6 products and digital codes, other than (A) specified digital products  
7 and digital games and (B) digital codes used to redeem specified  
8 digital products and digital games, by a marketplace seller through a  
9 marketplace facilitator or directly resulting from a referral.

10 (b) For marketplace facilitators, the election provided in (a) of  
11 this subsection (1) applies only with respect to:

12 (i) Retail sales through the marketplace facilitator's  
13 marketplace by or on behalf of marketplace sellers who do not have a  
14 physical presence in this state; and

15 (ii) A marketplace facilitator's own retail sales, if the  
16 marketplace facilitator does not have a physical presence in this  
17 state.

18 (c)(i) For referrers, the election provided in (a) of this  
19 subsection (1) applies only with respect to:

20 (A) Retail sales directly resulting from a referral of the  
21 purchaser to a marketplace seller who does not have a physical  
22 presence in this state; and

23 (B) A referrer's own retail sales, if the referrer does not have  
24 a physical presence in this state.

25 (ii) A referrer may make different elections with respect to  
26 retail sales described in (c)(i)(A) and (B) of this subsection.

27 (d) An election under (a) of this subsection (1) to collect  
28 retail sales or use tax is binding on the remote seller, referrer, or  
29 marketplace facilitator until January 1st of the calendar year that  
30 is at least twelve consecutive months after the remote seller,  
31 referrer, or marketplace facilitator began collecting retail sales or  
32 use tax under such election. A remote seller, referrer, or  
33 marketplace facilitator who has made an election under this  
34 subsection to collect retail sales or use tax may change its election  
35 and comply with section 205 of this act by providing written notice  
36 to the department in a form and manner required by the department.  
37 Such an election change may take effect only on the first day of the  
38 calendar year that is at least thirty days following the date that  
39 the department received written notice from the remote seller,  
40 referrer, or marketplace facilitator of its change in election.

1 (e)(i) Remote sellers, referrers, and marketplace facilitators  
2 complying with section 205 of this act may change their election  
3 under this subsection (1) at any time by collecting and remitting  
4 retail sales or use taxes under this chapter or chapter 82.12 RCW on  
5 taxable retail sales sourced to this state. Such an election is  
6 binding as provided in (d) of this subsection (1).

7 (ii) Remote sellers, referrers, and marketplace facilitators  
8 electing for the first time to collect retail sales or use tax must  
9 begin collecting state and local retail sales or use taxes on taxable  
10 retail sales sourced to this state beginning on the first day of the  
11 calendar month that is at least thirty days from the date that the  
12 remote seller, referrer, or marketplace facilitator met either  
13 threshold described in subsection (2) of this section.

14 (f) If the department discovers that any remote seller, referrer,  
15 or marketplace facilitator required to make an election under this  
16 subsection (1) is not registered with the department and collecting  
17 retail sales or use tax, the remote seller, referrer, or marketplace  
18 facilitator is conclusively presumed to have elected to comply with  
19 the notice and reporting requirements of section 205 of this act.

20 (2)(a) A remote seller is subject to subsection (1) of this  
21 section if, during the current or immediately preceding calendar  
22 year, its gross receipts from retail sales sourced to this state  
23 under RCW 82.32.730 are at least ten thousand dollars.

24 (b) A marketplace facilitator is subject to subsection (1) of  
25 this section if, during the current or immediately preceding calendar  
26 year, the gross receipts from retail sales sourced to this state  
27 under RCW 82.32.730 by the marketplace facilitator, whether in its  
28 own name or as an agent of a marketplace seller, total at least ten  
29 thousand dollars.

30 (c) A referrer is subject to subsection (1) of this section if,  
31 during the current or immediately preceding calendar year, the gross  
32 income of the business received from the referrer's referral services  
33 apportioned to Washington under RCW 82.04.462, whether or not subject  
34 to tax under chapter 82.04 RCW, and from retail sales sourced to this  
35 state under RCW 82.32.730, if any, is at least two hundred sixty-  
36 seven thousand dollars.

37 (3) This section is subject to the provisions of section 214 of  
38 this act.

1 (4) For the purposes of this section, "marketplace facilitator,"  
2 "referral," "referrer," and "remote seller" have the same meaning as  
3 provided in section 204 of this act.

4 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.08  
5 RCW to be codified between section 202 of this act and RCW 82.08.054  
6 to read as follows:

7 (1)(a) For purposes of this chapter and chapter 82.12 RCW, a  
8 marketplace facilitator or referrer is deemed to be an agent of any  
9 marketplace seller making retail sales through the marketplace  
10 facilitator's physical or electronic marketplace or directly  
11 resulting from a referral of the purchaser by the referrer.

12 (b) In addition to other applicable recordkeeping requirements,  
13 the department may require a marketplace facilitator or referrer to  
14 provide or make available to the department any information the  
15 department determines is reasonably necessary to enforce the  
16 provisions of this chapter and chapter 82.--- RCW (the new chapter  
17 created in section 601 of this act). Such information may include  
18 documentation of sales made by marketplace sellers through the  
19 marketplace facilitator's physical or electronic marketplace or  
20 directly resulting from a referral by the referrer. The department  
21 may prescribe by rule the form and manner for providing this  
22 information.

23 (2) A marketplace facilitator or referrer is relieved of  
24 liability under this chapter and chapter 82.12 RCW for failure to  
25 collect the correct amount of tax to the extent that the marketplace  
26 facilitator or referrer can show to the department's satisfaction  
27 that the error was due to incorrect information given to the  
28 marketplace facilitator or referrer by the marketplace seller, unless  
29 the marketplace facilitator, or referrer, and marketplace seller are  
30 affiliated persons. Where the marketplace facilitator or referrer is  
31 relieved of liability under this subsection (2), the marketplace  
32 seller is solely liable for the amount of uncollected tax due.

33 (3)(a) Subject to the limits in (b) and (c) of this subsection  
34 (3), a marketplace facilitator or referrer is relieved of liability  
35 under this chapter and chapter 82.12 RCW for the failure to collect  
36 tax on taxable retail sales to the extent that the marketplace  
37 facilitator or referrer can show to the department's satisfaction  
38 that:

1 (i) The taxable retail sale was made through the marketplace  
2 facilitator's marketplace or directly resulting from a referral of  
3 the purchaser by the referrer;

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

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

9 (b) Liability relief for a marketplace facilitator under (a) of  
10 this subsection (3) for a calendar year is limited as follows:

11 (i) For calendar year 2018, the liability relief may not exceed  
12 ten percent of the total tax due under this chapter and chapter 82.12  
13 RCW on taxable retail sales by the marketplace facilitator as agent  
14 of a marketplace seller and sourced to this state under RCW 82.32.730  
15 during the same calendar year.

16 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the  
17 liability relief may not exceed five percent of the total tax due  
18 under this chapter and chapter 82.12 RCW on taxable retail sales by  
19 the marketplace facilitator as agent of a marketplace seller and  
20 sourced to this state under RCW 82.32.730 during the same calendar  
21 year.

22 (iii) Beginning in calendar year 2024, the liability relief may  
23 not exceed three percent of the total tax due under this chapter and  
24 chapter 82.12 RCW on taxable retail sales by the marketplace  
25 facilitator as agent of a marketplace seller and sourced to this  
26 state under RCW 82.32.730 during the same calendar year.

27 (c) Liability relief for a referrer under (a) of this subsection  
28 (3) for a calendar year is limited as follows:

29 (i) For calendar year 2018, the liability relief may not exceed  
30 ten percent of the total tax due under this chapter and chapter 82.12  
31 RCW on taxable retail sales directly resulting from a referral of the  
32 purchaser to the marketplace seller by the referrer and sourced to  
33 this state under RCW 82.32.730 during the same calendar year.

34 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the  
35 liability relief may not exceed five percent of the total tax due  
36 under this chapter and chapter 82.12 RCW on taxable retail sales  
37 directly resulting from a referral of the purchaser to the  
38 marketplace seller by the referrer and sourced to this state under  
39 RCW 82.32.730 during the same calendar year.

1 (iii) Beginning in calendar year 2024, the liability relief may  
2 not exceed three percent of the total tax due under this chapter and  
3 chapter 82.12 RCW on taxable retail sales directly resulting from a  
4 referral of the purchaser to the marketplace seller by the referrer  
5 and sourced to this state under RCW 82.32.730 during the same  
6 calendar year.

7 (d) Where the marketplace facilitator or referrer is relieved of  
8 liability under this subsection (3), the marketplace seller is also  
9 relieved of liability for the amount of uncollected tax due, subject  
10 to the limitations in subsection (4) of this section.

11 (e) The department may by rule determine the manner in which a  
12 taxpayer may claim the liability relief provided under this  
13 subsection.

14 (4) Except as otherwise provided in this section, a marketplace  
15 seller obligated or electing to collect the taxes imposed under this  
16 chapter and chapter 82.12 RCW is not required to collect such taxes  
17 on all taxable retail sales through a marketplace operated by a  
18 marketplace facilitator or directly resulting from a referral of the  
19 purchaser to the marketplace seller by the referrer if the  
20 marketplace seller has obtained documentation from the marketplace  
21 facilitator or referrer indicating that the marketplace facilitator  
22 or referrer is registered with the department and will collect all  
23 applicable taxes due under this chapter and chapter 82.12 RCW on all  
24 taxable retail sales made on behalf of the marketplace seller through  
25 the marketplace operated by the marketplace facilitator or taxable  
26 retail sales directly resulting from a referral of the purchaser to  
27 the marketplace seller by the referrer. The documentation required by  
28 this subsection (4) must be provided in a form and manner prescribed  
29 by or acceptable to the department. This subsection (4) does not  
30 relieve a marketplace seller from liability for uncollected taxes due  
31 under this chapter or chapter 82.12 RCW resulting from a marketplace  
32 facilitator's or referrer's failure to collect the proper amount of  
33 tax due when the error was due to incorrect information given to the  
34 marketplace facilitator or referrer by the marketplace seller.

35 (5) Except as otherwise provided in this section, a marketplace  
36 seller that is also a remote seller subject to section 202(1) of this  
37 act is relieved of its obligation to collect sales or use taxes  
38 imposed under section 202 of this act with respect to all taxable  
39 retail sales through a marketplace operated by a marketplace  
40 facilitator that provides the marketplace seller with written

1 confirmation that the marketplace facilitator has elected to comply  
2 with the notice and reporting requirements of section 205 of this act  
3 in lieu of collecting sales and use taxes.

4 (6) Notwithstanding subsections (4) and (5) of this section, a  
5 marketplace seller is not relieved of the obligation to collect taxes  
6 imposed under this chapter and chapter 82.12 RCW or comply with  
7 section 202 of this act with respect to retail sales of digital  
8 products and digital codes, other than (a) specified digital products  
9 and digital games and (b) digital codes used to redeem specified  
10 digital products and digital games, until January 1, 2020.

11 (7) No class action may be brought against a marketplace  
12 facilitator or referrer in any court of this state on behalf of  
13 purchasers arising from or in any way related to an overpayment of  
14 sales or use tax collected by the marketplace facilitator or  
15 referrer, regardless of whether that claim is characterized as a tax  
16 refund claim. Nothing in this subsection affects a purchaser's right  
17 to seek a refund from the department as provided under chapter 82.32  
18 RCW.

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

23 (9) This section is subject to the provisions of section 214 of  
24 this act.

25 (10) The definitions in section 204 of this act apply to this  
26 section.

27 NEW SECTION. **Sec. 204.** The definitions in this section apply  
28 throughout this chapter unless the context clearly requires  
29 otherwise.

30 (1) "Affiliated person" means a person that, with respect to  
31 another person:

32 (a) Has an ownership interest of more than five percent, whether  
33 direct or indirect, in the other person; or

34 (b) Is related to the other person because a third person, or  
35 group of third persons who are affiliated persons with respect to  
36 each other, holds an ownership interest of more than five percent,  
37 whether direct or indirect, in the related persons.

38 (2) "Consumer" has the same meaning as provided in chapters  
39 82.04, 82.08, and 82.12 RCW.



1 (3) "Marketplace facilitator" means a person that contracts with  
2 sellers to facilitate for consideration, regardless of whether  
3 deducted as fees from the transaction, the sale of the seller's  
4 products through a physical or electronic marketplace operated by the  
5 person, and engages:

6 (a) Directly or indirectly, through one or more affiliated  
7 persons in any of the following:

8 (i) Transmitting or otherwise communicating the offer or  
9 acceptance between the buyer and seller;

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

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

14 (iv) Software development or research and development activities  
15 related to any of the activities described in (b) of this subsection  
16 (3), if such activities are directly related to a physical or  
17 electronic marketplace operated by the person or an affiliated  
18 person; and

19 (b) In any of the following activities with respect to the  
20 seller's products:

21 (i) Payment processing services;

22 (ii) Fulfillment or storage services;

23 (iii) Listing products for sale;

24 (iv) Setting prices;

25 (v) Branding sales as those of the marketplace facilitator;

26 (vi) Order taking;

27 (vii) Advertising or promotion; or

28 (viii) Providing customer service or accepting or assisting with  
29 returns or exchanges.

30 (4) "Marketplace seller" means a seller that makes retail sales  
31 through any physical or electronic marketplaces operated by a  
32 marketplace facilitator or directly resulting from a referral by a  
33 referrer, regardless of whether the seller is required to be  
34 registered with the department as provided in RCW 82.32.030.

35 (5) "Platform" means an electronic or physical medium, including  
36 a web site or catalog, operated by a referrer.

37 (6) "Product" has the same meaning as provided in RCW 82.32.023.

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

1 (8) "Referral" means the transfer by a referrer of a potential  
2 customer to a marketplace seller who advertises or lists products for  
3 sale on the referrer's platform.

4 (9)(a) "Referrer" means a person, other than a person engaging in  
5 the business of printing a newspaper or publishing a newspaper as  
6 defined in RCW 82.04.214, who contracts or otherwise agrees with a  
7 seller to list or advertise for sale one or more items in any medium,  
8 including a web site or catalog; receives a commission, fee, or other  
9 consideration from the seller for the listing or advertisement;  
10 transfers, via telephone, internet link, or other means, a purchaser  
11 to a seller or an affiliated person to complete the sale; and does  
12 not collect receipts from the purchasers for the transaction.

13 (b) "Referrer" does not include a person that:

14 (i) Provides internet advertising services; and

15 (ii) Does not ever provide either the marketplace seller's  
16 shipping terms or advertise whether a marketplace seller charges  
17 sales tax.

18 (10) "Remote seller" means any seller, other than a marketplace  
19 facilitator or referrer, who does not have a physical presence in  
20 this state and makes retail sales to purchasers.

21 (11) "Retail sale" and "sale" have the same meaning as provided  
22 in chapter 82.04 RCW.

23 (12) "Seller" has the same meaning as in RCW 82.08.010 and  
24 includes marketplace facilitators, whether making sales in their own  
25 right or on behalf of marketplace sellers, and referrers.

26 NEW SECTION. **Sec. 205.** (1) Except as otherwise provided in  
27 subsection (5) of this section, a seller that does not collect the  
28 tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale  
29 must comply with the applicable notice and reporting requirements of  
30 this section. For taxable retail sales made through a marketplace  
31 facilitator, or other agent, the marketplace facilitator, or other  
32 agent must comply with the notice and reporting requirements of this  
33 section, and the principal is not subject to the notice and reporting  
34 requirements of this section with respect to those sales. If the  
35 referrer makes an election to comply with the applicable notice and  
36 reporting requirements of this section, marketplace sellers to whom a  
37 referral is made by the referrer remain subject to the applicable  
38 notice and reporting requirements under this section for their sales  
39 unless the marketplace sellers collect the tax imposed under chapter

1 82.08 or 82.12 RCW on taxable retail sales sourced to this state  
2 under RCW 82.32.730.

3 (2)(a) A seller, other than a referrer acting in its capacity as  
4 a referrer, subject to the notice and reporting requirements of this  
5 section must:

6 (i) Post a conspicuous notice on its marketplace, platform, web  
7 site, catalog, or any other similar medium that informs Washington  
8 purchasers that:

9 (A) Sales or use tax is due on certain purchases;

10 (B) Washington requires the purchaser to file a use tax return;  
11 and

12 (C) The notice is provided under the requirements of this  
13 section; and

14 (ii) Provide a notice to each consumer at the time of each retail  
15 sale. The notice under this subsection (2)(a)(ii) must include the  
16 following information:

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

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

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

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

31 (i) Such indication is followed immediately with the notice  
32 required by (a)(ii) of this subsection (2); or

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

35 (3) A referrer subject to the notice and reporting requirements  
36 of this section must:

37 (a) Post a conspicuous notice on its platform that informs  
38 Washington purchasers:

39 (i) That sales or use tax is due on certain purchases;

1 (ii) That the seller may or may not collect and remit retail  
2 sales tax on a purchase;

3 (iii) That Washington requires the purchaser to file a use tax  
4 return if retail sales tax is not assessed at the time of a taxable  
5 sale by the seller;

6 (iv) That the notice is provided under the requirements of this  
7 section;

8 (v) Of the instructions for obtaining additional information from  
9 the department regarding whether and how to remit the sales or use  
10 tax to the department; and

11 (vi) That if the seller to whom the purchaser is referred does  
12 not collect retail sales tax on a subsequent purchase by the  
13 purchaser, the seller may be required to provide information to the  
14 purchaser and the department about the purchaser's potential sales or  
15 use tax liability.

16 (b) The notice under (a) of this subsection (3) must be  
17 prominently displayed on the platform and may include pop-up boxes or  
18 notification by other means that appear when the referrer transfers a  
19 purchaser to a marketplace seller or an affiliated person to complete  
20 the sale.

21 (4)(a) A seller, other than a referrer acting in its capacity as  
22 a referrer, subject to the notice and reporting requirements of  
23 subsection (2) of this section must, no later than February 28th of  
24 each year, provide a report to each consumer for whom the seller was  
25 required to provide a notice under subsection (2)(a)(ii) of this  
26 section.

27 (b) The report under this subsection (4) must include:

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

31 (ii) A list, by date, generally indicating the type of product  
32 purchased or leased during the immediately preceding calendar year by  
33 the consumer from the seller, sourced to this state under RCW  
34 82.32.730, and the price of each product;

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

38 (iv) A statement that the seller is required to submit a report  
39 to the department pursuant to subsection (6) of this section stating

1 the total dollar amount of the consumer's purchases from the seller;  
2 and

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

4 (c)(i) The report required under this subsection (4) must be sent  
5 to the consumer's billing address or, if unknown, the consumer's  
6 shipping address, by first-class mail, in an envelope marked  
7 prominently with words indicating important tax information is  
8 enclosed.

9 (ii) If no billing or shipping address is known, the report must  
10 be sent electronically to the consumer's last known email address  
11 with a subject heading indicating important tax information is  
12 enclosed.

13 (5)(a) A referrer subject to the notice requirements under  
14 subsection (3) of this section must, no later than February 28th of  
15 each year, provide notice to each marketplace seller to whom the  
16 referrer transferred a potential purchaser located in Washington  
17 during the previous calendar year.

18 (b) The notice under this subsection (5) must include:

19 (i) A statement that Washington imposes a sales or use tax on  
20 retail sales;

21 (ii) A statement that a seller, meeting the threshold in section  
22 202(2) of this act, is required to either collect and remit retail  
23 sales or use tax on all taxable retail sales sourced to this state  
24 under RCW 82.32.730 or to comply with this section; and

25 (iii) Instructions for obtaining additional information from the  
26 department.

27 (c) By February 28th of each year, a referrer required to provide  
28 the notice under this subsection must provide the department with:

29 (i) A list of sellers who received the referrer's notice under  
30 this subsection. The information must be provided electronically in a  
31 form and manner required by the department.

32 (ii) An affidavit signed under penalty of perjury from an officer  
33 of the referrer affirming that the referrer made reasonable efforts  
34 to comply with the applicable sales and use tax notice and reporting  
35 requirements of this section.

36 (6)(a) A seller, other than a referrer acting in its capacity as  
37 a referrer, subject to the notice and reporting requirements of this  
38 section must, no later than February 28th of each year, file a report  
39 with the department.

1 (b) The report under this subsection (6) must include, with  
2 respect to each consumer to whom the seller is required to provide a  
3 report under subsection (4) of this section by February 28th of the  
4 current calendar year:

5 (i) The consumer's name;

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

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

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

13 (c) The report under this subsection (6) must also include an  
14 affidavit signed under penalty of perjury from an officer of the  
15 seller affirming that the seller made reasonable efforts to comply  
16 with the applicable sales and use tax notice and reporting  
17 requirements in this section.

18 (d) Except for the affidavit, the report under this subsection  
19 (6) must be filed electronically in a form and manner required by the  
20 department.

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

25 (8) Every seller subject to this chapter must keep and preserve,  
26 for a period of five years, suitable records as may be necessary for  
27 the department to verify the seller's compliance with this chapter.  
28 All of the seller's books, records, and invoices must be open for  
29 examination at any reasonable time by the department. The department  
30 may require the attendance of any officer of the seller or any  
31 employee of the seller having knowledge pertinent to the department's  
32 investigation of the seller's compliance with this chapter, at a time  
33 and place fixed in a subpoena issued under RCW 82.32.117, and may  
34 take the person's testimony under oath.

35 (9) In exercising discretion in enforcing the provisions of this  
36 chapter, the department may take into consideration available  
37 resources, whether the anticipated benefits from any potential  
38 enforcement activities are likely to exceed the department's expected  
39 enforcement costs, and any other factors the department deems  
40 appropriate.

1        NEW SECTION.     **Sec. 206.**     (1)(a) The department must assess a  
2 penalty against any seller, other than a referrer acting in its  
3 capacity as a referrer, that fails to provide notice to consumers  
4 pursuant to section 205(2)(a) of this act, in addition to any other  
5 applicable penalties, in the amount of twenty thousand dollars. The  
6 department may assess the penalty under this subsection only once per  
7 calendar year, regardless of the number of notices a seller fails to  
8 provide pursuant to section 205(2)(a) of this act during the calendar  
9 year. The department may apply this penalty at any time during a  
10 calendar year and no more frequently than annually.

11        (b) The department must assess a penalty against any referrer  
12 that fails to provide notice to consumers pursuant to section 205(3)  
13 of this act, in addition to any other applicable penalties, in the  
14 amount of twenty thousand dollars. The department may apply this  
15 penalty at any time during a calendar year and no more frequently  
16 than annually.

17        (2)(a) The department must assess a penalty against a seller who  
18 fails to provide a report as required by section 205 (4) or (5) of  
19 this act, in addition to any other applicable penalties, as follows:

20        (i) Five thousand dollars if the gross receipts of the seller and  
21 through the seller's marketplace from retail sales sourced to this  
22 state under RCW 82.32.730 are less than fifty thousand dollars for  
23 the calendar year for which the report was required to be made;

24        (ii) Ten thousand dollars if the gross receipts of the seller and  
25 through the seller's marketplace from retail sales sourced to this  
26 state under RCW 82.32.730 are at least fifty thousand dollars but  
27 less than one hundred fifty thousand dollars;

28        (iii) Fifty thousand dollars if the gross receipts of the seller  
29 and through the seller's marketplace from retail sales sourced to  
30 this state under RCW 82.32.730 are at least one hundred fifty  
31 thousand dollars but less than three hundred thousand dollars; or

32        (iv) If the gross receipts of the seller and through the seller's  
33 marketplace from retail sales sourced to this state under RCW  
34 82.32.730 are three hundred thousand dollars or greater, one hundred  
35 thousand dollars plus twenty thousand dollars for every fifty  
36 thousand dollars in gross receipts over three hundred thousand  
37 dollars.

38        (b) The department must assess a penalty against a referrer who  
39 fails to provide the notice and list required by section 205(5) of  
40 this act, in addition to any other applicable penalties. The

1 department may assess the penalty under this subsection only once per  
2 calendar year, regardless of the number of failures to comply with  
3 section 205(5) of this act during the calendar year. The amount of  
4 the penalties assessed are as follows:

5 (i) Fifty thousand dollars if the gross income of the referrer is  
6 at least two hundred sixty-seven thousand dollars but less than three  
7 hundred thousand dollars of the gross income of the business received  
8 from the referrer's referral services apportioned to Washington under  
9 RCW 82.04.460, whether or not subject to tax under chapter 82.04 RCW,  
10 for the calendar year for which the notice and list was required to  
11 be made; or

12 (ii) If the gross income of the referrer is three hundred  
13 thousand dollars or greater, one hundred thousand dollars plus twenty  
14 thousand dollars for every fifty thousand dollars in gross income  
15 over three hundred thousand dollars of the gross income of the  
16 business received from the referrer's referral services apportioned  
17 to Washington under RCW 82.04.460, whether or not subject to tax  
18 under chapter 82.04 RCW, for the calendar year for which the notice  
19 and list was required to be made.

20 (3) The department must assess a penalty against any seller,  
21 other than a referrer acting in its capacity as a referrer, who fails  
22 to provide a report to the department as required by section 205(6)  
23 of this act, in addition to any other applicable penalties, in the  
24 amount of twenty-five dollars multiplied by the number of consumers  
25 that should have been included on such report, but not less than  
26 twenty thousand dollars for any calendar year.

27 (4) The penalties imposed under subsections (1) through (3) of  
28 this section are cumulative.

29 (5) No penalty may be imposed by the department under subsections  
30 (1) through (4) of this section more than four years after the close  
31 of the calendar year in which the notice or report giving rise to the  
32 penalty was required to have been provided. This subsection (5) does  
33 not apply to penalties reassessed under subsection (9) of this  
34 section.

35 (6) When assessing a penalty under this section, the department  
36 may use any reasonable estimation technique where necessary or  
37 appropriate to determine the amount of any penalty.

38 (7) Interest accrues on the amount of the total penalty that has  
39 been assessed under this section until the total penalty amount is  
40 paid in full. Interest imposed under this section must be computed



1 and assessed as provided in RCW 82.32.050 as if the penalty imposed  
2 under this subsection was a tax liability.

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

9 (9)(a)(i) A seller is entitled to a conditional waiver of  
10 penalties and interest imposed under this section if the seller  
11 enters into a written agreement with the department electing to  
12 collect retail sales or use tax or fully comply with all applicable  
13 notice and reporting requirements of this chapter, beginning by a  
14 date acceptable to the department. An election to collect retail  
15 sales or use tax must be for a period of at least twelve consecutive  
16 months and is subject to the provisions of section 202(1)(d) of this  
17 act.

18 (ii) The department may grant a waiver of penalties and interest  
19 under this subsection (9)(a) for penalties and interest assessed for  
20 a seller's failure to comply with the notice and reporting  
21 requirements for one or more violations.

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

25 (iv) The department must reassess penalties and interest  
26 conditionally waived under this subsection (9)(a) if the department  
27 finds that, after the date that the seller agreed to fully comply  
28 with the applicable notice and reporting requirements of this  
29 chapter, the seller failed to:

30 (A) Provide notice under section 205(2)(a)(ii) of this act to at  
31 least ninety percent of the consumers entitled to such notice in any  
32 given calendar year or portion of the initial calendar year in which  
33 the agreement required under this subsection was in effect if the  
34 agreement was in effect for less than the entire calendar year;

35 (B) Timely provide the reports required under section 205(4) of  
36 this act to all consumers who received notice from the seller under  
37 section 205(2)(a)(ii) of this act during any calendar year, unless  
38 the department finds that any such failure was due to circumstances  
39 beyond the seller's control;

1 (C) Timely provide the reports required under section 205(6) of  
2 this act during any calendar year, unless the department finds that  
3 any such failure was due to circumstances beyond the seller's  
4 control; or

5 (D) With respect to referrers, timely provide the notice required  
6 under section 205(3) of this act and the notice and list required  
7 under section 205(5) of this act during any calendar year, unless the  
8 department finds that any such failure was due to circumstances  
9 beyond the referrer's control.

10 (v) The department must reassess penalties and interest  
11 conditionally waived under this subsection (9)(a) if the department  
12 finds that, after the date that the seller elected to collect retail  
13 sales or use tax, the seller failed to register with the department  
14 and make a reasonable effort to comply with the requirements of RCW  
15 82.08.050 and 82.12.040.

16 (vi) The department may not reassess penalties and interest  
17 conditionally waived under this subsection (9)(a) more than four  
18 calendar years following the calendar year in which the department  
19 granted the conditional waiver under this subsection (9)(a).

20 (vii) The provisions of subsection (8) of this section apply to  
21 penalties and interest reassessed under this subsection (9)(a). The  
22 department may add additional interest on penalties reassessed under  
23 this subsection (9)(a) only if the total amount of penalties  
24 reassessed under this subsection (9)(a) is not paid in full by the  
25 date due.

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

30 (c) The department may waive penalties imposed under this section  
31 if the department determines that the failure of the seller to fully  
32 comply with the notice or reporting requirements was due to  
33 reasonable cause and not willful neglect. In determining whether  
34 reasonable cause exists, the department will consider, among other  
35 relevant factors, whether: (i) The failure was due to willful or  
36 reckless disregard of the seller's notice or reporting obligations;  
37 (ii) the seller made subsequent efforts to avoid future  
38 noncompliance; and (iii) the magnitude of the noncompliance was  
39 significant in terms of dollars and time when accounting for the  
40 seller's size and volume of transactions. On appeal, a court or the

1 board of tax appeals must give great deference to the department's  
2 penalty waiver decision under this subsection (9)(c) and affirm the  
3 department's decision, unless the taxpayer can show by clear, cogent,  
4 and convincing evidence that the department's decision lacked any  
5 reasonable basis.

6 (d) A request for a waiver of penalties and interest under this  
7 subsection must be received by the department in writing and before  
8 the penalties and interest for which a waiver is requested are due  
9 pursuant to subsection (8) of this section. The department must deny  
10 any request for a waiver of penalties and interest that does not  
11 fully comply with the provisions of this subsection (9)(d).

12 NEW SECTION. **Sec. 207.** Chapter 82.32 RCW applies to the  
13 administration of this chapter.

14 NEW SECTION. **Sec. 208.** Nothing in this chapter relieves sellers  
15 or consumers who are subject to chapter 82.08 or 82.12 RCW from any  
16 responsibilities imposed under those chapters. Nor does anything in  
17 this chapter prevent the department from administering and enforcing  
18 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to  
19 any seller or consumer who is subject to such taxes.

20 NEW SECTION. **Sec. 209.** A new section is added to chapter 82.32  
21 RCW to be codified between RCW 82.32.045 and 82.32.050 to read as  
22 follows:

23 (1) Except as otherwise provided in this section, taxes imposed  
24 under chapter 82.08 or 82.12 RCW and payable by a consumer directly  
25 to the department are due, on returns prescribed by the department,  
26 by the earlier of April 1st of the calendar year immediately  
27 following the calendar year in which the sale or use occurred or  
28 within thirty days of the date of a notice from the department that  
29 tax may be due.

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

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

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

1        NEW SECTION.    **Sec. 210.**    A new section is added to chapter 82.32  
2    RCW to read as follows:

3        (1) A remote seller, referrer, or marketplace facilitator that is  
4    subject to section 202 of this act and is complying with the  
5    requirements of chapters 82.08 and 82.12 RCW may only seek a recovery  
6    of retail sales and use taxes, penalties, or interest from the  
7    department by following the recovery procedures established under RCW  
8    82.32.060. However, no claim may be granted on the basis that the  
9    taxpayer lacked a physical presence in this state and complied with  
10   the tax collection provisions of chapters 82.08 and 82.12 RCW  
11   voluntarily.

12       (2) Neither the state nor any seller who elects under section 202  
13   of this act to collect and remit retail sales or use tax is liable to  
14   a purchaser who claims that the retail sales or use tax has been  
15   over-collected because a provision of chapter . . . , Laws of 2017 3rd  
16   sp. sess. (this act) is later deemed unlawful.

17       (3) Nothing in chapter . . . , Laws of 2017 3rd sp. sess. (this  
18   act) affects the obligation of any purchaser from this state to remit  
19   retail sales or use tax as to any applicable taxable transaction in  
20   which the seller does not collect and remit retail sales or use tax.

21       **Sec. 211.**    RCW 82.08.050 and 2010 c 112 s 8 are each amended to  
22   read as follows:

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

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

35       (3) Except as otherwise provided in this section, if any seller  
36   fails to collect the tax imposed in this chapter or, having collected  
37   the tax, fails to pay it to the department in the manner prescribed  
38   by this chapter, whether such failure is the result of the seller's  
39   own acts or the result of acts or conditions beyond the seller's

1 control, the seller is, nevertheless, personally liable to the state  
2 for the amount of the tax.

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

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

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

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

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

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

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

37 (c) Sellers are relieved from personal liability for the amount  
38 of tax if they obtain a blanket exemption certificate for a purchaser  
39 with which the seller has a recurring business relationship. The  
40 department may not request from a seller renewal of blanket exemption

1 certificates or updates of exemption certificate information or data  
2 elements if there is a recurring business relationship between the  
3 buyer and seller. For purposes of this subsection (7)(c), a  
4 "recurring business relationship" means at least one sale transaction  
5 within a period of twelve consecutive months.

6 (d) Sellers are relieved from personal liability for the amount  
7 of tax if they obtain a copy of a direct pay permit issued under RCW  
8 82.32.087.

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

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

30 (10) Where a buyer has failed to pay to the seller the tax  
31 imposed by this chapter and the seller has not paid the amount of the  
32 tax to the department, the department may, in its discretion, proceed  
33 directly against the buyer for collection of the tax. If the  
34 department proceeds directly against the buyer for collection of the  
35 tax as authorized in this subsection, the department may add a  
36 penalty of ten percent of the unpaid tax to the amount of the tax due  
37 for failure of the buyer to pay the tax to the seller, regardless of  
38 when the tax may be collected by the department. In addition to the  
39 penalty authorized in this subsection, all of the provisions of  
40 chapter 82.32 RCW, including those relative to interest and

1 penalties, apply. For the sole purpose of applying the various  
2 provisions of chapter 82.32 RCW, the twenty-fifth day of the month  
3 following the tax period in which the purchase was made will be  
4 considered as the due date of the tax.

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

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

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

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

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

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

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

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

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

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

34 **Sec. 212.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to  
35 read as follows:

36 (1) Every person who ~~((maintains in this state a place of  
37 business or a stock of goods, or engages in business activities  
38 within this state))~~ is subject to a collection obligation under  
39 chapter 82.08 RCW, except a person making a valid election to comply

1 with the notice and reporting provisions of section 205 of this act,  
2 must obtain from the department a certificate of registration, and  
3 must, at the time of making sales of tangible personal property,  
4 digital goods, digital codes, digital automated services, extended  
5 warranties, or sales of any service defined as a retail sale in RCW  
6 82.04.050 (2) (a) or (g) or (6)((+b+)) (c), or making transfers of  
7 either possession or title, or both, of tangible personal property  
8 for use in this state, collect from the purchasers or transferees the  
9 tax imposed under this chapter. The tax to be collected under this  
10 section must be in an amount equal to the purchase price multiplied  
11 by the rate in effect for the retail sales tax under RCW 82.08.020.  
12 ~~((For the purposes of this chapter, the phrase "maintains in this~~  
13 ~~state a place of business" includes the solicitation of sales and/or~~  
14 ~~taking of orders by sales agents or traveling representatives. For~~  
15 ~~the purposes of this chapter, "engages in business activity within~~  
16 ~~this state" includes every activity which is sufficient under the~~  
17 ~~Constitution of the United States for this state to require~~  
18 ~~collection of tax under this chapter. The department must in rules~~  
19 ~~specify activities which constitute engaging in business activity~~  
20 ~~within this state, and must keep the rules current with future court~~  
21 ~~interpretations of the Constitution of the United States.))~~

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

32 (3) The tax required to be collected by this chapter is deemed to  
33 be held in trust by the retailer until paid to the department, and  
34 any retailer who appropriates or converts the tax collected to the  
35 retailer's own use or to any use other than the payment of the tax  
36 provided herein to the extent that the money required to be collected  
37 is not available for payment on the due date as prescribed is guilty  
38 of a misdemeanor. In case any seller fails to collect the tax herein  
39 imposed or having collected the tax, fails to pay the same to the  
40 department in the manner prescribed, whether such failure is the



1 result of the seller's own acts or the result of acts or conditions  
2 beyond the seller's control, the seller is nevertheless personally  
3 liable to the state for the amount of such tax, unless the seller has  
4 taken from the buyer a copy of a direct pay permit issued under RCW  
5 82.32.087.

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

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

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

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

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

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

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

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

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

37 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this  
38 section, any person making sales is not obligated to collect the tax  
39 imposed by this chapter if the state is prohibited under the

1 Constitution or laws of the United States from requiring the person  
2 to collect the tax imposed by this chapter.

3 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this  
4 section, any licensed dealer facilitating a firearm sale or transfer  
5 between two unlicensed persons by conducting background checks under  
6 chapter 9.41 RCW is not obligated to collect the tax imposed by this  
7 chapter.

8 **Sec. 213.** RCW 82.12.040 and 2017 c 323 s 525 are each amended to  
9 read as follows:

10 (1) Every person who ~~((maintains in this state a place of~~  
11 ~~business or a stock of goods, or engages in business activities~~  
12 ~~within this state))~~ is subject to a collection obligation under  
13 chapter 82.08 RCW, except a person making a valid election to comply  
14 with the notice and reporting provisions of section 205 of this act,  
15 must obtain from the department a certificate of registration, and  
16 must, at the time of making sales of tangible personal property,  
17 digital goods, digital codes, digital automated services, extended  
18 warranties, or sales of any service defined as a retail sale in RCW  
19 82.04.050 (2) (a) or (g) or (6)(c), or making transfers of either  
20 possession or title, or both, of tangible personal property for use  
21 in this state, collect from the purchasers or transferees the tax  
22 imposed under this chapter. The tax to be collected under this  
23 section must be in an amount equal to the purchase price multiplied  
24 by the rate in effect for the retail sales tax under RCW 82.08.020.  
25 ~~((For the purposes of this chapter, the phrase "maintains in this~~  
26 ~~state a place of business" includes the solicitation of sales and/or~~  
27 ~~taking of orders by sales agents or traveling representatives. For~~  
28 ~~the purposes of this chapter, "engages in business activity within~~  
29 ~~this state" includes every activity which is sufficient under the~~  
30 ~~Constitution of the United States for this state to require~~  
31 ~~collection of tax under this chapter. The department must in rules~~  
32 ~~specify activities which constitute engaging in business activity~~  
33 ~~within this state, and must keep the rules current with future court~~  
34 ~~interpretations of the Constitution of the United States.))~~

35 (2) Every person who engages in this state in the business of  
36 acting as an independent selling agent for persons who do not hold a  
37 valid certificate of registration, and who receives compensation by  
38 reason of sales of tangible personal property, digital goods, digital  
39 codes, digital automated services, extended warranties, or sales of

1 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)  
2 or (6)(c), of his or her principals for use in this state, must, at  
3 the time such sales are made, collect from the purchasers the tax  
4 imposed on the purchase price under this chapter, and for that  
5 purpose is deemed a retailer as defined in this chapter.

6 (3) The tax required to be collected by this chapter is deemed to  
7 be held in trust by the retailer until paid to the department, and  
8 any retailer who appropriates or converts the tax collected to the  
9 retailer's own use or to any use other than the payment of the tax  
10 provided herein to the extent that the money required to be collected  
11 is not available for payment on the due date as prescribed is guilty  
12 of a misdemeanor. In case any seller fails to collect the tax herein  
13 imposed or having collected the tax, fails to pay the same to the  
14 department in the manner prescribed, whether such failure is the  
15 result of the seller's own acts or the result of acts or conditions  
16 beyond the seller's control, the seller is nevertheless personally  
17 liable to the state for the amount of such tax, unless the seller has  
18 taken from the buyer a copy of a direct pay permit issued under RCW  
19 82.32.087.

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

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

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

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

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

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

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

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

1 ~~subject to review, that a state can impose sales and use tax~~  
2 ~~collection duties on remote sellers.~~

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

11 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this  
12 section, any person making sales is not obligated to collect the tax  
13 imposed by this chapter if the state is prohibited under the  
14 Constitution or laws of the United States from requiring the person  
15 to collect the tax imposed by this chapter.

16 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this  
17 section, any licensed dealer facilitating a firearm sale or transfer  
18 between two unlicensed persons by conducting background checks under  
19 chapter 9.41 RCW is not obligated to collect the tax imposed by this  
20 chapter.

21 NEW SECTION. **Sec. 214.** A new section is added to chapter 82.32  
22 RCW to read as follows:

23 (1) If the department determines that a change, taking effect  
24 after the effective date of this section, in the streamlined sales  
25 and use tax agreement or federal law creates a conflict with any  
26 provision of section 202 or 203 of this act, such conflicting  
27 provision or provisions of section 202 or 203 of this act, including  
28 any related provisions that would not function as originally  
29 intended, have no further force and effect as of the date the change  
30 in the streamlined sales and use tax agreement or federal law becomes  
31 effective.

32 (2) For purposes of this section:

33 (a) A change in federal law conflicts with section 202 or 203 of  
34 this act if the change clearly allows states to impose greater sales  
35 and use tax collection obligations on remote sellers, referrers, or  
36 marketplace facilitators than provided for, or clearly prevents  
37 states from imposing sales and use tax collection obligations on  
38 remote sellers, referrers, or marketplace facilitators to the extent  
39 provided for, under section 202 or 203 of this act.

1 (b) A change in the streamlined sales and use tax agreement  
2 conflicts with section 202 or 203 of this act if one or more  
3 provisions of section 202 or 203 of this act causes this state to be  
4 found out of compliance with the streamlined sales and use tax  
5 agreement by its governing board.

6 (3) If the department makes a determination under this section  
7 that a change in federal law or the streamlined sales and use tax  
8 agreement conflicts with one or more provisions of section 202 or 203  
9 of this act, the department:

10 (a) May adopt rules in accordance with chapter 34.05 RCW that are  
11 consistent with the streamlined sales and use tax agreement and that  
12 impose sales and use tax collection obligations on remote sellers,  
13 referrers, or marketplace facilitators to the fullest extent allowed  
14 under state and federal law; and

15 (b) Must include information on its web site informing taxpayers  
16 and the public (i) of the provision or provisions of section 202 or  
17 203 of this act that will have no further force and effect, (ii) when  
18 such change will become effective, and (iii) about how to participate  
19 in any rule making conducted by the department in accordance with (a)  
20 of this subsection (3).

21 (4) For purposes of this section, "remote seller," "referrer,"  
22 and "marketplace facilitator" have the same meaning as provided in  
23 section 204 of this act.

### 24 Part III

#### 25 Nexus for Excise Tax Purposes

26 **Sec. 301.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each  
27 amended to read as follows:

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

36 **Sec. 302.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to  
37 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (3)(a) Payroll counting toward the thresholds in subsection  
38 (1)(c)(ii) and (iv) of this section is the total amount paid by the  
39 taxpayer for compensation in this state during the current or  
40 immediately preceding (~~tax~~) calendar year plus nonemployee

1 compensation paid to representative third parties in this state.  
2 Nonemployee compensation paid to representative third parties  
3 includes the gross amount paid to nonemployees who represent the  
4 taxpayer in interactions with the taxpayer's clients and includes  
5 sales commissions.

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

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

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

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

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

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

25 (c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or  
26 82.04.270 (~~((with respect to wholesale sales))~~), the gross proceeds of  
27 sales taxable under those statutory provisions and sourced to this  
28 state in accordance with RCW 82.32.730.

29 (5)(a) Each December, the department must review the cumulative  
30 percentage change in the consumer price index. The department must  
31 adjust the thresholds in subsection (1)(c)(i) through (iii) of this  
32 section if the consumer price index has changed by five percent or  
33 more since the later of June 1, 2010, or the date that the thresholds  
34 were last adjusted under this subsection. For purposes of determining  
35 the cumulative percentage change in the consumer price index, the  
36 department must compare the consumer price index available as of  
37 December 1st of the current year with the consumer price index as of  
38 the later of June 1, 2010, or the date that the thresholds were last  
39 adjusted under this subsection. The thresholds must be adjusted to  
40 reflect that cumulative percentage change in the consumer price



1 index. The adjusted thresholds must be rounded to the nearest one  
2 thousand dollars. Any adjustment will apply to tax periods that begin  
3 after the adjustment is made.

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

8 (6)(a)(i) Except as provided in (a)(iii) of this subsection (6),  
9 subsections (1) through (5) of this section only apply with respect  
10 to the taxes on persons engaged in apportionable activities as  
11 defined in RCW 82.04.460 or making wholesale sales taxable under RCW  
12 82.04.257(1) or 82.04.270.

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

23 (iii) For purposes of the taxes imposed under this chapter on the  
24 business of making sales at retail taxable under RCW 82.04.250(1) or  
25 82.04.257(1), a person is also deemed to have a substantial nexus  
26 with this state if the person's receipts from this state, pursuant to  
27 subsection (4)(c) of this section, meet either criterion in  
28 subsection (1)(c)(iii) or (iv) of this section, as adjusted under  
29 subsection (5) of this section.

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

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

38 (ii) A remote seller as defined in RCW 82.08.052 is presumed to  
39 be engaged in activities in this state that are significantly  
40 associated with the remote seller's ability to establish or maintain

1 a market for its products in this state if the remote seller is  
2 presumed to have a substantial nexus with this state under RCW  
3 82.08.052. The presumption in this subsection (6)(c)(ii) may be  
4 rebutted as provided in RCW 82.08.052. To the extent that the  
5 presumption in RCW 82.08.052 is no longer operative pursuant to RCW  
6 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer  
7 operative. (~~Nothing in this section may be construed to affect in~~  
8 ~~any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow~~  
9 ~~the scope of the terms "agent" or "other representative" in this~~  
10 ~~subsection (6)(c).)~~)

11 **Sec. 303.** RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each  
12 amended to read as follows:

13 (1) There is levied and collected from every person that has a  
14 substantial nexus with this state, as provided in RCW 82.04.067, a  
15 tax for the act or privilege of engaging in business activities. The  
16 tax is measured by the application of rates against value of  
17 products, gross proceeds of sales, or gross income of the business,  
18 as the case may be.

19 (2)(a) A person who has a substantial nexus with this state in  
20 (~~any tax year under the provisions of RCW 82.04.067 will be deemed~~  
21 ~~to have a substantial nexus with this state for the following tax~~  
22 ~~year)) the current calendar year under the provisions of RCW  
23 82.04.067, based solely on the person's property, payroll, or  
24 receipts in this state during the current calendar year, is subject  
25 to the tax imposed under this chapter for the current calendar year  
26 only on business activity occurring on and after the date that the  
27 person established a substantial nexus with this state in the current  
28 calendar year.~~

29 (b) This subsection (2) does not apply to any person who also had  
30 a substantial nexus with this state during:

31 (i) The immediately preceding calendar year under RCW 82.04.067;  
32 or

33 (ii) The current calendar year under RCW 82.04.067 (1)(a) or (b)  
34 or (6)(a)(ii) or (c).

35 NEW SECTION. **Sec. 304.** RCW 82.04.424 (Exemptions—Certain in-  
36 state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are  
37 each repealed.

1 **Part IV**

2 **Eliminate Streamlined Sales Tax Mitigation to Local Governments**

3 **Sec. 401.** RCW 82.14.495 and 2010 1st sp.s. c 37 s 952 are each  
4 amended to read as follows:

5 (1) The streamlined sales and use tax mitigation account is  
6 created in the state treasury. Through July 1, 2019, the state  
7 treasurer (~~shall~~) must transfer into the account from the general  
8 fund amounts as directed in RCW 82.14.500. Expenditures from the  
9 account may be used only for the purpose of mitigating the negative  
10 fiscal impacts to local taxing jurisdictions as a result of RCW  
11 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW  
12 82.14.020. (~~During the 2009-2011 fiscal biennium, the legislature  
13 may transfer from the streamlined sales and use tax mitigation  
14 account to the state general fund such amounts as reflect the excess  
15 fund balance of the account.~~)

16 (2) Beginning July 1, 2008, through September 30, 2019, the state  
17 treasurer, as directed by the department, (~~shall~~) must distribute  
18 the funds in the streamlined sales and use tax mitigation account to  
19 local taxing jurisdictions in accordance with RCW 82.14.500.

20 (3) The definitions in this subsection apply throughout this  
21 section and RCW 82.14.390 and 82.14.500 unless the context clearly  
22 requires otherwise.

23 (a) "Agreement" means the same as in RCW 82.32.020.

24 (b) "Local taxing jurisdiction" means through June 30, 2017,  
25 counties, cities, transportation authorities under RCW 82.14.045,  
26 public facilities districts under chapters 36.100 and 35.57 RCW,  
27 public transportation benefit areas under RCW 82.14.440, and regional  
28 transit authorities under chapter 81.112 RCW, that impose a sales and  
29 use tax. Beginning July 1, 2017, "local taxing jurisdiction" means  
30 cities, counties, and public facilities districts under chapters  
31 36.100 and 35.57 RCW.

32 (c) "Loss" or "losses" means the local sales and use tax revenue  
33 reduction to a local taxing jurisdiction resulting from the sourcing  
34 provisions in RCW 82.14.490 and the chapter 6, Laws of 2007  
35 amendments to RCW 82.14.020.

36 (d) "Marketplace facilitator/remote seller revenue" means the  
37 local sales and use tax revenue gain, including taxes voluntarily  
38 remitted and taxes collected from consumers, to each local taxing

1 jurisdiction from part II of this act as estimated by the department  
2 in RCW 82.14.500(6).

3 (e) "Net loss" or "net losses" means a loss offset by any  
4 voluntary compliance revenue and marketplace facilitator/remote  
5 seller revenue.

6 ~~((e))~~ (f) "Voluntary compliance revenue" means the local sales  
7 tax revenue gain to each local taxing jurisdiction reported to the  
8 department from persons registering through the central registration  
9 system authorized under the agreement.

10 ~~((f))~~ (g) "Working day" has the same meaning as in RCW  
11 82.45.180.

12 **Sec. 402.** RCW 82.14.500 and 2011 1st sp.s. c 50 s 974 are each  
13 amended to read as follows:

14 (1)~~((a))~~ In order to mitigate local sales tax revenue net  
15 losses as a result of the sourcing provisions of the streamlined  
16 sales and use tax agreement under this title, the state treasurer, on  
17 July 1, 2011, and each July 1st thereafter through July 1, 2019, must  
18 transfer into the streamlined sales and use tax mitigation account  
19 from the general fund the sum required to mitigate actual net losses  
20 as determined under this section.

21 ~~((b) During the 2011-2013 fiscal biennium, the amount that would~~  
22 ~~otherwise be transferred under (a) of this subsection must be reduced~~  
23 ~~by 3.4 percent.))~~

24 (2) Beginning July 1, 2008, and continuing until the department  
25 determines annual losses under subsection (3) of this section, the  
26 department must determine the amount of local sales tax net loss each  
27 local taxing jurisdiction experiences as a result of the sourcing  
28 provisions of the streamlined sales and use tax agreement under this  
29 title each calendar quarter. The department must determine losses by  
30 analyzing and comparing data from tax return information and tax  
31 collections for each local taxing jurisdiction before and after July  
32 1, 2008, on a calendar quarter basis. The department's analysis may  
33 be revised and supplemented in consultation with the oversight  
34 committee as provided in subsection (4) of this section. To determine  
35 net losses, the department must reduce losses by the amount of  
36 voluntary compliance revenue for the calendar quarter analyzed.  
37 Beginning December 31, 2008, distributions must be made quarterly  
38 from the streamlined sales and use tax mitigation account by the  
39 state treasurer, as directed by the department, to each local taxing

1 jurisdiction, other than public facilities districts for losses in  
2 respect to taxes imposed under the authority of RCW 82.14.390, in an  
3 amount representing its net losses for the previous calendar quarter.  
4 Distributions must be made on the last working day of each calendar  
5 quarter and must cease when distributions under subsection (3) of  
6 this section begin.

7 (3)(a) By December 31, 2009, or such later date the department in  
8 consultation with the oversight committee determines that sufficient  
9 data is available, the department must determine each local taxing  
10 jurisdiction's annual loss. The department must determine annual  
11 losses by comparing at least twelve months of data from tax return  
12 information and tax collections for each local taxing jurisdiction  
13 before and after July 1, 2008. The department is not required to  
14 determine annual losses on a recurring basis, but may make any  
15 adjustments to annual losses as it deems proper as a result of the  
16 annual reviews provided in (b) of this subsection. Beginning the  
17 calendar quarter in which the department determines annual losses,  
18 and each calendar quarter thereafter through September 30, 2019,  
19 distributions must be made from the streamlined sales and use tax  
20 mitigation account by the state treasurer on the last working day of  
21 the calendar quarter, as directed by the department, to each local  
22 taxing jurisdiction, other than public facilities districts for  
23 losses in respect to taxes imposed under the authority of RCW  
24 82.14.390, in an amount representing one-fourth of the jurisdiction's  
25 annual loss reduced by voluntary compliance revenue reported during  
26 the previous calendar quarter and marketplace facilitator/remote  
27 seller revenue reported during the previous calendar quarter.

28 (b) The department's analysis of annual losses must be reviewed  
29 by December 1st of each year and may be revised and supplemented in  
30 consultation with the oversight committee as provided in subsection  
31 (4) of this section.

32 (4) The department must convene an oversight committee to assist  
33 in the determination of losses. The committee includes one  
34 representative of one city whose revenues are increased, one  
35 representative of one city whose revenues are reduced, one  
36 representative of one county whose revenues are increased, one  
37 representative of one county whose revenues are decreased, one  
38 representative of one transportation authority under RCW 82.14.045  
39 whose revenues are increased, and one representative of one  
40 transportation authority under RCW 82.14.045 whose revenues are

1 reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007  
2 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight  
3 committee must meet quarterly with the department to review and  
4 provide additional input and direction on the department's analyses  
5 of losses. Local taxing jurisdictions may also present to the  
6 oversight committee additional information to improve the  
7 department's analyses of the jurisdiction's loss. Beginning January  
8 1, 2010, the oversight committee must meet at least annually with the  
9 department by December 1st.

10 (5) The rule-making provisions of chapter 34.05 RCW do not apply  
11 to this section.

12 (6)(a) As a result of part II of this act, local sales and use  
13 tax revenue is anticipated to increase due to additional tax  
14 remittance by marketplace facilitators, remote sellers, and  
15 consumers. This additional revenue will further mitigate the losses  
16 that resulted from the sourcing provisions of the streamlined sales  
17 and use tax agreement under this title and should be reflected in  
18 mitigation payments to negatively impacted local jurisdictions.

19 (b) Beginning January 1, 2018, and continuing through September  
20 30, 2019, the department must determine the increased sales and use  
21 tax revenue each local taxing jurisdiction experiences from  
22 marketplace facilitator/remote seller revenue as a result of sections  
23 201 through 213 of this act each calendar quarter. The department  
24 must convene the mitigation advisory committee before January 1,  
25 2018, to receive input on the determination of marketplace  
26 facilitator/remote seller revenue. Beginning with distributions made  
27 after March 31, 2018, distributions from the streamlined sales and  
28 use tax mitigation account by the state treasurer, as directed by the  
29 department, to each local taxing jurisdiction, must be reduced by the  
30 amount of its marketplace facilitator/remote seller revenue reported  
31 during the previous calendar quarter. No later than December 1, 2019,  
32 the department will determine the total marketplace facilitator/  
33 remote seller revenue for each local taxing jurisdiction for  
34 reporting periods beginning January 1, 2018, through reporting  
35 periods ending June 30, 2019. If the total distribution made from the  
36 streamlined sales and use tax mitigation account to a local taxing  
37 jurisdiction was not fully reduced by its total amount of marketplace  
38 facilitator/remote seller revenue for reporting periods beginning  
39 January 1, 2018, through reporting periods ending June 30, 2019, the  
40 department must reduce the local taxing jurisdiction's distribution

1 of local sales and use tax under RCW 82.14.060 by the excess amount  
2 received.

3 NEW SECTION. Sec. 403. (1)(a) Monthly, the state treasurer must  
4 distribute from the local sales and use tax account to the counties,  
5 cities, transportation authorities, public facilities districts, and  
6 transportation benefit districts the amount of tax collected on  
7 behalf of each taxing authority, less:

8 (i) The deduction provided for in RCW 82.14.050; and

9 (ii) The amount of any refunds of local sales and use taxes  
10 exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565,  
11 82.08.025661, or 82.12.025661, which must be made without  
12 appropriation; and

13 (iii) The deduction required under RCW 82.14.500.

14 (b) The state treasurer must make the distribution under this  
15 section without appropriation.

16 (2) In the event that any ordinance or resolution imposes a sales  
17 and use tax at a rate in excess of the applicable limits contained  
18 herein, such ordinance or resolution may not be considered void in  
19 toto, but only with respect to that portion of the rate that is in  
20 excess of the applicable limits contained herein.

21 NEW SECTION. Sec. 404. The following acts or parts of acts, as  
22 now existing or hereafter amended, are each repealed, effective  
23 October 1, 2019:

24 (1) RCW 82.14.495 (Streamlined sales and use tax mitigation  
25 account—Creation) and 2017 3rd sp.s. c . . . s 401 (section 401 of  
26 this act), 2010 1st sp.s. c 37 s 952, 2009 c 4 s 907, & 2007 c 6 s  
27 902;

28 (2) RCW 82.14.500 (Streamlined sales and use tax mitigation  
29 account—Funding—Determination of losses) and 2017 3rd sp.s. c . . .  
30 s 402 (section 402 of this act), 2011 1st sp.s. c 50 s 974, & 2007 c  
31 6 s 903; and

32 (3) 2017 3rd sp.s. c . . . s 403 (uncodified) (section 403 of  
33 this act).

34 **Part V**  
35 **Public Utility Privilege Tax Distributions**

1       **Sec. 501.** RCW 54.28.055 and 1986 c 189 s 1 are each amended to  
2 read as follows:

3       (1) After computing the tax imposed by RCW 54.28.025(1), the  
4 department of revenue (~~shall~~) must instruct the state treasurer to  
5 distribute the amount collected on the first business day of July as  
6 follows:

7       (a) Fifty percent to the state general fund for the support of  
8 schools; and

9       (b) Twenty-two percent to the counties, twenty-three percent to  
10 the cities, three percent to the fire protection districts, and two  
11 percent to the library districts.

12       (2) Each county, city, fire protection district and library  
13 district (~~shall~~) must receive a percentage of the amount for  
14 distribution to counties, cities, fire protection districts and  
15 library districts, respectively, in the proportion that the  
16 population of such district residing within the impacted area bears  
17 to the total population of all such districts residing within the  
18 impacted area. For the purposes of this chapter, the term "library  
19 district" includes only regional libraries (~~as defined in RCW~~  
20 ~~27.12.010(4)~~), rural county library districts (~~as defined in RCW~~  
21 ~~27.12.010(5)~~), intercounty rural library districts (~~as defined in~~  
22 ~~RCW 27.12.010(6)~~), and island library districts (~~as defined in RCW~~  
23 ~~27.12.010(7)~~). The population of a library district, for purposes of  
24 such a distribution, (~~shall~~) does not include any population within  
25 the library district and the impact area that also is located within  
26 a city or town.

27       (3) If any distribution pursuant to subsection (1)(b) of this  
28 section cannot be made, then that share (~~shall~~) must be prorated  
29 among the state and remaining local districts.

30       (4) All distributions directed by this section to be made on the  
31 basis of population (~~shall~~) must be calculated in accordance with  
32 data to be provided by the office of financial management.

33       **Sec. 502.** RCW 54.28.055 and 2017 c 323 s 105 are each amended to  
34 read as follows:

35       (1) Except as provided in subsection (3) of this section, the  
36 department of revenue must instruct the state treasurer to distribute  
37 the amount collected under RCW 54.28.025(1) on the first business day  
38 of July as follows:



1 (a) Fifty percent to the state general fund for the support of  
2 schools; and

3 (b) Twenty-two percent to the counties, twenty-three percent to  
4 the cities, three percent to the fire protection districts, and two  
5 percent to the library districts.

6 (2) Each county, city, fire protection district, and library  
7 district must receive a percentage of the amount for distribution to  
8 counties, cities, fire protection districts, and library districts,  
9 respectively, in the proportion that the population of such district  
10 residing within the impacted area bears to the total population of  
11 all such districts residing within the impacted area. For the  
12 purposes of this chapter, the term "library district" includes only  
13 regional libraries, rural county library districts, intercounty rural  
14 library districts, and island library districts as those terms are  
15 defined in RCW 27.12.010. The population of a library district, for  
16 purposes of such a distribution, does not include any population  
17 within the library district and the impact area that also is located  
18 within a city or town.

19 (3) Distributions under this section must be adjusted as follows:

20 (a) If any distribution pursuant to subsection (1)(b) of this  
21 section cannot be made, then that share must be prorated among the  
22 state and remaining local districts.

23 (b) The department of revenue must instruct the state treasurer  
24 to adjust distributions under this section, in whole or in part, to  
25 account for each county's, city's, fire protection district's, and  
26 library district's proportionate share of amounts previously  
27 distributed under this section and subsequently refunded to a public  
28 utility district under RCW 82.32.060.

29 (4) All distributions directed by this section to be made on the  
30 basis of population must be calculated in accordance with population  
31 data as last determined by the office of financial management.

32 **Part VI**

33 **Miscellaneous Provisions**

34 NEW SECTION. **Sec. 601.** Sections 204 through 208 of this act  
35 constitute a new chapter in Title 82 RCW.

36 NEW SECTION. **Sec. 602.** This act does not affect any existing  
37 right acquired or liability or obligation incurred under the sections

1 amended or repealed or under any rule or order adopted under those  
2 sections, nor does it affect any proceeding instituted under those  
3 sections.

4 NEW SECTION. **Sec. 603.** (1) If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

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

14 NEW SECTION. **Sec. 604.** The tax collection, reporting, and  
15 payment obligations imposed by this act apply prospectively only.

16 NEW SECTION. **Sec. 605.** (1) Except as otherwise provided in this  
17 section, this act is necessary for the immediate preservation of the  
18 public peace, health, or safety, or support of the state government  
19 and its existing public institutions, and takes effect immediately.

20 (2) Part I of this act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of  
22 the state government and its existing public institutions, and takes  
23 effect August 1, 2017.

24 (3) Section 213 of this act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of  
26 the state government and its existing public institutions, and takes  
27 effect July 23, 2017.

28 (4) Part III of this act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of  
30 the state government and its existing public institutions, and takes  
31 effect July 1, 2017.

32 (5) Section 502 of this act takes effect January 1, 2018.

33 NEW SECTION. **Sec. 606.** Section 212 of this act expires July 23,  
34 2017.

1        NEW SECTION.    **Sec. 607.**    Section 501 of this act expires January  
2    1, 2018.

--- END ---