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**HOUSE BILL 1303**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Kloba, Entenman, Ramel, Bateman, Santos, Frame, Gregerson, Ormsby, Pollet, and Slatter

Read first time 01/19/21. Referred to Committee on Finance.

1 AN ACT Relating to the regulation and taxation of the sale of  
2 Washingtonian's personal information and related data; amending RCW  
3 82.04.050, 82.04.050, 82.04.192, 82.04.2907, 82.04.460, 82.04.462,  
4 82.08.0291, and 82.32.087; adding new sections to chapter 82.04 RCW;  
5 creating a new section; prescribing penalties; providing effective  
6 dates; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature intends to update and  
9 adapt state tax policy to the forms of commerce that have emerged  
10 with new technologies. The legislature recognizes that consumers are  
11 increasingly conducting their professional and personal affairs  
12 online and on devices such as smartphones or tablets. These  
13 activities include applying for jobs, researching symptoms and  
14 communicating with health care providers, applying for permits and  
15 licenses, mapping routes, communicating with friends and family,  
16 consuming news and entertainment, and shopping and arranging for the  
17 delivery of goods and services to the home. Through these daily  
18 activities, consumers generate enormous and unprecedented quantities  
19 of data about themselves, including their locations, behaviors, and  
20 preferences.

1 (2) The legislature further recognizes that technological  
2 advances have made it possible to more easily and quickly gather,  
3 analyze, and export vast amounts of personal information, whether  
4 such information is obtained through electronic or other means.

5 (3) The legislature finds that there are various businesses  
6 engaged in accumulating the personal data that is available to be  
7 collected on Washingtonians, aggregating or compiling that  
8 information, and reselling it without any compensation to the people  
9 of the state. This is a new business model that has flourished and is  
10 anticipated to grow as more people and more devices are connected  
11 with ever-increasing frequency for an ever greater number of  
12 innovative applications. As such, the legislature intends to have  
13 this unique and growing industry set apart with its own individual  
14 tax rate. This will provide transparency on the number of businesses  
15 and volume of activity in this industry, and fairly generate revenue  
16 to be used for the benefit of the state of Washington and its people.

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

19 (1) Upon every person engaging within this state in the business  
20 of making sales of personal data or exchanging personal data for  
21 consideration; as to such persons, the amount of tax with respect to  
22 such business is equal to the gross income of the business multiplied  
23 by the rate of 1.8 percent.

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

26 (a) "Deidentified data" means data that cannot reasonably be used  
27 to infer information about, or otherwise be linked to, an identified  
28 or identifiable natural person, or a device linked to such person,  
29 provided that the controller that possesses the data:

30 (i) Takes reasonable measures to ensure that the data cannot be  
31 associated with a natural person;

32 (ii) Publicly commits to maintain and use the data only in a  
33 deidentified fashion and not attempt to reidentify the data; and

34 (iii) Contractually obligates any recipients of the information  
35 to comply with all provisions of this subsection.

36 (b) "Engaging within this state" has the same meaning as provided  
37 in RCW 82.04.066, and also means that a person generates gross income  
38 from the business from personal data, as defined in (c) of this  
39 subsection, of individuals located in this state. For purposes of

1 this subsection, an individual is located in this state if any of the  
2 addresses, as defined in RCW 82.04.462(5), utilized by that  
3 individual is located in this state.

4 (c) "Personal data" means any information that is linked or  
5 reasonably linked to an identified or identifiable natural person.

6 "Personal data" does not include:

7 (i) Deidentified data or publicly available information; or

8 (ii) Personal data that is sold by any state agency for the  
9 purposes of increasing public safety or positive health outcomes,  
10 provided that secondary sales of this personal data by the entities  
11 purchasing this personal data from the state agency is contractually  
12 prohibited.

13 (3) Nothing in this section may be construed as to impose a tax  
14 on internet access.

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

17 (1) Except as provided in subsection (6) of this section,  
18 beginning September 1, 2022, every person engaging within this state  
19 in the business of making sales of personal data or exchanging  
20 personal data for consideration must register with the department.

21 (2) Registration under subsection (1) of this section must be  
22 completed annually, at a date set by the department, and must consist  
23 of the following:

24 (a) The name, principal place of business, and character of  
25 business, including:

26 (i) The specific types of personal information from  
27 Washingtonians sold or exchanged for consideration;

28 (ii) The types of entities that personal information is sold or  
29 exchanged for consideration;

30 (iii) The sources and methods by which the personal information  
31 was obtained; and

32 (iv) The gross income of the business attributable to the sale,  
33 or exchange for consideration, of personal information of  
34 Washingtonians, to be calculated using the following:

35 (A) The ratio, expressed as a percentage, that the number of  
36 Washington addresses in the personal information bears to all  
37 addresses in the personal information; or

38 (B) If the ratio in (a)(iv)(A) of this subsection (2) is not  
39 readily attainable, the ratio, expressed as a percentage, that the

1 population of this state bears to all the states of the United States  
2 in the taxpayer's market, or by any other reasonable methods allowed  
3 by the department; and

4 (b) Submission of an informational return, as designed by the  
5 department.

6 (3) A person who is required to register under subsection (1) of  
7 this section and who fails to do so, or submits incomplete or  
8 inaccurate information, is subject to a fine of \$100 per day of  
9 delinquency in addition to an amount equal to any expenses incurred  
10 by the office of the attorney general in the investigation or  
11 prosecution of the delinquency.

12 (4) By no later than December 15, 2022, and annually thereafter,  
13 the department must report to the appropriate committees of the  
14 legislature, in compliance with RCW 43.01.036, a summary of the  
15 information received under subsection (2) of this section.

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

18 (a) "Addresses" means physical, mailing, or internet protocol  
19 addresses, or similar addresses.

20 (b) (i) "Engaging within this state" has the same meaning as  
21 provided in RCW 82.04.066.

22 (ii) For purposes of this subsection, an individual is located in  
23 this state if any of the addresses of that individual is located in  
24 this state.

25 (c) "Person" has the same meaning as provided in RCW 82.04.030.

26 (d) "Personal data" has the same meaning as provided in section 2  
27 of this act.

28 (6) The department may delay the application of this section if  
29 it is unable to implement any of the provisions of this section, but  
30 it may be delayed no later than November 1, 2022. If the department  
31 delays the application of this section, it must post notice of the  
32 new application date on its public website by August 1, 2022.

33 **Sec. 4.** RCW 82.04.050 and 2017 3rd sp.s. c 37 s 1201 are each  
34 amended to read as follows:

35 (1) (a) "Sale at retail" or "retail sale" means every sale of  
36 tangible personal property (including articles produced, fabricated,  
37 or imprinted) to all persons irrespective of the nature of their  
38 business and including, among others, without limiting the scope  
39 hereof, persons who install, repair, clean, alter, improve,

1 construct, or decorate real or personal property of or for consumers  
2 other than a sale to a person who:

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

7 (ii) Installs, repairs, cleans, alters, imprints, improves,  
8 constructs, or decorates real or personal property of or for  
9 consumers, if such tangible personal property becomes an ingredient  
10 or component of such real or personal property without intervening  
11 use by such person; or

12 (iii) Purchases for the purpose of consuming the property  
13 purchased in producing for sale as a new article of tangible personal  
14 property or substance, of which such property becomes an ingredient  
15 or component or is a chemical used in processing, when the primary  
16 purpose of such chemical is to create a chemical reaction directly  
17 through contact with an ingredient of a new article being produced  
18 for sale; or

19 (iv) Purchases for the purpose of consuming the property  
20 purchased in producing ferrosilicon which is subsequently used in  
21 producing magnesium for sale, if the primary purpose of such property  
22 is to create a chemical reaction directly through contact with an  
23 ingredient of ferrosilicon; or

24 (v) Purchases for the purpose of providing the property to  
25 consumers as part of competitive telephone service, as defined in RCW  
26 82.04.065; or

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

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

37 (c) The term also means every sale of tangible personal property  
38 to persons engaged in any business that is taxable under RCW  
39 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

4 (a) The installing, repairing, cleaning, altering, imprinting, or  
5 improving of tangible personal property of or for consumers,  
6 including charges made for the mere use of facilities in respect  
7 thereto, but excluding charges made for the use of self-service  
8 laundry facilities, and also excluding sales of laundry service to  
9 nonprofit health care facilities, and excluding services rendered in  
10 respect to live animals, birds and insects;

11 (b) The constructing, repairing, decorating, or improving of new  
12 or existing buildings or other structures under, upon, or above real  
13 property of or for consumers, including the installing or attaching  
14 of any article of tangible personal property therein or thereto,  
15 whether or not such personal property becomes a part of the realty by  
16 virtue of installation, and also includes the sale of services or  
17 charges made for the clearing of land and the moving of earth  
18 excepting the mere leveling of land used in commercial farming or  
19 agriculture;

20 (c) The constructing, repairing, or improving of any structure  
21 upon, above, or under any real property owned by an owner who conveys  
22 the property by title, possession, or any other means to the person  
23 performing such construction, repair, or improvement for the purpose  
24 of performing such construction, repair, or improvement and the  
25 property is then reconveyed by title, possession, or any other means  
26 to the original owner;

27 (d) The cleaning, fumigating, razing, or moving of existing  
28 buildings or structures, but does not include the charge made for  
29 janitorial services; and for purposes of this section the term  
30 "janitorial services" means those cleaning and caretaking services  
31 ordinarily performed by commercial janitor service businesses  
32 including, but not limited to, wall and window washing, floor  
33 cleaning and waxing, and the cleaning in place of rugs, drapes and  
34 upholstery. The term "janitorial services" does not include painting,  
35 papering, repairing, furnace or septic tank cleaning, snow removal or  
36 sandblasting;

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

1 (f) The furnishing of lodging and all other services by a hotel,  
2 rooming house, tourist court, motel, trailer camp, and the granting  
3 of any similar license to use real property, as distinguished from  
4 the renting or leasing of real property, and it is presumed that the  
5 occupancy of real property for a continuous period of one month or  
6 more constitutes a rental or lease of real property and not a mere  
7 license to use or enjoy the same. For the purposes of this  
8 subsection, it is presumed that the sale of and charge made for the  
9 furnishing of lodging for a continuous period of one month or more to  
10 a person is a rental or lease of real property and not a mere license  
11 to enjoy the same;

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

14 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)  
15 of this subsection when such sales or charges are for property, labor  
16 and services which are used or consumed in whole or in part by such  
17 persons in the performance of any activity defined as a "sale at  
18 retail" or "retail sale" even though such property, labor and  
19 services may be resold after such use or consumption. Nothing  
20 contained in this subsection may be construed to modify subsection  
21 (1) of this section and nothing contained in subsection (1) of this  
22 section may be construed to modify this subsection.

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

28 (a) Abstract, title insurance, and escrow services;

29 (b) ~~((Credit bureau services;~~

30 ~~(-e-))~~ Automobile parking and storage garage services;

31 ~~((+d-))~~ (c) Landscape maintenance and horticultural services but  
32 excluding (i) horticultural services provided to farmers and (ii)  
33 pruning, trimming, repairing, removing, and clearing of trees and  
34 brush near electric transmission or distribution lines or equipment,  
35 if performed by or at the direction of an electric utility;

36 ~~((+e-))~~ (d) Service charges associated with tickets to  
37 professional sporting events;

38 ~~((+f-))~~ (e) The following personal services: Tanning salon  
39 services, tattoo parlor services, steam bath services, turkish bath  
40 services, escort services, and dating services; and

1       (~~(g)~~) (f)(i) Operating an athletic or fitness facility,  
2 including all charges for the use of such a facility or for any  
3 associated services and amenities, except as provided in (~~(g)~~) (f)  
4 (ii) of this subsection.

5       (ii) Notwithstanding anything to the contrary in (~~(g)~~) (f)(i)  
6 of this subsection (3), the term "sale at retail" and "retail sale"  
7 under this subsection does not include:

8       (A) Separately stated charges for the use of an athletic or  
9 fitness facility where such use is primarily for a purpose other than  
10 engaging in or receiving instruction in a physical fitness activity;

11       (B) Separately stated charges for the use of a discrete portion  
12 of an athletic or fitness facility, other than a pool, where such  
13 discrete portion of the facility does not by itself meet the  
14 definition of "athletic or fitness facility" in this subsection;

15       (C) Separately stated charges for services, such as advertising,  
16 massage, nutritional consulting, and body composition testing, that  
17 do not require the customer to engage in physical fitness activities  
18 to receive the service. The exclusion in this subsection (3)(~~(g)~~)  
19 (f)(ii)(C) does not apply to personal training services and  
20 instruction in a physical fitness activity;

21       (D) Separately stated charges for physical therapy provided by a  
22 physical therapist, as those terms are defined in RCW 18.74.010, or  
23 occupational therapy provided by an occupational therapy  
24 practitioner, as those terms are defined in RCW 18.59.020, when  
25 performed pursuant to a referral from an authorized health care  
26 practitioner or in consultation with an authorized health care  
27 practitioner. For the purposes of this subsection (3)(~~(g)~~) (f)  
28 (ii)(D), an authorized health care practitioner means a health care  
29 practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57,  
30 18.57A, 18.71, or 18.71A RCW;

31       (E) Rent or association fees charged by a landlord or residential  
32 association to a tenant or residential owner with access to an  
33 athletic or fitness facility maintained by the landlord or  
34 residential association, unless the rent or fee varies depending on  
35 whether the tenant or owner has access to the facility;

36       (F) Services provided in the regular course of employment by an  
37 employee with access to an athletic or fitness facility maintained by  
38 the employer for use without charge by its employees or their family  
39 members;

1 (G) The provision of access to an athletic or fitness facility by  
2 an educational institution to its students and staff. However,  
3 charges made by an educational institution to its alumni or other  
4 members of the public for the use of any of the educational  
5 institution's athletic or fitness facilities are a retail sale under  
6 this subsection (3) ~~((g))~~ (f). For purposes of this subsection (3)  
7 ~~((g))~~ (f)(ii)(G), "educational institution" has the same meaning as  
8 in RCW 82.04.170;

9 (H) Yoga, chi gong, or martial arts classes, training, or events  
10 held at a community center, park, school gymnasium, college or  
11 university, hospital or other medical facility, private residence, or  
12 any other facility that is not operated within and as part of an  
13 athletic or fitness facility.

14 (iii) Nothing in ~~((g))~~ (f)(ii) of this subsection (3) may be  
15 construed to affect the taxation of sales made by the operator of an  
16 athletic or fitness facility, where such sales are defined as a  
17 retail sale under any provision of this section other than this  
18 subsection (3).

19 (iv) For the purposes of this subsection (3) ~~((g))~~ (f), the  
20 following definitions apply:

21 (A) "Athletic or fitness facility" means an indoor or outdoor  
22 facility or portion of a facility that is primarily used for:  
23 Exercise classes; strength and conditioning programs; personal  
24 training services; tennis, racquetball, handball, squash, or  
25 pickleball; or other activities requiring the use of exercise or  
26 strength training equipment, such as treadmills, elliptical machines,  
27 stair climbers, stationary cycles, rowing machines, pilates  
28 equipment, balls, climbing ropes, jump ropes, and weightlifting  
29 equipment.

30 (B) "Martial arts" means any of the various systems of training  
31 for physical combat or self-defense. "Martial arts" includes, but is  
32 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,  
33 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,  
34 Kendo, tai chi, and mixed martial arts.

35 (C) "Physical fitness activities" means activities that involve  
36 physical exertion for the purpose of improving or maintaining the  
37 general fitness, strength, flexibility, conditioning, or health of  
38 the participant. "Physical fitness activities" includes participating  
39 in yoga, chi gong, or martial arts.

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

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

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

9 (6) (a) The term also includes the sale of prewritten computer  
10 software to a consumer, regardless of the method of delivery to the  
11 end user. For purposes of (a) and (b) of this subsection, the sale of  
12 prewritten computer software includes the sale of or charge made for  
13 a key or an enabling or activation code, where the key or code is  
14 required to activate prewritten computer software and put the  
15 software into use. There is no separate sale of the key or code from  
16 the prewritten computer software, regardless of how the sale may be  
17 characterized by the vendor or by the purchaser.

18 (b) The term "retail sale" does not include the sale of or charge  
19 made for:

20 (i) Custom software; or

21 (ii) The customization of prewritten computer software.

22 (c) (i) The term also includes the charge made to consumers for  
23 the right to access and use prewritten computer software, where  
24 possession of the software is maintained by the seller or a third  
25 party, regardless of whether the charge for the service is on a per  
26 use, per user, per license, subscription, or some other basis.

27 (ii) (A) The service described in (c) (i) of this subsection (6)  
28 includes the right to access and use prewritten computer software to  
29 perform data processing.

30 (B) For purposes of this subsection (6) (c) (ii), "data processing"  
31 means the systematic performance of operations on data to extract the  
32 required information in an appropriate form or to convert the data to  
33 usable information. Data processing includes check processing, image  
34 processing, form processing, survey processing, payroll processing,  
35 claim processing, and similar activities.

36 (7) The term also includes the sale of or charge made for an  
37 extended warranty to a consumer. For purposes of this subsection,  
38 "extended warranty" means an agreement for a specified duration to  
39 perform the replacement or repair of tangible personal property at no  
40 additional charge or a reduced charge for tangible personal property,

1 labor, or both, or to provide indemnification for the replacement or  
2 repair of tangible personal property, based on the occurrence of  
3 specified events. The term "extended warranty" does not include an  
4 agreement, otherwise meeting the definition of extended warranty in  
5 this subsection, if no separate charge is made for the agreement and  
6 the value of the agreement is included in the sales price of the  
7 tangible personal property covered by the agreement. For purposes of  
8 this subsection, "sales price" has the same meaning as in RCW  
9 82.08.010.

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

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

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

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

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

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

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

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

37 (10) The term does not include the sale of or charge made for  
38 labor and services rendered in respect to the building, repairing, or  
39 improving of any street, place, road, highway, easement, right-of-  
40 way, mass public transportation terminal or parking facility, bridge,

1 tunnel, or trestle which is owned by a municipal corporation or  
2 political subdivision of the state or by the United States and which  
3 is used or to be used primarily for foot or vehicular traffic  
4 including mass transportation vehicles of any kind.

5 (11) The term also does not include sales of chemical sprays or  
6 washes to persons for the purpose of postharvest treatment of fruit  
7 for the prevention of scald, fungus, mold, or decay, nor does it  
8 include sales of feed, seed, seedlings, fertilizer, agents for  
9 enhanced pollination including insects such as bees, and spray  
10 materials to: (a) Persons who participate in the federal conservation  
11 reserve program, the environmental quality incentives program, the  
12 wetlands reserve program, and the wildlife habitat incentives  
13 program, or their successors administered by the United States  
14 department of agriculture; (b) farmers for the purpose of producing  
15 for sale any agricultural product; (c) farmers for the purpose of  
16 providing bee pollination services; and (d) farmers acting under  
17 cooperative habitat development or access contracts with an  
18 organization exempt from federal income tax under 26 U.S.C. Sec.  
19 501(c)(3) of the federal internal revenue code or the Washington  
20 state department of fish and wildlife to produce or improve wildlife  
21 habitat on land that the farmer owns or leases.

22 (12) The term does not include the sale of or charge made for  
23 labor and services rendered in respect to the constructing,  
24 repairing, decorating, or improving of new or existing buildings or  
25 other structures under, upon, or above real property of or for the  
26 United States, any instrumentality thereof, or a county or city  
27 housing authority created pursuant to chapter 35.82 RCW, including  
28 the installing, or attaching of any article of tangible personal  
29 property therein or thereto, whether or not such personal property  
30 becomes a part of the realty by virtue of installation. Nor does the  
31 term include the sale of services or charges made for the clearing of  
32 land and the moving of earth of or for the United States, any  
33 instrumentality thereof, or a county or city housing authority. Nor  
34 does the term include the sale of services or charges made for  
35 cleaning up for the United States, or its instrumentalities,  
36 radioactive waste and other by-products of weapons production and  
37 nuclear research and development.

38 (13) The term does not include the sale of or charge made for  
39 labor, services, or tangible personal property pursuant to agreements  
40 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the  
2 labor, services, or tangible personal property, and a transit agency,  
3 as defined in RCW 81.104.015, performs the labor or services.

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

7 (15)(a) The term "sale at retail" or "retail sale" includes  
8 amounts charged, however labeled, to consumers to engage in any of  
9 the activities listed in this subsection (15)(a), including the  
10 furnishing of any associated equipment or, except as otherwise  
11 provided in this subsection, providing instruction in such  
12 activities, where such charges are not otherwise defined as a "sale  
13 at retail" or "retail sale" in this section:

14 (i)(A) Golf, including any variant in which either golf balls or  
15 golf clubs are used, such as miniature golf, hitting golf balls at a  
16 driving range, and golf simulators, and including fees charged by a  
17 golf course to a player for using his or her own cart. However,  
18 charges for golf instruction are not a retail sale, provided that if  
19 the instruction involves the use of a golfing facility that would  
20 otherwise require the payment of a fee, such as green fees or driving  
21 range fees, such fees, including the applicable retail sales tax,  
22 must be separately identified and charged by the golfing facility  
23 operator to the instructor or the person receiving the instruction.

24 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except  
25 as otherwise provided in this subsection (15)(a)(i)(B), the term  
26 "sale at retail" or "retail sale" does not include amounts charged to  
27 participate in, or conduct, a golf tournament or other competitive  
28 event. However, amounts paid by event participants to the golf  
29 facility operator are retail sales under this subsection (15)(a)(i).  
30 Likewise, amounts paid by the event organizer to the golf facility  
31 are retail sales under this subsection (15)(a)(i), if such amounts  
32 vary based on the number of event participants;

33 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
34 paragliding, parasailing, and similar activities;

35 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
36 ping pong, and similar games;

37 (iv) Access to amusement park, theme park, and water park  
38 facilities, including but not limited to charges for admission and  
39 locker or cabana rentals. Discrete charges for rides or other  
40 attractions or entertainment that are in addition to the charge for

1 admission are not a retail sale under this subsection (15)(a)(iv).  
2 For the purposes of this subsection, an amusement park or theme park  
3 is a location that provides permanently affixed amusement rides,  
4 games, and other entertainment, but does not include parks or zoos  
5 for which the primary purpose is the exhibition of wildlife, or  
6 fairs, carnivals, and festivals as defined in (b)(i) of this  
7 subsection;

8 (v) Batting cage activities;

9 (vi) Bowling, but not including competitive events, except that  
10 amounts paid by the event participants to the bowling alley operator  
11 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
12 paid by the event organizer to the operator of the bowling alley are  
13 retail sales under this subsection (15)(a)(vi), if such amounts vary  
14 based on the number of event participants;

15 (vii) Climbing on artificial climbing structures, whether indoors  
16 or outdoors;

17 (viii) Day trips for sightseeing purposes;

18 (ix) Bungee jumping, zip lining, and riding inside a ball,  
19 whether inflatable or otherwise;

20 (x) Horseback riding offered to the public, where the seller  
21 furnishes the horse to the buyer and providing instruction is not the  
22 primary focus of the activity, including guided rides, but not  
23 including therapeutic horseback riding provided by an instructor  
24 certified by a nonprofit organization that offers national or  
25 international certification for therapeutic riding instructors;

26 (xi) Fishing, including providing access to private fishing areas  
27 and charter or guided fishing, except that fishing contests and  
28 license fees imposed by a government entity are not a retail sale  
29 under this subsection;

30 (xii) Guided hunting and hunting at game farms and shooting  
31 preserves, except that hunting contests and license fees imposed by a  
32 government entity are not a retail sale under this subsection;

33 (xiii) Swimming, but only in respect to (A) recreational or  
34 fitness swimming that is open to the public, such as open swim, lap  
35 swimming, and special events like kids night out and pool parties  
36 during open swim time, and (B) pool parties for private events, such  
37 as birthdays, family gatherings, and employee outings. Fees for  
38 swimming lessons, to participate in swim meets and other  
39 competitions, or to join a swim team, club, or aquatic facility are  
40 not retail sales under this subsection (15)(a)(xiii);

1 (xiv) Go-karting, bumper cars, and other motorized activities  
2 where the seller provides the vehicle and the premises where the  
3 buyer will operate the vehicle;

4 (xv) Indoor or outdoor playground activities, such as inflatable  
5 bounce structures and other inflatables; mazes; trampolines; slides;  
6 ball pits; games of tag, including laser tag and soft-dart tag; and  
7 human gyroscope rides, regardless of whether such activities occur at  
8 the seller's place of business, but not including playground  
9 activities provided for children by a licensed child day care center  
10 or licensed family day care provider as those terms are defined in  
11 RCW ((~~43.215.010~~)) 43.216.010;

12 (xvi) Shooting sports and activities, such as target shooting,  
13 skeet, trap, sporting clays, "5" stand, and archery, but only in  
14 respect to discrete charges to members of the public to engage in  
15 these activities, but not including fees to enter a competitive  
16 event, instruction that is entirely or predominately classroom based,  
17 or to join or renew a membership at a club, range, or other facility;

18 (xvii) Paintball and airsoft activities;

19 (xviii) Skating, including ice skating, roller skating, and  
20 inline skating, but only in respect to discrete charges to members of  
21 the public to engage in skating activities, but not including skating  
22 lessons, competitive events, team activities, or fees to join or  
23 renew a membership at a skating facility, club, or other  
24 organization;

25 (xix) Nonmotorized snow sports and activities, such as downhill  
26 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
27 tubing, snowshoeing, and similar snow sports and activities, whether  
28 engaged in outdoors or in an indoor facility with or without snow,  
29 but only in respect to discrete charges to the public for the use of  
30 land or facilities to engage in nonmotorized snow sports and  
31 activities, such as fees, however labeled, for the use of ski lifts  
32 and tows and daily or season passes for access to trails or other  
33 areas where nonmotorized snow sports and activities are conducted.  
34 However, fees for the following are not retail sales under this  
35 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits  
36 issued by a governmental entity to park a vehicle on or access public  
37 lands; and (C) permits or leases granted by an owner of private  
38 timberland for recreational access to areas used primarily for  
39 growing and harvesting timber; and

1 (xx) Scuba diving; snorkeling; river rafting; surfing;  
2 kiteboarding; flyboarding; water slides; inflatables, such as water  
3 pillows, water trampolines, and water rollers; and similar water  
4 sports and activities.

5 (b) Notwithstanding anything to the contrary in this subsection  
6 (15), the term "sale at retail" or "retail sale" does not include  
7 charges:

8 (i) Made for admission to, and rides or attractions at, fairs,  
9 carnivals, and festivals. For the purposes of this subsection, fairs,  
10 carnivals, and festivals are events that do not exceed twenty-one  
11 days and a majority of the amusement rides, if any, are not affixed  
12 to real property;

13 (ii) Made by an educational institution to its students and staff  
14 for activities defined as retail sales by (a)(i) through (xx) of this  
15 subsection. However, charges made by an educational institution to  
16 its alumni or other members of the general public for these  
17 activities are a retail sale under this subsection (15). For purposes  
18 of this subsection (15)(b)(ii), "educational institution" has the  
19 same meaning as in RCW 82.04.170;

20 (iii) Made by a vocational school for commercial diver training  
21 that is licensed by the workforce training and education coordinating  
22 board under chapter 28C.10 RCW; or

23 (iv) Made for day camps offered by a nonprofit organization or  
24 state or local governmental entity that provide youth not older than  
25 age eighteen, or that are focused on providing individuals with  
26 disabilities or mental illness, the opportunity to participate in a  
27 variety of supervised activities.

28 **Sec. 5.** RCW 82.04.050 and 2020 c 80 s 58 are each amended to  
29 read as follows:

30 (1)(a) "Sale at retail" or "retail sale" means every sale of  
31 tangible personal property (including articles produced, fabricated,  
32 or imprinted) to all persons irrespective of the nature of their  
33 business and including, among others, without limiting the scope  
34 hereof, persons who install, repair, clean, alter, improve,  
35 construct, or decorate real or personal property of or for consumers  
36 other than a sale to a person who:

37 (i) Purchases for the purpose of resale as tangible personal  
38 property in the regular course of business without intervening use by

1 such person, but a purchase for the purpose of resale by a regional  
2 transit authority under RCW 81.112.300 is not a sale for resale; or

3 (ii) Installs, repairs, cleans, alters, imprints, improves,  
4 constructs, or decorates real or personal property of or for  
5 consumers, if such tangible personal property becomes an ingredient  
6 or component of such real or personal property without intervening  
7 use by such person; or

8 (iii) Purchases for the purpose of consuming the property  
9 purchased in producing for sale as a new article of tangible personal  
10 property or substance, of which such property becomes an ingredient  
11 or component or is a chemical used in processing, when the primary  
12 purpose of such chemical is to create a chemical reaction directly  
13 through contact with an ingredient of a new article being produced  
14 for sale; or

15 (iv) Purchases for the purpose of consuming the property  
16 purchased in producing ferrosilicon which is subsequently used in  
17 producing magnesium for sale, if the primary purpose of such property  
18 is to create a chemical reaction directly through contact with an  
19 ingredient of ferrosilicon; or

20 (v) Purchases for the purpose of providing the property to  
21 consumers as part of competitive telephone service, as defined in RCW  
22 82.04.065; or

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

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

33 (c) The term also means every sale of tangible personal property  
34 to persons engaged in any business that is taxable under RCW  
35 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

39 (a) The installing, repairing, cleaning, altering, imprinting, or  
40 improving of tangible personal property of or for consumers,

1 including charges made for the mere use of facilities in respect  
2 thereto, but excluding charges made for the use of self-service  
3 laundry facilities, and also excluding sales of laundry service to  
4 nonprofit health care facilities, and excluding services rendered in  
5 respect to live animals, birds and insects;

6 (b) The constructing, repairing, decorating, or improving of new  
7 or existing buildings or other structures under, upon, or above real  
8 property of or for consumers, including the installing or attaching  
9 of any article of tangible personal property therein or thereto,  
10 whether or not such personal property becomes a part of the realty by  
11 virtue of installation, and also includes the sale of services or  
12 charges made for the clearing of land and the moving of earth  
13 excepting the mere leveling of land used in commercial farming or  
14 agriculture;

15 (c) The constructing, repairing, or improving of any structure  
16 upon, above, or under any real property owned by an owner who conveys  
17 the property by title, possession, or any other means to the person  
18 performing such construction, repair, or improvement for the purpose  
19 of performing such construction, repair, or improvement and the  
20 property is then reconveyed by title, possession, or any other means  
21 to the original owner;

22 (d) The cleaning, fumigating, razing, or moving of existing  
23 buildings or structures, but does not include the charge made for  
24 janitorial services; and for purposes of this section the term  
25 "janitorial services" means those cleaning and caretaking services  
26 ordinarily performed by commercial janitor service businesses  
27 including, but not limited to, wall and window washing, floor  
28 cleaning and waxing, and the cleaning in place of rugs, drapes and  
29 upholstery. The term "janitorial services" does not include painting,  
30 papering, repairing, furnace or septic tank cleaning, snow removal or  
31 sandblasting;

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

35 (f) The furnishing of lodging and all other services by a hotel,  
36 rooming house, tourist court, motel, trailer camp, and the granting  
37 of any similar license to use real property, as distinguished from  
38 the renting or leasing of real property, and it is presumed that the  
39 occupancy of real property for a continuous period of one month or  
40 more constitutes a rental or lease of real property and not a mere

1 license to use or enjoy the same. For the purposes of this  
2 subsection, it is presumed that the sale of and charge made for the  
3 furnishing of lodging for a continuous period of one month or more to  
4 a person is a rental or lease of real property and not a mere license  
5 to enjoy the same;

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

8 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)  
9 of this subsection when such sales or charges are for property, labor  
10 and services which are used or consumed in whole or in part by such  
11 persons in the performance of any activity defined as a "sale at  
12 retail" or "retail sale" even though such property, labor and  
13 services may be resold after such use or consumption. Nothing  
14 contained in this subsection may be construed to modify subsection  
15 (1) of this section and nothing contained in subsection (1) of this  
16 section may be construed to modify this subsection.

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

22 (a) Abstract, title insurance, and escrow services;

23 (b) ~~((Credit bureau services;~~

24 ~~(-e-))~~ Automobile parking and storage garage services;

25 ~~((-d-))~~ (c) Landscape maintenance and horticultural services but  
26 excluding (i) horticultural services provided to farmers and (ii)  
27 pruning, trimming, repairing, removing, and clearing of trees and  
28 brush near electric transmission or distribution lines or equipment,  
29 if performed by or at the direction of an electric utility;

30 ~~((-e-))~~ (d) Service charges associated with tickets to  
31 professional sporting events;

32 ~~((-f-))~~ (e) The following personal services: Tanning salon  
33 services, tattoo parlor services, steam bath services, turkish bath  
34 services, escort services, and dating services; and

35 ~~((-g-))~~ (f)(i) Operating an athletic or fitness facility,  
36 including all charges for the use of such a facility or for any  
37 associated services and amenities, except as provided in ~~((-g-))~~ (f)  
38 (ii) of this subsection.

1 (ii) Notwithstanding anything to the contrary in (~~(g)~~) (f)(i)  
2 of this subsection (3), the term "sale at retail" and "retail sale"  
3 under this subsection does not include:

4 (A) Separately stated charges for the use of an athletic or  
5 fitness facility where such use is primarily for a purpose other than  
6 engaging in or receiving instruction in a physical fitness activity;

7 (B) Separately stated charges for the use of a discrete portion  
8 of an athletic or fitness facility, other than a pool, where such  
9 discrete portion of the facility does not by itself meet the  
10 definition of "athletic or fitness facility" in this subsection;

11 (C) Separately stated charges for services, such as advertising,  
12 massage, nutritional consulting, and body composition testing, that  
13 do not require the customer to engage in physical fitness activities  
14 to receive the service. The exclusion in this subsection (~~(3)(g)~~)  
15 (f)(ii)(C) does not apply to personal training services and  
16 instruction in a physical fitness activity;

17 (D) Separately stated charges for physical therapy provided by a  
18 physical therapist, as those terms are defined in RCW 18.74.010, or  
19 occupational therapy provided by an occupational therapy  
20 practitioner, as those terms are defined in RCW 18.59.020, when  
21 performed pursuant to a referral from an authorized health care  
22 practitioner or in consultation with an authorized health care  
23 practitioner. For the purposes of this subsection (~~(3)(g)~~) (f)  
24 (ii)(D), an authorized health care practitioner means a health care  
25 practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57,  
26 18.71, or 18.71A RCW;

27 (E) Rent or association fees charged by a landlord or residential  
28 association to a tenant or residential owner with access to an  
29 athletic or fitness facility maintained by the landlord or  
30 residential association, unless the rent or fee varies depending on  
31 whether the tenant or owner has access to the facility;

32 (F) Services provided in the regular course of employment by an  
33 employee with access to an athletic or fitness facility maintained by  
34 the employer for use without charge by its employees or their family  
35 members;

36 (G) The provision of access to an athletic or fitness facility by  
37 an educational institution to its students and staff. However,  
38 charges made by an educational institution to its alumni or other  
39 members of the public for the use of any of the educational  
40 institution's athletic or fitness facilities are a retail sale under

1 this subsection (3) ~~((g))~~ (f). For purposes of this subsection (3)  
2 ~~((g))~~ (f)(ii)(G), "educational institution" has the same meaning as  
3 in RCW 82.04.170;

4 (H) Yoga, chi gong, or martial arts classes, training, or events  
5 held at a community center, park, school gymnasium, college or  
6 university, hospital or other medical facility, private residence, or  
7 any other facility that is not operated within and as part of an  
8 athletic or fitness facility.

9 (iii) Nothing in ~~((g))~~ (f)(ii) of this subsection (3) may be  
10 construed to affect the taxation of sales made by the operator of an  
11 athletic or fitness facility, where such sales are defined as a  
12 retail sale under any provision of this section other than this  
13 subsection (3).

14 (iv) For the purposes of this subsection (3) ~~((g))~~ (f), the  
15 following definitions apply:

16 (A) "Athletic or fitness facility" means an indoor or outdoor  
17 facility or portion of a facility that is primarily used for:  
18 Exercise classes; strength and conditioning programs; personal  
19 training services; tennis, racquetball, handball, squash, or  
20 pickleball; or other activities requiring the use of exercise or  
21 strength training equipment, such as treadmills, elliptical machines,  
22 stair climbers, stationary cycles, rowing machines, pilates  
23 equipment, balls, climbing ropes, jump ropes, and weightlifting  
24 equipment.

25 (B) "Martial arts" means any of the various systems of training  
26 for physical combat or self-defense. "Martial arts" includes, but is  
27 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,  
28 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,  
29 Kendo, tai chi, and mixed martial arts.

30 (C) "Physical fitness activities" means activities that involve  
31 physical exertion for the purpose of improving or maintaining the  
32 general fitness, strength, flexibility, conditioning, or health of  
33 the participant. "Physical fitness activities" includes participating  
34 in yoga, chi gong, or martial arts.

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

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

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

4 (6)(a) The term also includes the sale of prewritten computer  
5 software to a consumer, regardless of the method of delivery to the  
6 end user. For purposes of (a) and (b) of this subsection, the sale of  
7 prewritten computer software includes the sale of or charge made for  
8 a key or an enabling or activation code, where the key or code is  
9 required to activate prewritten computer software and put the  
10 software into use. There is no separate sale of the key or code from  
11 the prewritten computer software, regardless of how the sale may be  
12 characterized by the vendor or by the purchaser.

13 (b) The term "retail sale" does not include the sale of or charge  
14 made for:

15 (i) Custom software; or

16 (ii) The customization of prewritten computer software.

17 (c)(i) The term also includes the charge made to consumers for  
18 the right to access and use prewritten computer software, where  
19 possession of the software is maintained by the seller or a third  
20 party, regardless of whether the charge for the service is on a per  
21 use, per user, per license, subscription, or some other basis.

22 (ii)(A) The service described in (c)(i) of this subsection (6)  
23 includes the right to access and use prewritten computer software to  
24 perform data processing.

25 (B) For purposes of this subsection (6)(c)(ii), "data processing"  
26 means the systematic performance of operations on data to extract the  
27 required information in an appropriate form or to convert the data to  
28 usable information. Data processing includes check processing, image  
29 processing, form processing, survey processing, payroll processing,  
30 claim processing, and similar activities.

31 (7) The term also includes the sale of or charge made for an  
32 extended warranty to a consumer. For purposes of this subsection,  
33 "extended warranty" means an agreement for a specified duration to  
34 perform the replacement or repair of tangible personal property at no  
35 additional charge or a reduced charge for tangible personal property,  
36 labor, or both, or to provide indemnification for the replacement or  
37 repair of tangible personal property, based on the occurrence of  
38 specified events. The term "extended warranty" does not include an  
39 agreement, otherwise meeting the definition of extended warranty in  
40 this subsection, if no separate charge is made for the agreement and

1 the value of the agreement is included in the sales price of the  
2 tangible personal property covered by the agreement. For purposes of  
3 this subsection, "sales price" has the same meaning as in RCW  
4 82.08.010.

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

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

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

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

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

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

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

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

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

1           (11) The term also does not include sales of chemical sprays or  
2 washes to persons for the purpose of postharvest treatment of fruit  
3 for the prevention of scald, fungus, mold, or decay, nor does it  
4 include sales of feed, seed, seedlings, fertilizer, agents for  
5 enhanced pollination including insects such as bees, and spray  
6 materials to: (a) Persons who participate in the federal conservation  
7 reserve program, the environmental quality incentives program, the  
8 wetlands reserve program, and the wildlife habitat incentives  
9 program, or their successors administered by the United States  
10 department of agriculture; (b) farmers for the purpose of producing  
11 for sale any agricultural product; (c) farmers for the purpose of  
12 providing bee pollination services; and (d) farmers acting under  
13 cooperative habitat development or access contracts with an  
14 organization exempt from federal income tax under 26 U.S.C. Sec.  
15 501(c)(3) of the federal internal revenue code or the Washington  
16 state department of fish and wildlife to produce or improve wildlife  
17 habitat on land that the farmer owns or leases.

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

34           (13) The term does not include the sale of or charge made for  
35 labor, services, or tangible personal property pursuant to agreements  
36 providing maintenance services for bus, rail, or rail fixed guideway  
37 equipment when a regional transit authority is the recipient of the  
38 labor, services, or tangible personal property, and a transit agency,  
39 as defined in RCW 81.104.015, performs the labor or services.

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

4 (15)(a) The term "sale at retail" or "retail sale" includes  
5 amounts charged, however labeled, to consumers to engage in any of  
6 the activities listed in this subsection (15)(a), including the  
7 furnishing of any associated equipment or, except as otherwise  
8 provided in this subsection, providing instruction in such  
9 activities, where such charges are not otherwise defined as a "sale  
10 at retail" or "retail sale" in this section:

11 (i)(A) Golf, including any variant in which either golf balls or  
12 golf clubs are used, such as miniature golf, hitting golf balls at a  
13 driving range, and golf simulators, and including fees charged by a  
14 golf course to a player for using his or her own cart. However,  
15 charges for golf instruction are not a retail sale, provided that if  
16 the instruction involves the use of a golfing facility that would  
17 otherwise require the payment of a fee, such as green fees or driving  
18 range fees, such fees, including the applicable retail sales tax,  
19 must be separately identified and charged by the golfing facility  
20 operator to the instructor or the person receiving the instruction.

21 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except  
22 as otherwise provided in this subsection (15)(a)(i)(B), the term  
23 "sale at retail" or "retail sale" does not include amounts charged to  
24 participate in, or conduct, a golf tournament or other competitive  
25 event. However, amounts paid by event participants to the golf  
26 facility operator are retail sales under this subsection (15)(a)(i).  
27 Likewise, amounts paid by the event organizer to the golf facility  
28 are retail sales under this subsection (15)(a)(i), if such amounts  
29 vary based on the number of event participants;

30 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
31 paragliding, parasailing, and similar activities;

32 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
33 ping pong, and similar games;

34 (iv) Access to amusement park, theme park, and water park  
35 facilities, including but not limited to charges for admission and  
36 locker or cabana rentals. Discrete charges for rides or other  
37 attractions or entertainment that are in addition to the charge for  
38 admission are not a retail sale under this subsection (15)(a)(iv).  
39 For the purposes of this subsection, an amusement park or theme park  
40 is a location that provides permanently affixed amusement rides,

1 games, and other entertainment, but does not include parks or zoos  
2 for which the primary purpose is the exhibition of wildlife, or  
3 fairs, carnivals, and festivals as defined in (b)(i) of this  
4 subsection;

5 (v) Batting cage activities;

6 (vi) Bowling, but not including competitive events, except that  
7 amounts paid by the event participants to the bowling alley operator  
8 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
9 paid by the event organizer to the operator of the bowling alley are  
10 retail sales under this subsection (15)(a)(vi), if such amounts vary  
11 based on the number of event participants;

12 (vii) Climbing on artificial climbing structures, whether indoors  
13 or outdoors;

14 (viii) Day trips for sightseeing purposes;

15 (ix) Bungee jumping, zip lining, and riding inside a ball,  
16 whether inflatable or otherwise;

17 (x) Horseback riding offered to the public, where the seller  
18 furnishes the horse to the buyer and providing instruction is not the  
19 primary focus of the activity, including guided rides, but not  
20 including therapeutic horseback riding provided by an instructor  
21 certified by a nonprofit organization that offers national or  
22 international certification for therapeutic riding instructors;

23 (xi) Fishing, including providing access to private fishing areas  
24 and charter or guided fishing, except that fishing contests and  
25 license fees imposed by a government entity are not a retail sale  
26 under this subsection;

27 (xii) Guided hunting and hunting at game farms and shooting  
28 preserves, except that hunting contests and license fees imposed by a  
29 government entity are not a retail sale under this subsection;

30 (xiii) Swimming, but only in respect to (A) recreational or  
31 fitness swimming that is open to the public, such as open swim, lap  
32 swimming, and special events like kids night out and pool parties  
33 during open swim time, and (B) pool parties for private events, such  
34 as birthdays, family gatherings, and employee outings. Fees for  
35 swimming lessons, to participate in swim meets and other  
36 competitions, or to join a swim team, club, or aquatic facility are  
37 not retail sales under this subsection (15)(a)(xiii);

38 (xiv) Go-karting, bumper cars, and other motorized activities  
39 where the seller provides the vehicle and the premises where the  
40 buyer will operate the vehicle;

1 (xv) Indoor or outdoor playground activities, such as inflatable  
2 bounce structures and other inflatables; mazes; trampolines; slides;  
3 ball pits; games of tag, including laser tag and soft-dart tag; and  
4 human gyroscope rides, regardless of whether such activities occur at  
5 the seller's place of business, but not including playground  
6 activities provided for children by a licensed child day care center  
7 or licensed family day care provider as those terms are defined in  
8 RCW 43.216.010;

9 (xvi) Shooting sports and activities, such as target shooting,  
10 skeet, trap, sporting clays, "5" stand, and archery, but only in  
11 respect to discrete charges to members of the public to engage in  
12 these activities, but not including fees to enter a competitive  
13 event, instruction that is entirely or predominately classroom based,  
14 or to join or renew a membership at a club, range, or other facility;

15 (xvii) Paintball and airsoft activities;

16 (xviii) Skating, including ice skating, roller skating, and  
17 inline skating, but only in respect to discrete charges to members of  
18 the public to engage in skating activities, but not including skating  
19 lessons, competitive events, team activities, or fees to join or  
20 renew a membership at a skating facility, club, or other  
21 organization;

22 (xix) Nonmotorized snow sports and activities, such as downhill  
23 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
24 tubing, snowshoeing, and similar snow sports and activities, whether  
25 engaged in outdoors or in an indoor facility with or without snow,  
26 but only in respect to discrete charges to the public for the use of  
27 land or facilities to engage in nonmotorized snow sports and  
28 activities, such as fees, however labeled, for the use of ski lifts  
29 and tows and daily or season passes for access to trails or other  
30 areas where nonmotorized snow sports and activities are conducted.  
31 However, fees for the following are not retail sales under this  
32 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits  
33 issued by a governmental entity to park a vehicle on or access public  
34 lands; and (C) permits or leases granted by an owner of private  
35 timberland for recreational access to areas used primarily for  
36 growing and harvesting timber; and

37 (xx) Scuba diving; snorkeling; river rafting; surfing;  
38 kiteboarding; flyboarding; water slides; inflatables, such as water  
39 pillows, water trampolines, and water rollers; and similar water  
40 sports and activities.

1 (b) Notwithstanding anything to the contrary in this subsection  
2 (15), the term "sale at retail" or "retail sale" does not include  
3 charges:

4 (i) Made for admission to, and rides or attractions at, fairs,  
5 carnivals, and festivals. For the purposes of this subsection, fairs,  
6 carnivals, and festivals are events that do not exceed twenty-one  
7 days and a majority of the amusement rides, if any, are not affixed  
8 to real property;

9 (ii) Made by an educational institution to its students and staff  
10 for activities defined as retail sales by (a)(i) through (xx) of this  
11 subsection. However, charges made by an educational institution to  
12 its alumni or other members of the general public for these  
13 activities are a retail sale under this subsection (15). For purposes  
14 of this subsection (15)(b)(ii), "educational institution" has the  
15 same meaning as in RCW 82.04.170;

16 (iii) Made by a vocational school for commercial diver training  
17 that is licensed by the workforce training and education coordinating  
18 board under chapter 28C.10 RCW; or

19 (iv) Made for day camps offered by a nonprofit organization or  
20 state or local governmental entity that provide youth not older than  
21 age eighteen, or that are focused on providing individuals with  
22 disabilities or mental illness, the opportunity to participate in a  
23 variety of supervised activities.

24 **Sec. 6.** RCW 82.04.192 and 2020 c 139 s 4 are each amended to  
25 read as follows:

26 (1) "Digital audio works" means works that result from the  
27 fixation of a series of musical, spoken, or other sounds, including  
28 ringtones.

29 (2) "Digital audiovisual works" means a series of related images  
30 which, when shown in succession, impart an impression of motion,  
31 together with accompanying sounds, if any.

32 (3)(a) "Digital automated service," except as provided in (b) of  
33 this subsection (3), means any service transferred electronically  
34 that uses one or more software applications.

35 (b) "Digital automated service" does not include:

36 (i) Any service that primarily involves the application of human  
37 effort by the seller, and the human effort originated after the  
38 customer requested the service;

1 (ii) The loaning or transferring of money or the purchase, sale,  
2 or transfer of financial instruments. For purposes of this subsection  
3 (3)(b)(ii), "financial instruments" include cash, accounts receivable  
4 and payable, loans and notes receivable and payable, debt securities,  
5 equity securities, as well as derivative contracts such as forward  
6 contracts, swap contracts, and options;

7 (iii) Dispensing cash or other physical items from a machine;

8 (iv) Payment processing services;

9 (v) Parimutuel wagering and handicapping contests as authorized  
10 by chapter 67.16 RCW;

11 (vi) Telecommunications services and ancillary services as those  
12 terms are defined in RCW 82.04.065;

13 (vii) The internet and internet access as those terms are defined  
14 in RCW 82.04.297;

15 (viii) The service described in RCW 82.04.050(6)(c);

16 (ix) Online educational programs provided by a:

17 (A) Public or private elementary or secondary school; or

18 (B) An institution of higher education as defined in sections  
19 1001 or 1002 of the federal higher education act of 1965 (Title 20  
20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For  
21 purposes of this subsection (3)(b)(ix)(B), an online educational  
22 program must be encompassed within the institution's accreditation;

23 (x) Live presentations, such as lectures, seminars, workshops, or  
24 courses, where participants are connected to other participants via  
25 the internet or telecommunications equipment, which allows audience  
26 members and the presenter or instructor to give, receive, and discuss  
27 information with each other in real time;

28 (xi) Travel agent services, including online travel services, and  
29 automated systems used by travel agents to book reservations;

30 (xii)(A) A service that allows the person receiving the service  
31 to make online sales of products or services, digital or otherwise,  
32 using either: (I) The service provider's website; or (II) the service  
33 recipient's website, but only when the service provider's technology  
34 is used in creating or hosting the service recipient's website or is  
35 used in processing orders from customers using the service  
36 recipient's website.

37 (B) The service described in this subsection (3)(b)(xii) does not  
38 include the underlying sale of the products or services, digital or  
39 otherwise, by the person receiving the service;

1 (xiii) Advertising services. For purposes of this subsection  
2 (3)(b)(xiii), "advertising services" means all services directly  
3 related to the creation, preparation, production, or the  
4 dissemination of advertisements. Advertising services include layout,  
5 art direction, graphic design, mechanical preparation, production  
6 supervision, placement, and rendering advice to a client concerning  
7 the best methods of advertising that client's products or services.  
8 Advertising services also include online referrals, search engine  
9 marketing and lead generation optimization, web campaign planning,  
10 the acquisition of advertising space in the internet media, and the  
11 monitoring and evaluation of website traffic for purposes of  
12 determining the effectiveness of an advertising campaign. Advertising  
13 services do not include web hosting services and domain name  
14 registration;

15 (xiv) The mere storage of digital products, digital codes,  
16 computer software, or master copies of software. This exclusion from  
17 the definition of digital automated services includes providing space  
18 on a server for web hosting or the backing up of data or other  
19 information;

20 (xv) Data processing services. For purposes of this subsection  
21 (3)(b)(xv), "data processing service" means a primarily automated  
22 service provided to a business or other organization where the  
23 primary object of the service is the systematic performance of  
24 operations by the service provider on data supplied in whole or in  
25 part by the customer to extract the required information in an  
26 appropriate form or to convert the data to usable information. Data  
27 processing services include check processing, image processing, form  
28 processing, survey processing, payroll processing, claim processing,  
29 and similar activities. Data processing does not include the service  
30 described in RCW 82.04.050(6)(c); (~~and~~)

31 (xvi) Any business activity taxable under section 2 of this act;  
32 and

33 (xvii) Digital goods.

34 (4) "Digital books" means works that are generally recognized in  
35 the ordinary and usual sense as books.

36 (5) "Digital code" means a code that provides a purchaser with  
37 the right to obtain one or more digital products, if all of the  
38 digital products to be obtained through the use of the code have the  
39 same sales and use tax treatment. "Digital code" does not include a  
40 code that represents a stored monetary value that is deducted from a

1 total as it is used by the purchaser. "Digital code" also does not  
2 include a code that represents a redeemable card, gift card, or gift  
3 certificate that entitles the holder to select digital products of an  
4 indicated cash value. A digital code may be obtained by any means,  
5 including email or by tangible means regardless of its designation as  
6 song code, video code, book code, or some other term.

7 (6) (a) "Digital goods," except as provided in (b) of this  
8 subsection (6), means sounds, images, data, facts, or information, or  
9 any combination thereof, transferred electronically, including, but  
10 not limited to, specified digital products and other products  
11 transferred electronically not included within the definition of  
12 specified digital products.

13 (b) The term "digital goods" does not include:

14 (i) Telecommunications services and ancillary services as those  
15 terms are defined in RCW 82.04.065;

16 (ii) Computer software as defined in RCW 82.04.215;

17 (iii) The internet and internet access as those terms are defined  
18 in RCW 82.04.297;

19 (iv) (A) Except as provided in (b) (iv) (B) of this subsection (6),  
20 the representation of a personal or professional service in  
21 electronic form, such as an electronic copy of an engineering report  
22 prepared by an engineer, where the service primarily involves the  
23 application of human effort by the service provider, and the human  
24 effort originated after the customer requested the service.

25 (B) The exclusion in (b) (iv) (A) of this subsection (6) does not  
26 apply to photographers in respect to amounts received for the taking  
27 of photographs that are transferred electronically to the customer,  
28 but only if the customer is an end user, as defined in RCW  
29 82.04.190(11), of the photographs. Such amounts are considered to be  
30 for the sale of digital goods; (~~and~~)

31 (v) Personal data as defined in section 2 of this act; and

32 (vi) Services and activities excluded from the definition of  
33 digital automated services in subsection (3) (b) (i) through (~~(xv)~~)  
34 (xvi) of this section and not otherwise described in (b) (i) through  
35 (~~(iv)~~) (v) of this subsection (6).

36 (7) "Digital products" means digital goods and digital automated  
37 services.

38 (8) "Electronically transferred" or "transferred electronically"  
39 means obtained by the purchaser by means other than tangible storage  
40 media. It is not necessary that a copy of the product be physically

1 transferred to the purchaser. So long as the purchaser may access the  
2 product, it will be considered to have been electronically  
3 transferred to the purchaser.

4 (9) "Specified digital products" means electronically transferred  
5 digital audiovisual works, digital audio works, and digital books.

6 (10) "Subscription radio services" means the sale of audio  
7 programming by a radio broadcaster as defined in RCW 82.08.0208,  
8 except as otherwise provided in this subsection. "Subscription radio  
9 services" does not include audio programming that is sold on a pay-  
10 per-program basis or that allows the buyer to access a library of  
11 programs at any time for a specific charge for that service.

12 (11) "Subscription television services" means the sale of video  
13 programming by a television broadcaster as defined in RCW 82.08.0208,  
14 except as otherwise provided in this subsection. "Subscription  
15 television services" does not include video programming that is sold  
16 on a pay-per-program basis or that allows the buyer to access a  
17 library of programs at any time for a specific charge for that  
18 service, but only if the seller is not subject to a franchise fee in  
19 this state under the authority of Title 47 U.S.C. Sec. 542(a) on the  
20 gross revenue derived from the sale.

21 **Sec. 7.** RCW 82.04.2907 and 2015 3rd sp.s. c 5 s 101 are each  
22 amended to read as follows:

23 (1) Upon every person engaging within this state in the business  
24 of receiving income from royalties, the amount of tax with respect to  
25 the business is equal to the gross income from royalties multiplied  
26 by the rate provided in RCW 82.04.290(2)(a).

27 (2) For the purposes of this section, "gross income from  
28 royalties" means compensation for the use of intangible property,  
29 including charges in the nature of royalties, regardless of where the  
30 intangible property will be used. For purposes of this subsection,  
31 "intangible property" includes copyrights, patents, licenses,  
32 franchises, trademarks, trade names, and similar items. "Gross income  
33 from royalties" does not include compensation for any natural  
34 resource, gross income of the business from the sale, or exchange for  
35 consideration, of personal data as defined in section 2 of this act,  
36 the licensing of prewritten computer software to the end user, or the  
37 licensing of digital goods, digital codes, or digital automated  
38 services to the end user as defined in RCW 82.04.190(11).

1       **Sec. 8.** RCW 82.04.460 and 2014 c 97 s 304 are each amended to  
2 read as follows:

3       (1) Except as otherwise provided in this section, any person  
4 earning apportionable income taxable under this chapter and also  
5 taxable in another state must, for the purpose of computing tax  
6 liability under this chapter, apportion to this state, in accordance  
7 with RCW 82.04.462, that portion of the person's apportionable income  
8 derived from business activities performed within this state.

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

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

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

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

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

34       (a) "Apportionable income" means gross income of the business  
35 generated from engaging in apportionable activities, including income  
36 received from apportionable activities performed outside this state  
37 if the income would be taxable under this chapter if received from  
38 activities in this state, less the exemptions and deductions  
39 allowable under this chapter. For purposes of this subsection,  
40 "apportionable activities" means only those activities taxed under:

1 (i) RCW 82.04.255;  
2 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);  
3 (iii) RCW 82.04.280(1)(e);  
4 (iv) RCW 82.04.285;  
5 (v) RCW 82.04.286;  
6 (vi) RCW 82.04.290;  
7 (vii) RCW 82.04.2907;  
8 (viii) RCW 82.04.2908;  
9 (ix) RCW 82.04.263, but only to the extent of any activity that  
10 would be taxable under any of the provisions enumerated under (a)(i)  
11 through (viii) of this subsection (4) if the tax classification in  
12 RCW 82.04.263 did not exist; (~~and~~)  
13 (x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect  
14 to advertising; and  
15 (xi) Section 2 of this act.

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

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

26 **Sec. 9.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to  
27 read as follows:

28 (1) The apportionable income of a person within the scope of RCW  
29 82.04.460(1) is apportioned to Washington by multiplying its  
30 apportionable income by the receipts factor. Persons who are subject  
31 to tax under more than one of the tax classifications enumerated in  
32 RCW 82.04.460(4)(a) (i) through (~~(x)~~) (xi) must calculate a  
33 separate receipts factor for each tax classification that the person  
34 is taxable under.

35 (2) For purposes of subsection (1) of this section, the receipts  
36 factor is a fraction and is calculated as provided in subsections (3)  
37 (~~and (4)~~) through (5) of this section and, for financial  
38 institutions, as provided in the rule adopted by the department under  
39 the authority of RCW 82.04.460(2).

1           (3) (a) The numerator of the receipts factor is the total gross  
2 income of the business of the taxpayer attributable to this state  
3 during the tax year from engaging in an apportionable activity. The  
4 denominator of the receipts factor is the total gross income of the  
5 business of the taxpayer from engaging in an apportionable activity  
6 everywhere in the world during the tax year.

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

10           (i) Where the customer received the benefit of the taxpayer's  
11 service or, in the case of gross income from royalties, where the  
12 customer used the taxpayer's intangible property. When a customer  
13 receives the benefit of the taxpayer's services or uses the  
14 taxpayer's intangible property in this and one or more other states  
15 and the amount of gross income of the business that was received by  
16 the taxpayer in return for the services received or intangible  
17 property used by the customer in this state can be reasonably  
18 determined by the taxpayer, such amount of gross income must be  
19 attributed to this state.

20           (ii) If the customer received the benefit of the service or used  
21 the intangible property in more than one state and if the taxpayer is  
22 unable to attribute gross income of the business under the provisions  
23 of (b) (i) of this subsection (3), gross income of the business must  
24 be attributed to the state in which the benefit of the service was  
25 primarily received or in which the intangible property was primarily  
26 used.

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

33           (iv) If the taxpayer is unable to attribute gross income of the  
34 business under the provisions of (b) (i), (ii), or (iii) of this  
35 subsection (3), gross income of the business must be attributed to  
36 the state to which the billing statements or invoices are sent to the  
37 customer by the taxpayer.

38           (v) If the taxpayer is unable to attribute gross income of the  
39 business under the provisions of (b) (i), (ii), (iii), or (iv) of this

1 subsection (3), gross income of the business must be attributed to  
2 the state from which the customer sends payment to the taxpayer.

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

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

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

23 (c) Gross income of the business from engaging in an  
24 apportionable activity must be excluded from the denominator of the  
25 receipts factor if, in respect to such activity, at least some of the  
26 activity is performed in this state, and the gross income is  
27 attributable under (b) of this subsection (3) to a state in which the  
28 taxpayer is not taxable. For purposes of this subsection (3)(c), "not  
29 taxable" means that the taxpayer is not subject to a business  
30 activities tax by that state, except that a taxpayer is taxable in a  
31 state in which it would be deemed to have a substantial nexus with  
32 that state under the standards in RCW 82.04.067(1) regardless of  
33 whether that state imposes such a tax. "Business activities tax"  
34 means a tax measured by the amount of, or economic results of,  
35 business activity conducted in a state. The term includes taxes  
36 measured in whole or in part on net income or gross income or  
37 receipts. "Business activities tax" does not include a sales tax, use  
38 tax, or a similar transaction tax, imposed on the sale or acquisition  
39 of goods or services, whether or not denominated a gross receipts tax  
40 or a tax imposed on the privilege of doing business.

1 (d) This subsection (3) does not apply to financial institutions  
2 with respect to apportionable income taxable under RCW 82.04.290.  
3 Financial institutions must calculate the receipts factor as provided  
4 in subsection (4) of this section and the rule adopted by the  
5 department under the authority of RCW 82.04.460(2) with respect to  
6 apportionable income taxable under RCW 82.04.290. Financial  
7 institutions that are subject to tax under any other tax  
8 classification enumerated in RCW 82.04.460(4)(a)(i) through (v) and  
9 (vii) through (~~(x)~~) (xi) must calculate a separate receipts factor,  
10 as provided in this section, for each of the other tax  
11 classifications that the financial institution is taxable under.

12 (4) A taxpayer may calculate the receipts factor for the current  
13 tax year based on the most recent calendar year for which information  
14 is available for the full calendar year. If a taxpayer does not  
15 calculate the receipts factor for the current tax year based on  
16 previous calendar year information as authorized in this subsection,  
17 the business must use current year information to calculate the  
18 receipts factor for the current tax year. In either case, a taxpayer  
19 must correct the reporting for the current tax year when complete  
20 information is available to calculate the receipts factor for that  
21 year, but not later than October 31st of the following tax year.  
22 Interest will apply to any additional tax due on a corrected tax  
23 return. Interest must be computed and assessed as provided in RCW  
24 82.32.050 and accrues until the additional taxes are paid. Penalties  
25 as provided in RCW 82.32.090 will apply to any such additional tax  
26 due only if the current tax year reporting is not corrected and the  
27 additional tax is not paid by October 31st of the following tax year.  
28 Interest as provided in RCW 82.32.060 will apply to any tax paid in  
29 excess of that properly due on a return as a result of a taxpayer  
30 using previous calendar year data or incomplete current-year data to  
31 calculate the receipts factor.

32 (5)(a)(i) Except as provided in (a)(ii) of this subsection (5),  
33 for purposes of computing the receipts factor under subsection (3) of  
34 this section, gross income of the business generating sales, or  
35 exchange for consideration, of personal data must be attributable to  
36 this state in the ratio, expressed as a percentage, that the number  
37 of Washington addresses in the personal data bears to all addresses  
38 in the personal data. Only personal data used to generate the gross  
39 income of the business to be attributed under this subsection

1 (5)(a)(i) is applicable in calculating the ratio described in this  
2 subsection (5)(a)(i).

3 (ii) If the taxpayer is unable to attribute gross income of the  
4 business under the provisions of (a)(i) of this subsection (5), gross  
5 income of the business generated from making sales, or exchanging for  
6 consideration, of personal data must be attributed to this state in  
7 the ratio, expressed as a percentage, that the population this state  
8 bears to all the states of the United States in the taxpayer's  
9 market, or by any other reasonable methods of attribution allowed by  
10 the department.

11 (b) For purposes of this subsection:

12 (i) "Addresses" means physical, mailing, or internet protocol  
13 addresses, or similar addresses; and

14 (ii) "Personal data" has the same meaning as provided in section  
15 2 of this act.

16 (6) Unless the context clearly requires otherwise, the  
17 definitions in this subsection apply throughout this section.

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

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

24 **Sec. 10.** RCW 82.08.0291 and 2015 c 169 s 4 are each amended to  
25 read as follows:

26 The tax imposed by RCW 82.08.020 does not apply to sales defined  
27 as a sale at retail and retail sale under RCW 82.04.050 (3) ~~((g))~~  
28 (f) or (15), by a nonprofit youth organization, as defined in RCW  
29 82.04.4271, to members of the organization; and the tax does not  
30 apply to physical fitness classes provided by a local government.

31 **Sec. 11.** RCW 82.32.087 and 2015 c 169 s 11 are each amended to  
32 read as follows:

33 (1) The director may grant a direct pay permit to a taxpayer who  
34 demonstrates, to the satisfaction of the director, that the taxpayer  
35 meets the requirements of this section. The direct pay permit allows  
36 the taxpayer to accrue and remit directly to the department use tax  
37 on the acquisition of tangible personal property or sales tax on the  
38 sale of or charges made for labor and/or services, in accordance with

1 all of the applicable provisions of this title. Any taxpayer that  
2 uses a direct pay permit must remit state and local sales or use tax  
3 directly to the department. The agreement by the purchaser to remit  
4 tax directly to the department, rather than pay sales or use tax to  
5 the seller, relieves the seller of the obligation to collect sales or  
6 use tax and requires the buyer to pay use tax on the tangible  
7 personal property and sales tax on the sale of or charges made for  
8 labor and/or services.

9 (2) (a) A taxpayer may apply for a permit under this section if:

10 (i) The taxpayer's cumulative tax liability is reasonably expected to  
11 be two hundred forty thousand dollars or more in the current calendar  
12 year; or (ii) the taxpayer makes purchases subject to the taxes  
13 imposed under chapter 82.08 or 82.12 RCW in excess of ten million  
14 dollars per calendar year. For the purposes of this section, "tax  
15 liability" means the amount required to be remitted to the department  
16 for taxes administered under this chapter, except for the taxes  
17 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,  
18 82.29A, and 84.33 RCW.

19 (b) Application for a permit must be made in writing to the  
20 director in a form and manner prescribed by the department. A  
21 taxpayer who transacts business in two or more locations may submit  
22 one application to cover the multiple locations.

23 (c) The director must review a direct pay permit application in a  
24 timely manner and must notify the applicant, in writing, of the  
25 approval or denial of the application. The department must approve or  
26 deny an application based on the applicant's ability to comply with  
27 local government use tax coding capabilities and responsibilities;  
28 requirements for vendor notification; recordkeeping obligations;  
29 electronic data capabilities; and tax reporting procedures.  
30 Additionally, an application may be denied if the director determines  
31 that denial would be in the best interest of collecting taxes due  
32 under this title. The department must provide a direct pay permit to  
33 an approved applicant with the notice of approval. The direct pay  
34 permit must clearly state that the holder is solely responsible for  
35 the accrual and payment of the tax imposed under chapters 82.08 and  
36 82.12 RCW and that the seller is relieved of liability to collect tax  
37 imposed under chapters 82.08 and 82.12 RCW on all sales to the direct  
38 pay permit holder. The taxpayer may petition the director for  
39 reconsideration of a denial.

1 (d) A taxpayer who uses a direct pay permit must continue to  
2 maintain records that are necessary to a determination of the tax  
3 liability in accordance with this title. A direct pay permit is not  
4 transferable and the use of a direct pay permit may not be assigned  
5 to a third party.

6 (3) Taxes for which the direct pay permit is used are due and  
7 payable on the tax return for the reporting period in which the  
8 taxpayer (a) receives the tangible personal property purchased or in  
9 which the labor and/or services are performed or (b) receives an  
10 invoice for such property or such labor and/or services, whichever  
11 period is earlier.

12 (4) The holder of a direct pay permit must furnish a copy of the  
13 direct pay permit to each vendor with whom the taxpayer has opted to  
14 use a direct pay permit. Sellers who make sales upon which the sales  
15 or use tax is not collected by reason of the provisions of this  
16 section, in addition to existing requirements under this title, must  
17 maintain a copy of the direct pay permit and any such records or  
18 information as the department may specify.

19 (5) A direct pay permit is subject to revocation by the director  
20 at any time the department determines that the taxpayer has violated  
21 any provision of this section or that revocation would be in the best  
22 interests of collecting the taxes due under this title. The notice of  
23 revocation must be in writing and is effective either as of the end  
24 of the taxpayer's next normal reporting period or a date deemed  
25 appropriate by the director and identified in the revocation notice.  
26 The taxpayer may petition the director for reconsideration of a  
27 revocation and reinstatement of the permit.

28 (6) Any taxpayer who chooses to no longer use a direct pay permit  
29 or whose permit is revoked by the department, must return the permit  
30 to the department and immediately make a good faith effort to notify  
31 all vendors to whom the permit was given, advising them that the  
32 permit is no longer valid.

33 (7) Except as provided in this subsection, the direct pay permit  
34 may be used for any purchase of tangible personal property and any  
35 retail sale under RCW 82.04.050. The direct pay permit may not be  
36 used for:

37 (a) Purchases of meals or beverages;

38 (b) Purchases of motor vehicles, trailers, boats, airplanes, and  
39 other property subject to requirements for title transactions by the  
40 department of licensing;

1 (c) Purchases for which a reseller permit or other documentation  
2 authorized under RCW 82.04.470 may be used;

3 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)  
4 and (f), (3) (a) (~~through (c), (e), (f), and (g))~~), (b), and (d)  
5 through (f), (5), and (15); or

6 (e) Other activities subject to tax under chapter 82.08 or 82.12  
7 RCW that the department by rule designates, consistent with the  
8 purposes of this section, as activities for which a direct pay permit  
9 is not appropriate and may not be used.

10 NEW SECTION. **Sec. 12.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 13.** Section 4 of this act expires July 1,  
15 2022.

16 NEW SECTION. **Sec. 14.** Section 5 of this act takes effect July  
17 1, 2022.

18 NEW SECTION. **Sec. 15.** Sections 1 through 4 and 6 through 12 of  
19 this act take effect January 1, 2022.

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