H-2445.4

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**HOUSE BILL 2224**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Carlyle, Hunter, S. Hunt, Kagi, and Walkinshaw

AN ACT Relating to investing in education and essential public services by modifying and improving the fairness of Washington's excise tax system by enacting an excise tax on capital gains, narrowing or eliminating tax preferences, reinstating a previously expired business and occupation surtax while increasing the small business tax credit, and implementing marketplace fairness in Washington; amending RCW 82.04.29002, 82.04.4451, 82.08.0293, 82.12.0293, 82.08.0273, 82.12.0263, 82.04.2907, 82.04.066, 82.04.067, 82.08.050, 82.12.040, 82.45.010, 82.45.080, and 82.04.440; reenacting and amending RCW 82.04.260; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.32 RCW; adding a new section to chapter 43.135 RCW; adding a new section to chapter 39.42 RCW; adding a new chapter to Title 82 RCW; creating new sections; repealing RCW 82.04.272 and 82.04.424; prescribing penalties; providing an effective date; and declaring an emergency.

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

**PART I**

**Permanently Extending the Business and Occupation Surtax**

**Sec.**  RCW 82.04.29002 and 2010 1st sp.s. c 23 s 1101 are each amended to read as follows:

(1) ((~~Beginning May 1, 2010, through June 30, 2013,~~)) An additional rate of tax of 0.30 percent is added to the rate provided for in RCW 82.04.255, 82.04.285, and 82.04.290(2)(a). Revenue collected from the additional rate of tax under this subsection (1) must be deposited in the education legacy trust account created in RCW 83.100.230.

(2)(a) The additional rate in subsection (1) of this section does not apply to persons engaging within this state in business as a hospital. "Hospital" has the meaning provided in chapter 70.41 RCW but also includes any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW.

(b) The additional rate in subsection (1) of this section does not apply to amounts received from performing scientific research and development services including but not limited to research and development in the physical, engineering, and life sciences (such as agriculture, bacteriological, biotechnology, chemical, life sciences, and physical science research and development laboratories or services).

**Sec.**  RCW 82.04.4451 and 2010 1st sp.s. c 23 s 1102 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least fifty percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is thirty-five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least fifty percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is ((~~seventy~~)) one hundred fifty dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

**PART II**

**Eliminating the Preferential Business and Occupation Tax Rate for Travel Agents**

**Sec.**  RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4 are each reenacted and amended to read as follows:

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

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

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

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

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

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

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

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

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

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

((~~(7)~~)) (6) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

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

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

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

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

((~~(11)~~)) (10)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

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

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

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection ((~~(11)~~)) (10) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection ((~~(11)~~)) (10), this subsection ((~~(11)~~)) (10) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection ((~~(11)~~)) (10) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection ((~~(11)~~)) (10)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

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

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

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

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

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

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

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

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

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

(v) "Timber products" means:

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

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

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

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

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection ((~~(12)~~)) (11) must file a complete annual survey with the department under RCW 82.32.585.

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

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

(b) A person reporting under the tax rate provided in this subsection ((~~(14)~~)) (13) must file a complete annual report with the department under RCW 82.32.534.

**PART III**

**Eliminating the Sales and Use Tax Exemption for Bottled Water**

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

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

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

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

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

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

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

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

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

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) For purposes of this section, "prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

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

(4) The provisions of RCW 82.32.060 apply to refunds authorized under this section.

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

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

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

(2) For the purposes of this section, "prescription" has the same meaning as provided in section 303 of this act.

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

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

(b) For purposes of this subsection and section 306 of this act, a person's primary source of drinking water is unsafe if:

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

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

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

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

(3) The provisions of RCW 82.32.060 apply to refunds authorized under this section.

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

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

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

The provisions of this chapter do not apply in respect to the use of bottled water by persons whose primary source of drinking water is unsafe as provided in section 305 of this act.

**PART IV**

**Repealing the Nonresident Sales and Use Tax Exemption**

**Sec.**  RCW 82.08.0273 and 2014 c 140 s 17 are each amended to read as follows:

(1) Subject to the conditions and limitations in this section, the tax levied by RCW 82.08.020 ((~~does not apply to~~)) in the form of a remittance from the department is provided for sales to nonresidents of this state of tangible personal property, digital goods, and digital codes((~~, when~~)). The exemption only applies if:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at ((~~his or her~~)) the purchaser's place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the ((~~requirements~~)) provisions in subsections (1) and (3) through ((~~(6)~~)) (7) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must ((~~display proof of his or her current nonresident status as provided in this section~~)) pay the state and local sales tax to the seller at the time of purchase and then request a remittance from the department in accordance with this subsection and subsection (4) of this section. A request for remittance must include proof of the person's status as a nonresident at the time of the purchase for which a remittance is requested. The request for a remittance must also include any additional information and documentation as required by the department, which may include a description of the item purchased for which a remittance is requested, the sales price of the item, the amount of state sales tax paid on the item, the date of the purchase, the name of the seller and the physical address where the sale took place, and copies of sales receipts showing the qualified purchases.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(c) In lieu of furnishing proof of a person's nonresident status under (b) of this subsection (3), a person claiming exemption from retail sales tax under the provisions of this section may provide the seller with an exemption certificate in compliance with subsection (4)(b) of this section.

(4)(a) ((~~Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which must show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.~~

~~(b) In lieu of using the method provided in (a) of this subsection to document an exempt sale to a nonresident, a seller may accept from the purchaser a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board or any other exemption certificate as may be authorized by the department and properly completed by the purchaser. A nonresident purchaser who uses an exemption certificate authorized in this subsection (4)(b) must include the purchaser's driver's license number or other state-issued identification number and the state of issuance.~~

~~(c) In lieu of using the methods provided in (a) and (b) of this subsection to document an exempt sale to a nonresident, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.~~

~~(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.~~

~~(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.~~

~~(6)(a) Any vendor who makes sales without collecting the tax and who fails to maintain records of sales to nonresidents as provided in this section is personally liable for the amount of tax due.~~

~~(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW~~)) (i) Beginning January 1, 2016, through December 31, 2016, a person may request a remittance from the department for state sales taxes paid by the person on qualified retail purchases made in Washington between July 1, 2015, and December 31, 2015.

(ii) Beginning January 1, 2017, a person may request a remittance from the department during any calendar year for state sales taxes paid by the person on qualified retail purchases made in Washington during the immediately preceding calendar year only. No application may be made with respect to purchases made before the immediately preceding calendar year.

(b) The remittance request, including proof of nonresident status and any other documentation and information required by the department, must be made using an electronic application process as prescribed by the department. Only one remittance request may be made by a person per calendar year.

(c) The total amount of a remittance request must be at least twenty-five dollars. The department must deny any request for a remittance that is less than twenty-five dollars.

(d) The department will examine the applicant's proof of nonresident status and any other documentation and information as required in the application to determine whether the applicant is entitled to a remittance under this section.

(5)(a) Any person making fraudulent statements to the department, which includes the offer of fraudulent or fraudulently procured identification or fraudulent sales receipts, in order to receive a remittance of retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person requesting a remittance of sales tax from the department by providing proof of identification or sales receipts not the person's own, or counterfeit identification or sales receipts, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6) The exemption provided by this section is for state sales taxes.

(7) A nonresident who receives a refund of sales tax from the seller for any reason with respect to a purchase made in this state is not entitled to a remittance for the tax paid on the purchase. A person who receives both a remittance under this section and a refund from the seller with respect to the same purchase must immediately repay the remittance to the department. Interest as provided in chapter 82.32 RCW applies to amounts due under this section from the date that the department made the remittance until the amount due under this subsection is paid to the department. A person who receives a remittance with respect to a purchase for which the person had, at the time the person submitted the application for a remittance, already received a refund of sales tax from the seller is also liable for the evasion penalty in RCW 82.32.090(7) and is ineligible to receive any further remittances from the department under this section.

((~~(7)~~)) (8) The exemption in this section does not apply to sales of marijuana, useable marijuana, or marijuana-infused products.

**PART V**

**Capital Gains Tax**

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

(1) "Adjusted capital gain" means federal net long-term capital gain:

(a) Plus any loss from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such loss was included in calculating federal net long-term capital gain; and

(b) Less any gain from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such gain was included in calculating federal net long-term capital gain.

(2) "Capital asset" has the same meaning as provided by section 1221 of the internal revenue code and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under section 1231 or any other provision of the internal revenue code.

(3) "Department" means the department of revenue.

(4) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes.

(5) "Individual" means a natural person.

(6) "Internal revenue code" means the United States internal revenue code of 1986 as amended as of the effective date of this section, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(7) "Long-term capital asset" means a capital asset that is held for more than one year.

(8)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and spent in the aggregate not more than thirty days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year but maintained a place of abode and was physically present in this state for more than one hundred eighty-three days during the taxable year.

(b) For purposes of this subsection, "day" includes any portion of a day, except that a continuous period of twenty-four hours or less may not constitute more than one day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(9) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(10) "Taxpayer" means an individual subject to tax under this chapter.

(11) "Washington capital gains" means an individual's adjusted capital gains allocated to this state as provided in section 506 of this act, less:

(a) Twenty-five thousand dollars; or

(b) Fifty thousand dollars for individuals filing joint returns under this chapter.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2016, a tax is imposed on all individuals for the privilege of selling or exchanging long-term capital assets, or of receiving Washington capital gains. The tax equals five percent multiplied by the individual's Washington capital gains.

(2) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section. No such losses may be carried back or carried forward to another taxable year.

(3)(a) The tax imposed in this section applies to the sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or a beneficial owner at the time of the sale or exchange.

(b) For purposes of this chapter, an individual is a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S-corporation, or trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

NEW SECTION. **Sec.**  This chapter does not apply to the sale or exchange of:

(1)(a) A principal residence if the gain is excluded from tax under section 121 of the internal revenue code; or

(b) A principal residence by state registered domestic partners or spouses of the same sex, if the gain would be otherwise excluded from tax under section 121 of the internal revenue code;

(2) Assets held under a retirement savings account under section 401(k) of the internal revenue code, a tax-sheltered annuity or a custodial account described in section 403(b) of the internal revenue code, a deferred compensation plan under section 457(b) of the internal revenue code, an individual retirement account or an individual retirement annuity described in section 408 of the internal revenue code, a Roth individual retirement account described in section 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or similar retirement savings vehicle;

(3) Assets pursuant to or under imminent threat of condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation;

(4) Cattle, horses, or breeding livestock held for more than twelve months if for the taxable year of the sale or exchange, more than fifty percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;

(5) Agricultural land by an individual who has regular, continuous, and substantial involvement in the operation of the agricultural land that meets the criteria for material participation in an activity under section 469(h) of the internal revenue code for the ten years prior to the date of the sale or exchange of the agricultural land;

(6) Property used in the trade or business of the taxpayer if the property qualifies for an income tax deduction under sections 167 or 179 of the internal revenue code; and

(7) Timber for which the taxpayer makes an election under section 631 (a) or (b) of the internal revenue code to treat the cutting of such timber as a sale or exchange.

NEW SECTION. **Sec.**  The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in or under the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

NEW SECTION. **Sec.**  In computing tax there may be deducted from the measure of tax amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

NEW SECTION. **Sec.**  (1) For purposes of the tax imposed under this chapter, adjusted capital gains are allocated as follows:

(a) Adjusted capital gains from the sale or exchange of real property are allocated to this state if the real property is located in this state or a majority of the fair market value of the real property is located in this state.

(b) Adjusted capital gains from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Adjusted capital gains from the sale or exchange of tangible personal property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

(i) The property was located in the state at any time during the taxable year in which the sale or exchange occurred or the immediately preceding taxable year;

(ii) The taxpayer was a resident at the time the sale or exchange occurred; and

(iii) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the adjusted capital gain by another taxing jurisdiction.

(c) Adjusted capital gains from the sale or exchange of intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the sale or exchange occurred.

(2)(a) A credit is allowed against the tax imposed in section 502 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

(b) As used in this section, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

NEW SECTION. **Sec.**  (1) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed.

(2) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, not including any filing extension. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(3) The department may by rule require that certain individuals and other persons file, at times and on forms prescribed by the department, informational returns for any period.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year, the taxpayer is entitled to the same extension of time for filing the return required under this section if the taxpayer provides the department, before the due date provided in subsection (1) of this section, the extension confirmation number or other evidence satisfactory to the department confirming the federal extension. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

NEW SECTION. **Sec.**  (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners and spouses of the same sex may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) In any case in which a joint return is filed under this section, the liability of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

NEW SECTION. **Sec.**  To the extent not inconsistent with the provisions of this chapter, the following sections apply to the administration of taxes imposed under this chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380, 82.32.410, 82.32.805, and 82.32.808.

NEW SECTION. **Sec.**  (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

NEW SECTION. **Sec.**  See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter.

NEW SECTION. **Sec.**  RCW 82.32.805 and 82.32.808 apply only with respect to new tax preferences, as defined in RCW 82.32.805, enacted after the effective date of this section.

NEW SECTION. **Sec.**  (1) All revenue collected under this chapter must be deposited into the student investment fund hereby created in the state treasury. Moneys in the fund may be spent only after appropriation. As provided in subsection (2) of this section, expenditures from the fund must be used only for common schools, higher education, and establishing a student investment reserve.

(2)(a) To the extent that funds are available, by June 30, 2017, and by June 30th of each year thereafter, the following amounts must be transferred from the student investment fund to the education legacy trust account created in RCW 83.100.230 for the support of the common schools:

(i) In fiscal year 2017, $400,000,000;

(ii) In fiscal year 2018, $439,000,000;

(iii) In fiscal year 2019, $453,000,000;

(iv) In fiscal year 2020, $466,000,000;

(v) In fiscal year 2021, $477,000,000;

(vi) In fiscal year 2022, and each fiscal year thereafter, the amount transferred in the prior fiscal year increased by the fiscal growth factor.

(b) To the extent that funds are available after making the distribution under (a) of this subsection, by June 30, 2017, and by June 30th of each year thereafter, the following amounts must be transferred from the student investment fund to the education legacy trust account created in RCW 83.100.230 for higher education purposes:

(i) In fiscal year 2017, $150,000,000;

(ii) In fiscal year 2018, $186,000,000;

(iii) In fiscal year 2019, $192,000,000;

(iv) In fiscal year 2020, $198,000,000;

(v) In fiscal year 2021, $203,000,000;

(vi) In fiscal year 2022, and each fiscal year thereafter, the amount transferred in the prior fiscal year increased by the fiscal growth factor.

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

(a) "Fiscal growth factor" means the sum of inflation and population change for the prior fiscal year.

(b) "Inflation" means the percentage change in the implicit price deflator for the United States for each fiscal year as published by the federal bureau of labor statistics.

(c) "Population change" means the percentage change in state population for the prior fiscal year as reported by the office of financial management.

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

(1) A deduction is allowed against a person's gross income of the business to the extent necessary to avoid taxing the same amounts under this chapter and section 502 of this act.

(2) This section is not subject to RCW 82.32.805 and 82.32.808 (1) through (5).

**PART VI**

**Repealing the Preferential B&O Tax Rate for Sellers of Prescription Drugs**

NEW SECTION. **Sec.**  RCW 82.04.272 (Tax on warehousing and reselling prescription drugs) and 2013 c 19 s 127, 2003 c 168 s 401, & 1998 c 343 s 1 are each repealed.

NEW SECTION. **Sec.**  Section 601 of this act applies to taxes due for reporting periods beginning on or after the effective date of section 601 of this act.

**PART VII**

**Narrowing the Use Tax Exemption for Extracted Fuel**

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

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

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

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

(2) In lieu of the use tax rate provided in RCW 82.12.020, refinery fuel gas is subject to a rate of 3.852 percent.

**PART VIII**

**Repealing the Preferential B&O Tax Rate for Royalty Income**

**Sec.**  RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties, the amount of tax with respect to the business is equal to the gross income from royalties multiplied by the rate ((~~of 0.484 percent~~)) provided in RCW 82.04.290(2)(a).

(2) For the purposes of this section, "gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

**PART IX**

**Nexus for Excise Tax Purposes**

NEW SECTION. **Sec.**  (1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogues. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred ninety-four million dollars in sales and use taxes in fiscal year 2015 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other important public services.

(2) The legislature recognizes that states may not impose sales or use tax collection obligations on an out-of-state business unless the business has a substantial nexus with the taxing state. The legislature also recognizes that under the United States supreme court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*, 386 U.S. 753 (1967), substantial nexus under the commerce clause requires a physical presence by the seller in the taxing state. Relying on the doctrine of stare decisis, the United States supreme court reaffirmed the physical presence nexus standard twenty-five years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

(3) The legislature further finds that the basis of the physical presence nexus standard was primarily justified by the complexity and burden on mail order sellers and other out-of-state sellers in complying with the sales tax laws in numerous jurisdictions at the state and local level all across the country. The legislature further finds that the supreme court's concerns underlying the *Bellas Hess* decision have been effectively addressed by advances in technology and simplified tax laws. For example, Washington and most other states with sales taxes allow or require electronic reporting and payment of the tax. Also, several states, including Washington, offer free online sales tax rate lookup tools. A number of private companies offer automated sales tax compliance solutions. In addition, sales tax laws have been simplified in many states, including Washington, through participation in the streamlined sales and use tax project and compliance with the streamlined sales and use tax agreement.

(4) The legislature further finds that *Bellas Hess* was decided one year before the first plans were developed for the computer network that became the basis of the internet. The legislature further finds that since *Quill* was decided e-commerce has grown substantially, generating retail sales of three hundred five billion dollars in 2014, which have been growing at a rate of about fifteen percent for the last five years. The legislature further finds that like their brick-and-mortar competitors, online businesses receive benefits and opportunities provided by their market states, such as transportation networks, infrastructure, laws providing protection of business interests, access to the courts to protect valuable rights, and a regulated marketplace. However, the legislature finds that under the current physical presence nexus standard, online-only sellers have an unfair competitive advantage over in-state brick-and-mortar stores to the detriment of main street retailers. Online-only businesses have no geographical limitations to their marketplace; no costs of maintaining local physical retail stores, such as infrastructure costs, employee costs, and property taxes; and may not have to collect sales tax on sales to customers in states in which they do not have a physical presence, all of which lead to their ability to price their goods at a lower cost to consumers. The legislature further finds that even if the physical presence nexus standard was once a wise rule of law, it is no longer justifiable.

(5) The legislature further finds that the supreme court in its *Quill* decision implicitly invited the United States congress to resolve whether and to what extent states may impose a sales tax collection obligation on remote sellers. The legislature further finds that there is overwhelming support among the public, states, and municipalities, and many national and local associations representing brick-and-mortar businesses for federal legislation requiring remote sellers to collect and remit retail sales tax. The legislature further finds that despite such broad-based support, congress has failed to enact such legislation.

(6) The legislature agrees with Justice Kennedy's concurring option in the recent *Direct Marketing Association v. Brohl* decision (case no. 13-1032) that the court's *Quill* holding is "inflicting extreme harm and unfairness on the States," and that "[t]here is a powerful case to be made that a retailer doing extensive business within a State has a sufficiently 'substantial nexus' to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet." Justice Kennedy stated that "it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*," and he closed his opinion by inviting a direct challenge to *Quill* and *Bellas Hess*, saying that "[t]he legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*."

(7) The legislature finds that because Washington is unique in that it relies so heavily on sales tax to fund education and other vital state services, and because Washington has frequently been at the forefront of advancing technology and tax policy, it is incumbent upon this state to lead the way to a more fair and equitable modern marketplace where online businesses and brick-and-mortar businesses can compete based on quality of products and other nontax factors, which benefits all consumers. The legislature recognizes that the fast pace of technological change seen with the rapid growth of electronic commerce puts pressure on states to update their tax codes just as this state did in 2009 in adopting Engrossed Substitute House Bill No. 2075 addressing the excise taxation of digital products and again in 2010 in adopting economic nexus and market-based apportionment for business and occupation tax purposes in Second Engrossed Substitute Senate Bill No. 6143. The legislature finds that making such changes is not radical or to be unexpected, but is a rational means to avoid an ever-shrinking tax base resulting from an outdated tax code that has not kept up with significant changes in technology and the economy.

(8) Therefore, the legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule by testing the boundaries of the rule. This act also sets up a legal challenge to the physical presence nexus rule that could potentially lead to the United States supreme court reevaluating *Bellas Hess* and *Quill* or congress enacting legislation authorizing and establishing the requirements for states to impose a sales tax collection duty on remote sellers. To achieve these objectives, this act establishes clear statutory guidelines for determining when sellers are required to collect Washington's sales tax. These guidelines clarify the extent of the traditional physical presence standard and also incorporate an "economic nexus" standard under which a remote seller would establish a substantial nexus with this state solely by generating a meaningful amount of sales into this state. This act also amends the statutory guidelines for determining whether a taxpayer has sufficient nexus for purposes of the state's business and occupation tax.

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

(1) A seller, including a remote seller, with a substantial nexus with this state must comply with the provisions of this chapter. A seller is deemed to have a substantial nexus with this state for purposes of the taxes imposed under this chapter if the seller has substantial nexus as provided in RCW 82.04.067 or as otherwise provided in this section.

(2) A seller is deemed to have a substantial nexus with this state if the seller makes retail sales to Washington customers in an aggregate amount exceeding ten thousand dollars during the calendar year and also meets one or more of the following criteria:

(a) The seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the remote seller, except as otherwise provided in subsection (3) of this section;

(b)(i) The seller offers its products for sale through one or more marketplaces operated by any marketplace facilitator that has a substantial nexus with this state; or

(ii) The seller or a person, including an affiliated person, other than a common carrier acting solely as a common carrier, engages in or performs any of the following activities in this state:

(A) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller;

(B) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state;

(C) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state;

(D) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller;

(E) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state;

(F) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in this state;

(G) Shares management, business systems, business practices, or employees with the seller or, in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state; or

(H) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state; or

(c)(i) The seller contracts with a payment processor or merchant bank, or accepts credit cards issued either by a financial institution under a license from a credit card association or by an entity that also authorizes purchases and settles with consumers and merchants, if the payment processor, merchant bank, credit card association, or credit card issuer has a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of payment processors, credit card associations, credit card issuers described in (c)(i) of this subsection (2), and merchant banks that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(3) Substantial nexus under subsection (2)(a) of this section does not apply if the seller establishes by a preponderance of the evidence that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Evidence may be shown by:

(a) Establishing that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition; or

(b) Any other means as may be approved by the department.

(4)(a) For purposes of subsection (2)(b)(i) of this section, a marketplace facilitator is deemed to have a substantial nexus with this state if:

(i) The marketplace facilitator or any affiliated person maintains a physical presence in this state to engage in any of the activities described in subsection (7)(a)(i) or (ii) of this section; or

(ii) The marketplace facilitator generated more than ten thousand dollars of gross receipts in the preceding calendar year from retail sales made through its physical or electronic marketplace by sellers that are physically located in this state. For purposes of this subsection (4)(a)(ii), a seller is presumed to be physically located in this state if the address for the seller maintained in the business records of the marketplace facilitator is in this state.

(b) Pursuant to RCW 82.32.330(3)(u), the department may disclose the identity of marketplace facilitators that have a substantial nexus with this state for purposes of collecting the taxes imposed under this chapter.

(5) A seller that has a substantial nexus with this state in any tax year as provided in subsections (1) through (4) of this section continues to have a substantial nexus with this state for the entire tax year immediately following the tax year during which the seller ceased to have a substantial nexus with this state as provided in subsections (1) through (4) of this section.

(6) For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons who are affiliated with respect to each other.

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

(a) "Marketplace facilitator" means a person that contracts with sellers to facilitate, for compensation, the sale of the seller's products through a physical or electronic marketplace, and engages, either directly or indirectly, through one or more affiliated persons, in:

(i) Any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

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

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

(D) Software development or research and development activities related to any of the activities described in (a)(i)(A) through (C) or (a)(ii)(A) through (H) of this subsection (7); and

(ii) Any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;

(F) Order taking;

(G) Advertising or promotion; or

(H) Providing customer service or accepting or assisting with returns or exchanges.

(b) "Merchant bank" means a financial institution or any other member of a credit card network that allows the seller to accept credit card payments and is responsible for depositing transaction proceeds into the seller's designated account.

(c) "Payment processor" means a person that contracts directly with a seller to provide settlement for the seller's credit card, debit card, or other payment transactions.

(d) "Product" means any property or service that is sold in a sale at retail as defined in RCW 82.04.050.

(e) "Remote seller" means a seller that makes retail sales of products from one state to buyers located in other states. With respect to this state, a remote seller does not include any seller that is physically located in this state.

(f) "Resident" means a person who is domiciled in this state or who maintains a place of abode in this state. A person is presumed to be a resident of this state if the person has a mailing address in this state.

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

(1) For purposes of this chapter, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace. A marketplace facilitator must collect the taxes imposed under this chapter on all retail sales made through the marketplace facilitator's marketplace and sourced to this state under RCW 82.32.730, whether as principal or as the agent of a marketplace seller.

(2) A marketplace facilitator is relieved of liability under this chapter for failure to collect the correct amount of tax to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and marketplace seller are affiliated persons as defined in section 902 of this act. Where the marketplace facilitator is relieved of liability under this subsection (2), the marketplace seller is solely liable for the amount of uncollected tax due.

(3) A marketplace seller with a substantial nexus with this state is relieved of its obligation to collect the taxes imposed under this chapter on all taxable retail sales through a marketplace operated by a marketplace facilitator if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under this chapter on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator. The documentation required by this subsection (3) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (3) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter resulting from a marketplace facilitator's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator by the marketplace seller.

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

(a) "Marketplace facilitator" has the same meaning as in section 902 of this act.

(b) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplaces owned or operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department as provided in RCW 82.32.030.

**Sec.**  RCW 82.04.066 and 2010 1st sp.s. c 23 s 103 are each amended to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or making retail or wholesale sales taxable under RCW 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs ((~~entirely or primarily~~)) within this state. If the service performed by the representative third party occurs both within and outside of this state, a portion of the compensation paid to the representative third party must be allocated to this state based on any method approved by the department that reasonably approximates the representative third party's compensation in this state.

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

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

(a) Those amounts included in the numerator of the receipts factor under RCW 82.04.462 ((~~and,~~));

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

(c) For persons taxable under RCW 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270, the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

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

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

(6) Subsections (1) through (5) of this section only apply with respect to the taxes imposed ((~~under this chapter~~)) on persons engaged in apportionable activities as defined in RCW 82.04.460 or making retail or wholesale sales taxable under RCW 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460 other than the activities taxed under RCW 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state. A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(7) Notwithstanding subsection (6) of this section, during any time that the state is prevented from compelling remote sellers without any physical presence in this state to collect the taxes imposed under chapter 82.08 RCW as a result of a court's ruling and the lack of remote seller collection authority provided under federal law, a person making sales at retail taxed under RCW 82.04.250 (1) or (2) or 82.04.257(1) has a substantial nexus with this state for purposes of the taxes imposed under RCW 82.04.250 (1) or (2) or 82.04.257(1) only if the person has a substantial nexus with this state for purposes of collecting the taxes imposed under chapter 82.08 RCW. For purposes of this subsection, "remote seller" has the same meaning as in section 902 of this act.

NEW SECTION. **Sec.**  RCW 82.04.424 (Exemptions—Certain in-state activities) and 2003 c 76 s 2 are each repealed.

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

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

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

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

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

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

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

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

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

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

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

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

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

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

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

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent of the unpaid tax to the amount of the tax due for failure of the buyer to pay the tax to the seller, regardless of when the tax may be collected by the department. In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, apply. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made will be considered as the due date of the tax.

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 82.12.040 and 2015 c 1 s 11 (Initiative Measure No. 594) are each amended to read as follows:

(1) Every person who ((~~maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall~~)) has a substantial nexus with this state as provided in section 902 of this act must obtain from the department a certificate of registration, and ((~~shall~~)) must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. ((~~For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.~~))

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

**PART X**

**Real Estate Excise Tax on Foreclosures**

NEW SECTION. **Sec.**  The legislature finds that the existing real estate excise tax exemption for transfers occurring in the context of bank foreclosures and the enforcement of judgments by creditors does not benefit distressed homeowners except in limited circumstances. The exemption has been broadly used to exempt sales made to third-party buyers by combining an unrelated sales transaction into the foreclosure proceeding. In addition, there have been questions raised in litigation whether the exemption applies to orders of sales arising in any court context, rather than those expressly identified in the existing exemption. It is the intent of the legislature to (1) eliminate the real estate excise tax exemption for transfers that occur in foreclosures except in circumstances where the tax would impact the owner of the property, and (2) restructure the existing statute to preserve the exemption for deeds given in lieu of the foreclosure process and transfers made to extinguish existing security interests. Because this restructuring is intended only to clarify and preserve existing exemptions, the legislature does not intend for the provisions of RCW 82.32.805 or 82.32.808 to apply to this act.

**Sec.**  RCW 82.45.010 and 2014 c 58 s 24 are each amended to read as follows:

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

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

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

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

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

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

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

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

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of ((~~a mortgage~~)) either a mortgage or deed of trust, except to the extent of any additional consideration provided to the grantor.

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

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

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

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

(i) A mortgage, deed of trust, or other transfer of an interest in real property merely to secure a debt, or the assignment, reconveyance, or release thereof.

(j) Any transfer or conveyance made pursuant to a foreclosure of a mortgage or deed of trust, or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment((~~, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust~~)) pursuant to chapter 6.17 RCW, when:

(i) The transfer or conveyance is to other than the mortgagee, beneficiary of the deed of trust, lienholder, or judgment creditor, and the selling price exceeds the amount of the lien, security interest, or judgment that is the subject of the foreclosure or execution; or

(ii) The transfer or conveyance is to the United States, this state, or any political subdivision thereof, or a municipal corporation of this state.

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

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

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

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

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

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

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

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

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

**Sec.**  RCW 82.45.080 and 2010 1st sp.s. c 23 s 210 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the tax levied under this chapter is the obligation of the seller and the department may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages. The department's use of one course of enforcement is not an election not to pursue the other.

(2) When a transfer or conveyance made pursuant to a judicial or nonjudicial foreclosure of a mortgage, deed of trust, lien, or enforcement of a judgment is subject to tax under this chapter, and notwithstanding any other provisions of law, the tax levied under this chapter is the obligation of the transferee or grantee, and provisions of this chapter applicable to the seller apply to the transferee or grantee. The department may enforce the obligation against the transferee or grantee as provided in subsection (1) of this section.

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

NEW SECTION. **Sec.**  RCW 82.32.805 and 82.32.808 do not apply to sections 1001 and 1002 of this act.

**PART XI**

**Transfers to Education Legacy Trust Account**

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

(1) By the last workday of the second and fourth calendar quarters, the state treasurer must transfer the amount specified in subsection (2) of this section from the general fund to the education legacy trust account. The first transfer under this subsection (1) must occur by December 31, 2015.

(2) By December 15th and by June 15th of each year, the department must estimate the increase in state general fund revenues from the changes made under parts II through IV and VI through X of this act for the current and prior calendar quarters and notify the state treasurer of the increase.

NEW SECTION. **Sec.**  A new section is added to chapter 43.135 RCW to read as follows:

RCW 43.135.034(4) does not apply to the transfers under section 1101 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 39.42 RCW to read as follows:

The purpose of repealing or narrowing tax preferences in parts II through IV and VI through X of this act is to support education-related expenditures from the education legacy trust account. For this reason, general state revenues transferred to the education legacy trust account under section 1101 of this act are excluded from the calculation of general state revenues for purposes of Article VIII, section 1 of the state Constitution and RCW 39.42.130 and 39.42.140.

**PART XII**

**Technical Amendments**

**Sec.**  RCW 82.04.440 and 2011 c 2 s 205 are each amended to read as follows:

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

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

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or ((~~(12)~~)) (11), including those persons who are also taxable under RCW 82.04.261, are allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

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

(5) For the purpose of this section:

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

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

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

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

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

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

(e) "Business," "manufacturer," "extractor," and other terms used in this section have the meanings given in RCW 82.04.020 through ((~~82.04.212 [82.04.217]~~)) 82.04.217, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

**PART XIII**

**Miscellaneous Technical Provisions**

NEW SECTION. **Sec.**  Sections 501 through 513 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  Notwithstanding any common law rule of strict construction of statutes imposing taxes, part V of this act, being necessary for the welfare of the state and its inhabitants, must be liberally construed in support of the tax.

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

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

**--- END ---**