

HB 2163 - H AMD 638

By Representative Lytton

ADOPTED 06/30/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "Part I

4 **Eliminating or Narrowing Tax Preferences**

5 **Subpart A**

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

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

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

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

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

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

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

27 (a) "Bottled water" means water that is placed in a safety sealed
28 container or package for human consumption. Bottled water is calorie
29 free and does not contain sweeteners or other additives except that
30 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)

1 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
2 (vi) preservatives; and (vii) only those flavors, extracts, or
3 essences derived from a spice or fruit. "Bottled water" includes
4 water that is delivered to the buyer in a reusable container that is
5 not sold with the water.

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

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

9 (A) A vitamin;

10 (B) A mineral;

11 (C) An herb or other botanical;

12 (D) An amino acid;

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

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

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

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

25 ((+b+)) (c)(i) "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (4)(a) Subsection (1) of this section notwithstanding, the retail
7 sale of food and food ingredients is subject to sales tax under RCW
8 82.08.020 if the food and food ingredients are sold through a vending
9 machine. Except as provided in (b) of this subsection, the selling
10 price of food and food ingredients sold through a vending machine for
11 purposes of RCW 82.08.020 is fifty-seven percent of the gross
12 receipts.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) With respect to sales of bottled water delivered to the buyer
36 in a reusable container that is not sold with the water, buyers
37 claiming the exemption provided in this section must provide the
38 seller with an exemption certificate in a form and manner prescribed

1 by the department. The seller must retain a copy of the certificate
2 for the seller's files.

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

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

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

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

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

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

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

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

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

30 (2) Except for sales of bottled water delivered to the buyer in a
31 reusable container that is not sold with the water, sellers must
32 collect tax on sales subject to this exemption. Any buyer that has
33 paid at least twenty-five dollars in state and local sales taxes on
34 purchases of bottled water subject to this exemption may apply for a
35 refund of the taxes directly from the department in a form and manner
36 prescribed by the department. The department must deny any refund
37 application if the amount of the refund requested is less than
38 twenty-five dollars. No refund may be made for taxes paid more than

1 four years after the end of the calendar year in which the tax was
2 paid to the seller.

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

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

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

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

16 **Subpart B**

17 **Narrowing a Use Tax Exemption for Self-Produced Fuel**

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

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

29 NEW SECTION. **Sec. 108.** A new section is added to chapter 82.12
30 RCW to read as follows:

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

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

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

5 NEW SECTION. **Sec. 109.** Sections 107 through 109 of this act
6 apply with respect to fuel, other than biomass fuel, consumed within
7 this state on or after the effective date of this section, regardless
8 of whether such fuel was produced or manufactured before the
9 effective date of this section. For purposes of this section,
10 "consumed" means the use of fuel resulting in the release of usable
11 energy.

12 **Part II**

13 **Remote Sellers, Referrers, and Marketplace Facilitators**
14

15 NEW SECTION. **Sec. 201.** (1) The legislature finds that states
16 fail to collect more than twenty-three billion dollars annually in
17 sales taxes from remote sales over the internet and through catalogs.
18 The legislature further finds that Washington and its local
19 governments will lose out on an estimated three hundred fifty-three
20 million dollars in sales and use taxes in fiscal year 2018 from
21 remote sales, reducing funds that would otherwise be available for
22 the public education system, health care services, infrastructure,
23 and other vital public services.

24 (2) The legislature finds that Colorado adopted a law requiring
25 out-of-state retailers that do not collect Colorado's sales tax to
26 report tax-related information to their Colorado customers and the
27 Colorado department of revenue. The legislature further finds that in
28 2016 the United States court of appeals for the tenth circuit upheld
29 that law.

30 (3) The legislature intends by this act to address the
31 significant harm and unfairness brought about by the physical
32 presence nexus rule. To achieve this objective, this act adopts a new
33 program. Under the new program, remote sellers meeting a specified
34 threshold of gross receipts from retail sales into this state would
35 have the option to either collect retail sales or use tax on taxable
36 retail sales into this state or comply with certain sales and use tax
37 notice and reporting provisions. This option is also available to

1 other persons such as marketplace facilitators for facilitated sales
2 on behalf of third-party remote sellers. The sales and use tax notice
3 and reporting provisions in this act are similar to the multistate
4 tax commission's draft model sales and use tax notice and reporting
5 statute and Colorado's sales and use tax notice and reporting law.

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

9 (1)(a)(i) Except as provided in (a)(ii) of this subsection,
10 beginning January 1, 2018, and for any calendar year thereafter,
11 remote sellers, referrers, and marketplace facilitators meeting the
12 criteria in subsection (2) of this section or that have a physical
13 presence in this state, must elect to either collect and remit retail
14 sales or use tax on all taxable retail sales into this state pursuant
15 to this chapter and chapters 82.12 and 82.32 RCW or comply with
16 section 205 of this act.

17 (ii) Until January 1, 2020, the requirement under (a)(i) of this
18 subsection (1) to collect and remit tax or comply with section 205 of
19 this act does not apply with respect to the retail sale of digital
20 products and digital codes, other than (A) specified digital products
21 and digital games and (B) digital codes used to redeem specified
22 digital products and digital games, by a marketplace seller through a
23 marketplace facilitator or directly resulting from a referral.

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

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

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

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

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

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

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

3 (d) An election under (a) of this subsection (1) to collect
4 retail sales or use tax is binding on the remote seller, referrer, or
5 marketplace facilitator until January 1st of the calendar year that
6 is at least twelve consecutive months after the remote seller,
7 referrer, or marketplace facilitator began collecting retail sales or
8 use tax under such election. A remote seller, referrer, or
9 marketplace facilitator who has made an election under this
10 subsection to collect retail sales or use tax may change its election
11 and comply with section 205 of this act by providing written notice
12 to the department in a form and manner required by the department.
13 Such an election change may take effect only on the first day of the
14 calendar year that is at least thirty days following the date that
15 the department received written notice from the remote seller,
16 referrer, or marketplace facilitator of its change in election.

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

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

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

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

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

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

14 (3) This section is subject to the provisions of section 214 of
15 this act.

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

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

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

27 (b) In addition to other applicable recordkeeping requirements,
28 the department may require a marketplace facilitator or referrer to
29 provide or make available to the department any information the
30 department determines is reasonably necessary to enforce the
31 provisions of this chapter and chapter 82.--- RCW (the new chapter
32 created in section 501 of this act). Such information may include
33 documentation of sales made by marketplace sellers through the
34 marketplace facilitator's physical or electronic marketplace or
35 directly resulting from a referral by the referrer. The department
36 may prescribe by rule the form and manner for providing this
37 information.

38 (2) A marketplace facilitator or referrer is relieved of
39 liability under this chapter and chapter 82.12 RCW for failure to

1 collect the correct amount of tax to the extent that the marketplace
2 facilitator or referrer can show to the department's satisfaction
3 that the error was due to incorrect information given to the
4 marketplace facilitator or referrer by the marketplace seller, unless
5 the marketplace facilitator, or referrer, and marketplace seller are
6 affiliated persons. Where the marketplace facilitator or referrer is
7 relieved of liability under this subsection (2), the marketplace
8 seller is solely liable for the amount of uncollected tax due.

9 (3)(a) Subject to the limits in (b) and (c) of this subsection
10 (3), a marketplace facilitator or referrer is relieved of liability
11 under this chapter and chapter 82.12 RCW for the failure to collect
12 tax on taxable retail sales to the extent that the marketplace
13 facilitator or referrer can show to the department's satisfaction
14 that:

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

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

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

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

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

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

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

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

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

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

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

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

24 (e) The department may by rule determine the manner in which a
25 taxpayer may claim the liability relief provided under this
26 subsection.

27 (4) Except as otherwise provided in this section, a marketplace
28 seller obligated or electing to collect the taxes imposed under this
29 chapter and chapter 82.12 RCW is not required to collect such taxes
30 on all taxable retail sales through a marketplace operated by a
31 marketplace facilitator or directly resulting from a referral of the
32 purchaser to the marketplace seller by the referrer if the
33 marketplace seller has obtained documentation from the marketplace
34 facilitator or referrer indicating that the marketplace facilitator
35 or referrer is registered with the department and will collect all
36 applicable taxes due under this chapter and chapter 82.12 RCW on all
37 taxable retail sales made on behalf of the marketplace seller through
38 the marketplace operated by the marketplace facilitator or taxable
39 retail sales directly resulting from a referral of the purchaser to
40 the marketplace seller by the referrer. The documentation required by

1 this subsection (4) must be provided in a form and manner prescribed
2 by or acceptable to the department. This subsection (4) does not
3 relieve a marketplace seller from liability for uncollected taxes due
4 under this chapter or chapter 82.12 RCW resulting from a marketplace
5 facilitator's or referrer's failure to collect the proper amount of
6 tax due when the error was due to incorrect information given to the
7 marketplace facilitator or referrer by the marketplace seller.

8 (5) Except as otherwise provided in this section, a marketplace
9 seller that is also a remote seller subject to section 202(1) of this
10 act is relieved of its obligation to collect sales or use taxes
11 imposed under section 202 of this act with respect to all taxable
12 retail sales through a marketplace operated by a marketplace
13 facilitator that provides the marketplace seller with written
14 confirmation that the marketplace facilitator has elected to comply
15 with the notice and reporting requirements of section 205 of this act
16 in lieu of collecting sales and use taxes.

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

24 (7) No class action may be brought against a marketplace
25 facilitator or referrer in any court of this state on behalf of
26 purchasers arising from or in any way related to an overpayment of
27 sales or use tax collected by the marketplace facilitator or
28 referrer, regardless of whether that claim is characterized as a tax
29 refund claim. Nothing in this subsection affects a purchaser's right
30 to seek a refund from the department as provided under chapter 82.32
31 RCW.

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

36 (9) This section is subject to the provisions of section 214 of
37 this act.

38 (10) The definitions in section 204 of this act apply to this
39 section.

1 NEW SECTION. **Sec. 204.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Affiliated person" means a person that, with respect to
5 another person:

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

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

12 (2) "Consumer" has the same meaning as provided in chapters
13 82.04, 82.08, and 82.12 RCW.

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

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

21 (i) Transmitting or otherwise communicating the offer or
22 acceptance between the buyer and seller;

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

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

27 (iv) Software development or research and development activities
28 related to any of the activities described in (b) of this subsection
29 (3), if such activities are directly related to a physical or
30 electronic marketplace operated by the person or an affiliated
31 person; and

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

34 (i) Payment processing services;

35 (ii) Fulfillment or storage services;

36 (iii) Listing products for sale;

37 (iv) Setting prices;

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

39 (vi) Order taking;

40 (vii) Advertising or promotion; or

1 (viii) Providing customer service or accepting or assisting with
2 returns or exchanges.

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

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

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

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

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

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

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

26 (i) Provides internet advertising services; and

27 (ii) Does not ever provide either the marketplace seller's
28 shipping terms or advertise whether a marketplace seller charges
29 sales tax.

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

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

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

38 NEW SECTION. **Sec. 205.** (1) Except as otherwise provided in
39 subsection (5) of this section, a seller that does not collect the

1 tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
2 must comply with the applicable notice and reporting requirements of
3 this section. For taxable retail sales made through a marketplace
4 facilitator, or other agent, the marketplace facilitator, or other
5 agent must comply with the notice and reporting requirements of this
6 section, and the principal is not subject to the notice and reporting
7 requirements of this section with respect to those sales. If the
8 referrer makes an election to comply with the applicable notice and
9 reporting requirements of this section, marketplace sellers to whom a
10 referral is made by the referrer remain subject to the applicable
11 notice and reporting requirements under this section for their sales
12 unless the marketplace sellers collect the tax imposed under chapter
13 82.08 or 82.12 RCW on taxable retail sales sourced to this state
14 under RCW 82.32.730.

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

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

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

22 (B) Washington requires the purchaser to file a use tax return;
23 and

24 (C) The notice is provided under the requirements of this
25 section; and

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

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

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

33 (C) Instructions for obtaining additional information from the
34 department regarding whether and how to remit the sales or use tax to
35 the department.

36 (b) The notice under (a)(ii) of this subsection (2) must be
37 prominently displayed on all invoices and order forms including,
38 where applicable, electronic and catalog invoices and order forms,
39 and upon each sales receipt or similar document provided to the
40 purchaser, whether in paper or electronic form. No indication may be

1 made that sales or use tax is not imposed upon the transaction,
2 unless:

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

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

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

9 (a) Post a conspicuous notice on its platform that informs
10 Washington purchasers:

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

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

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

17 (iv) That the notice is provided under the requirements of this
18 section;

19 (v) Of the instructions for obtaining additional information from
20 the department regarding whether and how to remit the sales or use
21 tax to the department; and

22 (vi) That if the seller to whom the purchaser is referred does
23 not collect retail sales tax on a subsequent purchase by the
24 purchaser, the seller may be required to provide information to the
25 purchaser and the department about the purchaser's potential sales or
26 use tax liability.

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

32 (4)(a) A seller, other than a referrer acting in its capacity as
33 a referrer, subject to the notice and reporting requirements of
34 subsection (2) of this section must, no later than February 28th of
35 each year, provide a report to each consumer for whom the seller was
36 required to provide a notice under subsection (2)(a)(ii) of this
37 section.

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

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

4 (ii) A list, by date, generally indicating the type of product
5 purchased or leased during the immediately preceding calendar year by
6 the consumer from the seller, sourced to this state under RCW
7 82.32.730, and the price of each product;

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

11 (iv) A statement that the seller is required to submit a report
12 to the department pursuant to subsection (6) of this section stating
13 the total dollar amount of the consumer's purchases from the seller;
14 and

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

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

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

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

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

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

33 (ii) A statement that a seller, meeting the threshold in section
34 202(2) of this act, is required to either collect and remit retail
35 sales or use tax on all taxable retail sales sourced to this state
36 under RCW 82.32.730 or to comply with this section; and

37 (iii) Instructions for obtaining additional information from the
38 department.

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

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

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

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

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

16 (i) The consumer's name;

17 (ii) The billing address and, if different, the last known
18 mailing address;

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

22 (iv) The total dollar amount of all such purchases by such
23 consumer.

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

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

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

36 (8) Every seller subject to this chapter must keep and preserve,
37 for a period of five years, suitable records as may be necessary for
38 the department to verify the seller's compliance with this chapter.
39 All of the seller's books, records, and invoices must be open for
40 examination at any reasonable time by the department. The department

1 may require the attendance of any officer of the seller or any
2 employee of the seller having knowledge pertinent to the department's
3 investigation of the seller's compliance with this chapter, at a time
4 and place fixed in a subpoena issued under RCW 82.32.117, and may
5 take the person's testimony under oath.

6 (9) In exercising discretion in enforcing the provisions of this
7 chapter, the department may take into consideration available
8 resources, whether the anticipated benefits from any potential
9 enforcement activities are likely to exceed the department's expected
10 enforcement costs, and any other factors the department deems
11 appropriate.

12 NEW SECTION. **Sec. 206.** (1)(a) The department must assess a
13 penalty against any seller, other than a referrer acting in its
14 capacity as a referrer, that fails to provide notice to consumers
15 pursuant to section 205(2)(a) of this act, in addition to any other
16 applicable penalties, in the amount of twenty thousand dollars. The
17 department may assess the penalty under this subsection only once per
18 calendar year, regardless of the number of notices a seller fails to
19 provide pursuant to section 205(2)(a) of this act during the calendar
20 year. The department may apply this penalty at any time during a
21 calendar year and no more frequently than annually.

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

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

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

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

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

5 (iv) If the gross receipts of the seller and through the seller's
6 marketplace from retail sales sourced to this state under RCW
7 82.32.730 are three hundred thousand dollars or greater, one hundred
8 thousand dollars plus twenty thousand dollars for every fifty
9 thousand dollars in gross receipts over three hundred thousand
10 dollars.

11 (b) The department must assess a penalty against a referrer who
12 fails to provide the notice and list required by section 205(5) of
13 this act, in addition to any other applicable penalties. The
14 department may assess the penalty under this subsection only once per
15 calendar year, regardless of the number of failures to comply with
16 section 205(5) of this act during the calendar year. The amount of
17 the penalties assessed are as follows:

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

25 (ii) If the gross income of the referrer is three hundred
26 thousand dollars or greater, one hundred thousand dollars plus twenty
27 thousand dollars for every fifty thousand dollars in gross income
28 over three hundred thousand dollars of the gross income of the
29 business received from the referrer's referral services apportioned
30 to Washington under RCW 82.04.460, whether or not subject to tax
31 under chapter 82.04 RCW, for the calendar year for which the notice
32 and list was required to be made.

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

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

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

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

12 (7) Interest accrues on the amount of the total penalty that has
13 been assessed under this section until the total penalty amount is
14 paid in full. Interest imposed under this section must be computed
15 and assessed as provided in RCW 82.32.050 as if the penalty imposed
16 under this subsection was a tax liability.

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

23 (9)(a)(i) A seller is entitled to a conditional waiver of
24 penalties and interest imposed under this section if the seller
25 enters into a written agreement with the department electing to
26 collect retail sales or use tax or fully comply with all applicable
27 notice and reporting requirements of this chapter, beginning by a
28 date acceptable to the department. An election to collect retail
29 sales or use tax must be for a period of at least twelve consecutive
30 months and is subject to the provisions of section 202(1)(d) of this
31 act.

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

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

39 (iv) The department must reassess penalties and interest
40 conditionally waived under this subsection (9)(a) if the department

1 finds that, after the date that the seller agreed to fully comply
2 with the applicable notice and reporting requirements of this
3 chapter, the seller failed to:

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

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

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

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

23 (v) The department must reassess penalties and interest
24 conditionally waived under this subsection (9)(a) if the department
25 finds that, after the date that the seller elected to collect retail
26 sales or use tax, the seller failed to register with the department
27 and make a reasonable effort to comply with the requirements of RCW
28 82.08.050 and 82.12.040.

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

33 (vii) The provisions of subsection (8) of this section apply to
34 penalties and interest reassessed under this subsection (9)(a). The
35 department may add additional interest on penalties reassessed under
36 this subsection (9)(a) only if the total amount of penalties
37 reassessed under this subsection (9)(a) is not paid in full by the
38 date due.

39 (b) The department must waive penalties and interest imposed
40 under this section if the department determines that the failure of

1 the seller to fully comply with the notice or reporting requirements
2 was due to circumstances beyond the seller's control.

3 (c) The department may waive penalties imposed under this section
4 if the department determines that the failure of the seller to fully
5 comply with the notice or reporting requirements was due to
6 reasonable cause and not willful neglect. In determining whether
7 reasonable cause exists, the department will consider, among other
8 relevant factors, whether: (i) The failure was due to willful or
9 reckless disregard of the seller's notice or reporting obligations;
10 (ii) the seller made subsequent efforts to avoid future
11 noncompliance; and (iii) the magnitude of the noncompliance was
12 significant in terms of dollars and time when accounting for the
13 seller's size and volume of transactions. On appeal, a court or the
14 board of tax appeals must give great deference to the department's
15 penalty waiver decision under this subsection (9)(c) and affirm the
16 department's decision, unless the taxpayer can show by clear, cogent,
17 and convincing evidence that the department's decision lacked any
18 reasonable basis.

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

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

27 NEW SECTION. **Sec. 208.** Nothing in this chapter relieves sellers
28 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
29 responsibilities imposed under those chapters. Nor does anything in
30 this chapter prevent the department from administering and enforcing
31 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
32 any seller or consumer who is subject to such taxes.

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

36 (1) Except as otherwise provided in this section, taxes imposed
37 under chapter 82.08 or 82.12 RCW and payable by a consumer directly

1 to the department are due, on returns prescribed by the department,
2 by the earlier of April 1st of the calendar year immediately
3 following the calendar year in which the sale or use occurred or
4 within thirty days of the date of a notice from the department that
5 tax may be due.

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

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

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

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

15 (1) A remote seller, referrer, or marketplace facilitator that is
16 subject to section 202 of this act and is complying with the
17 requirements of chapters 82.08 and 82.12 RCW may only seek a recovery
18 of retail sales and use taxes, penalties, or interest from the
19 department by following the recovery procedures established under RCW
20 82.32.060. However, no claim may be granted on the basis that the
21 taxpayer lacked a physical presence in this state and complied with
22 the tax collection provisions of chapters 82.08 and 82.12 RCW
23 voluntarily.

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

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

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

35 (1) The tax imposed in this chapter must be paid by the buyer to
36 the seller. Each seller must collect from the buyer the full amount
37 of the tax payable in respect to each taxable sale in accordance with

1 the schedule of collections adopted by the department under the
2 provisions of RCW 82.08.060.

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

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

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

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

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

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

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

36 (7)(a) Sellers are relieved from personal liability for the
37 amount of tax if they obtain a fully completed exemption certificate
38 or capture the relevant data elements required under the streamlined
39 sales and use tax agreement within ninety days, or a longer period as

1 may be provided by rule by the department, subsequent to the date of
2 sale.

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

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

21 (d) Sellers are relieved from personal liability for the amount
22 of tax if they obtain a copy of a direct pay permit issued under RCW
23 82.32.087.

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

31 (9) Except as otherwise provided in this subsection, the tax
32 required by this chapter to be collected by the seller must be stated
33 separately from the selling price in any sales invoice or other
34 instrument of sale. On all retail sales through vending machines, the
35 tax need not be stated separately from the selling price or collected
36 separately from the buyer. Except as otherwise provided in this
37 subsection, for purposes of determining the tax due from the buyer to
38 the seller and from the seller to the department it must be
39 conclusively presumed that the selling price quoted in any price
40 list, sales document, contract or other agreement between the parties

1 does not include the tax imposed by this chapter. But if the seller
2 advertises the price as including the tax or that the seller is
3 paying the tax, the advertised price may not be considered the
4 selling price.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (2) Every person who engages in this state in the business of
39 acting as an independent selling agent for persons who do not hold a

1 valid certificate of registration, and who receives compensation by
2 reason of sales of tangible personal property, digital goods, digital
3 codes, digital automated services, extended warranties, or sales of
4 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
5 or (6)((+b+)) (c), of his or her principals for use in this state,
6 must, at the time such sales are made, collect from the purchasers
7 the tax imposed on the purchase price under this chapter, and for
8 that purpose is deemed a retailer as defined in this chapter.

9 (3) The tax required to be collected by this chapter is deemed to
10 be held in trust by the retailer until paid to the department, and
11 any retailer who appropriates or converts the tax collected to the
12 retailer's own use or to any use other than the payment of the tax
13 provided herein to the extent that the money required to be collected
14 is not available for payment on the due date as prescribed is guilty
15 of a misdemeanor. In case any seller fails to collect the tax herein
16 imposed or having collected the tax, fails to pay the same to the
17 department in the manner prescribed, whether such failure is the
18 result of the seller's own acts or the result of acts or conditions
19 beyond the seller's control, the seller is nevertheless personally
20 liable to the state for the amount of such tax, unless the seller has
21 taken from the buyer a copy of a direct pay permit issued under RCW
22 82.32.087.

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) Every person who ~~((maintains in this state a place of~~
28 ~~business or a stock of goods, or engages in business activities~~
29 ~~within this state))~~ is subject to a collection obligation under
30 chapter 82.08 RCW, except a person making a valid election to comply
31 with the notice and reporting provisions of section 205 of this act,
32 must obtain from the department a certificate of registration, and
33 must, at the time of making sales of tangible personal property,
34 digital goods, digital codes, digital automated services, extended
35 warranties, or sales of any service defined as a retail sale in RCW
36 82.04.050 (2) (a) or (g) or (6)(c), or making transfers of either
37 possession or title, or both, of tangible personal property for use
38 in this state, collect from the purchasers or transferees the tax
39 imposed under this chapter. The tax to be collected under this

1 section must be in an amount equal to the purchase price multiplied
2 by the rate in effect for the retail sales tax under RCW 82.08.020.
3 (~~For the purposes of this chapter, the phrase "maintains in this~~
4 ~~state a place of business" includes the solicitation of sales and/or~~
5 ~~taking of orders by sales agents or traveling representatives. For~~
6 ~~the purposes of this chapter, "engages in business activity within~~
7 ~~this state" includes every activity which is sufficient under the~~
8 ~~Constitution of the United States for this state to require~~
9 ~~collection of tax under this chapter. The department must in rules~~
10 ~~specify activities which constitute engaging in business activity~~
11 ~~within this state, and must keep the rules current with future court~~
12 ~~interpretations of the Constitution of the United States.)~~)

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

23 (3) The tax required to be collected by this chapter is deemed to
24 be held in trust by the retailer until paid to the department, and
25 any retailer who appropriates or converts the tax collected to the
26 retailer's own use or to any use other than the payment of the tax
27 provided herein to the extent that the money required to be collected
28 is not available for payment on the due date as prescribed is guilty
29 of a misdemeanor. In case any seller fails to collect the tax herein
30 imposed or having collected the tax, fails to pay the same to the
31 department in the manner prescribed, whether such failure is the
32 result of the seller's own acts or the result of acts or conditions
33 beyond the seller's control, the seller is nevertheless personally
34 liable to the state for the amount of such tax, unless the seller has
35 taken from the buyer a copy of a direct pay permit issued under RCW
36 82.32.087.

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

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

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

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

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

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

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

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

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

28 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this
29 section, any person making sales is not obligated to collect the tax
30 imposed by this chapter if the state is prohibited under the
31 Constitution or laws of the United States from requiring the person
32 to collect the tax imposed by this chapter.

33 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this
34 section, any licensed dealer facilitating a firearm sale or transfer
35 between two unlicensed persons by conducting background checks under
36 chapter 9.41 RCW is not obligated to collect the tax imposed by this
37 chapter.

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

1 (1) If the department determines that a change, taking effect
2 after the effective date of this section, in the streamlined sales
3 and use tax agreement or federal law creates a conflict with any
4 provision of section 202 or 203 of this act, such conflicting
5 provision or provisions of section 202 or 203 of this act, including
6 any related provisions that would not function as originally
7 intended, have no further force and effect as of the date the change
8 in the streamlined sales and use tax agreement or federal law becomes
9 effective.

10 (2) For purposes of this section:

11 (a) A change in federal law conflicts with section 202 or 203 of
12 this act if the change clearly allows states to impose greater sales
13 and use tax collection obligations on remote sellers, referrers, or
14 marketplace facilitators than provided for, or clearly prevents
15 states from imposing sales and use tax collection obligations on
16 remote sellers, referrers, or marketplace facilitators to the extent
17 provided for, under section 202 or 203 of this act.

18 (b) A change in the streamlined sales and use tax agreement
19 conflicts with section 202 or 203 of this act if one or more
20 provisions of section 202 or 203 of this act causes this state to be
21 found out of compliance with the streamlined sales and use tax
22 agreement by its governing board.

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

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

32 (b) Must include information on its web site informing taxpayers
33 and the public (i) of the provision or provisions of section 202 or
34 203 of this act that will have no further force and effect, (ii) when
35 such change will become effective, and (iii) about how to participate
36 in any rule making conducted by the department in accordance with (a)
37 of this subsection (3).

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

1 Part III

2 Nexus for Excise Tax Purposes

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

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

13 Sec. 302. RCW 82.04.067 and 2016 c 137 s 2 are each amended to
14 read as follows:

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

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

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

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

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

26 (ii) More than fifty-three thousand dollars of payroll in this
27 state;

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

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

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

37 (b)(i) Property owned by the taxpayer, other than loans and
38 credit card receivables owned by the taxpayer, is valued at its

1 original cost basis. Loans and credit card receivables owned by the
2 taxpayer are valued at their outstanding principal balance, without
3 regard to any reserve for bad debts. However, if a loan or credit
4 card receivable is charged off in whole or in part for federal income
5 tax purposes, the portion of the loan or credit card receivable
6 charged off is deducted from the outstanding principal balance.

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

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

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

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

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

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

38 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
39 subsection (2), the definitions in the multistate tax commission's
40 recommended formula for the apportionment and allocation of net

1 income of financial institutions as existing on June 1, 2010, or such
2 subsequent date as may be provided by the department by rule,
3 consistent with the purposes of this section, apply to this section.

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

6 (e) Notwithstanding anything else to the contrary in this
7 subsection, property counting toward the thresholds in subsection
8 (1)(c)(i) and (iv) of this section does not include a person's
9 ownership of, or rights in, computer software as defined in RCW
10 82.04.215, including computer software used in providing a digital
11 automated service; master copies of software; and digital goods and
12 digital codes residing on servers located in this state.

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

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

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

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

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

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

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

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

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

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

24 (6)(a)(i) Except as provided in (a)(iii) of this subsection (6),
25 subsections (1) through (5) of this section only apply with respect
26 to the taxes on persons engaged in apportionable activities as
27 defined in RCW 82.04.460 or making wholesale sales taxable under RCW
28 82.04.257(1) or 82.04.270.

29 (ii) Subject to the limitation in RCW 82.32.531, for purposes of
30 the taxes imposed under this chapter on ((any)) the business of
31 making sales at retail or any other activity not included in the
32 definition of apportionable activities in RCW 82.04.460, other than
33 the business of making wholesale sales taxed under RCW 82.04.257(1)
34 or 82.04.270, ((except as provided in RCW 82.32.531,)) a person is
35 deemed to have a substantial nexus with this state if the person has
36 a physical presence in this state during the ((tax)) current or
37 immediately preceding calendar year, which need only be demonstrably
38 more than a slightest presence.

39 (iii) For purposes of the taxes imposed under this chapter on the
40 business of making sales at retail taxable under RCW 82.04.250(1) or

1 82.04.257(1), a person is also deemed to have a substantial nexus
2 with this state if the person's receipts from this state, pursuant to
3 subsection (4)(c) of this section, meet either criterion in
4 subsection (1)(c)(iii) or (iv) of this section, as adjusted under
5 subsection (5) of this section.

6 (b) For purposes of this subsection, a person is physically
7 present in this state if the person has property or employees in this
8 state.

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

14 (ii) A remote seller as defined in RCW 82.08.052 is presumed to
15 be engaged in activities in this state that are significantly
16 associated with the remote seller's ability to establish or maintain
17 a market for its products in this state if the remote seller is
18 presumed to have a substantial nexus with this state under RCW
19 82.08.052. The presumption in this subsection (6)(c)(ii) may be
20 rebutted as provided in RCW 82.08.052. To the extent that the
21 presumption in RCW 82.08.052 is no longer operative pursuant to RCW
22 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer
23 operative. (~~Nothing in this section may be construed to affect in~~
24 ~~any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow~~
25 ~~the scope of the terms "agent" or "other representative" in this~~
26 ~~subsection (6)(c).)~~)

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

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

35 (2)(a) A person who has a substantial nexus with this state in
36 (~~any tax year under the provisions of RCW 82.04.067 will be deemed~~
37 ~~to have a substantial nexus with this state for the following tax~~
38 ~~year)) the current calendar year under the provisions of RCW
39 82.04.067, based solely on the person's property, payroll, or~~

1 receipts in this state during the current calendar year, is subject
2 to the tax imposed under this chapter for the current calendar year
3 only on business activity occurring on and after the date that the
4 person established a substantial nexus with this state in the current
5 calendar year.

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

8 (i) The immediately preceding calendar year under RCW 82.04.067;
9 or

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

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

15 **Part IV**

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

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

19 (1) The streamlined sales and use tax mitigation account is
20 created in the state treasury. Through July 1, 2019, the state
21 treasurer (~~shall~~) must transfer into the account from the general
22 fund amounts as directed in RCW 82.14.500. Expenditures from the
23 account may be used only for the purpose of mitigating the negative
24 fiscal impacts to local taxing jurisdictions as a result of RCW
25 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW
26 82.14.020. (~~During the 2009-2011 fiscal biennium, the legislature~~
27 may transfer from the streamlined sales and use tax mitigation
28 account to the state general fund such amounts as reflect the excess
29 fund balance of the account.))

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

34 (3) The definitions in this subsection apply throughout this
35 section and RCW 82.14.390 and 82.14.500 unless the context clearly
36 requires otherwise.

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

1 (b) "Local taxing jurisdiction" means through June 30, 2017,
2 counties, cities, transportation authorities under RCW 82.14.045,
3 public facilities districts under chapters 36.100 and 35.57 RCW,
4 public transportation benefit areas under RCW 82.14.440, and regional
5 transit authorities under chapter 81.112 RCW, that impose a sales and
6 use tax. Beginning July 1, 2017, "local taxing jurisdiction" means
7 cities, counties, and public facilities districts under chapters
8 36.100 and 35.57 RCW.

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

13 (d) "Marketplace facilitator/remote seller revenue" means the
14 local sales and use tax revenue gain, including taxes voluntarily
15 remitted and taxes collected from consumers, to each local taxing
16 jurisdiction from part II of this act as estimated by the department
17 in RCW 82.14.500(6).

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

21 ((+e)) (f) "Voluntary compliance revenue" means the local sales
22 tax revenue gain to each local taxing jurisdiction reported to the
23 department from persons registering through the central registration
24 system authorized under the agreement.

25 ((+f)) (g) "Working day" has the same meaning as in RCW
26 82.45.180.

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

29 (1)((+a)) In order to mitigate local sales tax revenue net
30 losses as a result of the sourcing provisions of the streamlined
31 sales and use tax agreement under this title, the state treasurer, on
32 July 1, 2011, and each July 1st thereafter through July 1, 2019, must
33 transfer into the streamlined sales and use tax mitigation account
34 from the general fund the sum required to mitigate actual net losses
35 as determined under this section.

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

1 (2) Beginning July 1, 2008, and continuing until the department
2 determines annual losses under subsection (3) of this section, the
3 department must determine the amount of local sales tax net loss each
4 local taxing jurisdiction experiences as a result of the sourcing
5 provisions of the streamlined sales and use tax agreement under this
6 title each calendar quarter. The department must determine losses by
7 analyzing and comparing data from tax return information and tax
8 collections for each local taxing jurisdiction before and after July
9 1, 2008, on a calendar quarter basis. The department's analysis may
10 be revised and supplemented in consultation with the oversight
11 committee as provided in subsection (4) of this section. To determine
12 net losses, the department must reduce losses by the amount of
13 voluntary compliance revenue for the calendar quarter analyzed.
14 Beginning December 31, 2008, distributions must be made quarterly
15 from the streamlined sales and use tax mitigation account by the
16 state treasurer, as directed by the department, to each local taxing
17 jurisdiction, other than public facilities districts for losses in
18 respect to taxes imposed under the authority of RCW 82.14.390, in an
19 amount representing its net losses for the previous calendar quarter.
20 Distributions must be made on the last working day of each calendar
21 quarter and must cease when distributions under subsection (3) of
22 this section begin.

23 (3)(a) By December 31, 2009, or such later date the department in
24 consultation with the oversight committee determines that sufficient
25 data is available, the department must determine each local taxing
26 jurisdiction's annual loss. The department must determine annual
27 losses by comparing at least twelve months of data from tax return
28 information and tax collections for each local taxing jurisdiction
29 before and after July 1, 2008. The department is not required to
30 determine annual losses on a recurring basis, but may make any
31 adjustments to annual losses as it deems proper as a result of the
32 annual reviews provided in (b) of this subsection. Beginning the
33 calendar quarter in which the department determines annual losses,
34 and each calendar quarter thereafter through September 30, 2019,
35 distributions must be made from the streamlined sales and use tax
36 mitigation account by the state treasurer on the last working day of
37 the calendar quarter, as directed by the department, to each local
38 taxing jurisdiction, other than public facilities districts for
39 losses in respect to taxes imposed under the authority of RCW
40 82.14.390, in an amount representing one-fourth of the jurisdiction's

1 annual loss reduced by voluntary compliance revenue reported during
2 the previous calendar quarter and marketplace facilitator/remote
3 seller revenue reported during the previous calendar quarter.

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

8 (4) The department must convene an oversight committee to assist
9 in the determination of losses. The committee includes one
10 representative of one city whose revenues are increased, one
11 representative of one city whose revenues are reduced, one
12 representative of one county whose revenues are increased, one
13 representative of one county whose revenues are decreased, one
14 representative of one transportation authority under RCW 82.14.045
15 whose revenues are increased, and one representative of one
16 transportation authority under RCW 82.14.045 whose revenues are
17 reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007
18 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight
19 committee must meet quarterly with the department to review and
20 provide additional input and direction on the department's analyses
21 of losses. Local taxing jurisdictions may also present to the
22 oversight committee additional information to improve the
23 department's analyses of the jurisdiction's loss. Beginning January
24 1, 2010, the oversight committee must meet at least annually with the
25 department by December 1st.

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

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

35 (b) Beginning January 1, 2018, and continuing through September
36 30, 2019, the department must determine the increased sales and use
37 tax revenue each local taxing jurisdiction experiences from
38 marketplace facilitator/remote seller revenue as a result of sections
39 201 through 213 of this act each calendar quarter. The department
40 must convene the mitigation advisory committee before January 1,

1 2018, to receive input on the determination of marketplace
2 facilitator/remote seller revenue. Beginning with distributions made
3 after March 31, 2018, distributions from the streamlined sales and
4 use tax mitigation account by the state treasurer, as directed by the
5 department, to each local taxing jurisdiction, must be reduced by the
6 amount of its marketplace facilitator/remote seller revenue reported
7 during the previous calendar quarter. No later than December 1, 2019,
8 the department will determine the total marketplace facilitator/
9 remote seller revenue for each local taxing jurisdiction for
10 reporting periods beginning January 1, 2018, through reporting
11 periods ending June 30, 2019. If the total distribution made from the
12 streamlined sales and use tax mitigation account to a local taxing
13 jurisdiction was not fully reduced by its total amount of marketplace
14 facilitator/remote seller revenue for reporting periods beginning
15 January 1, 2018, through reporting periods ending June 30, 2019, the
16 department must reduce the local taxing jurisdiction's distribution
17 of local sales and use tax under RCW 82.14.060 by the excess amount
18 received.

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

- 24 (i) The deduction provided for in RCW 82.14.050; and
25 (ii) The amount of any refunds of local sales and use taxes
26 exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565,
27 82.08.025661, or 82.12.025661, which must be made without
28 appropriation; and
29 (iii) The deduction required under RCW 82.14.500.

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

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

1 NEW SECTION. **Sec. 505.** (1) Except as otherwise provided in this
2 section, this act is necessary for the immediate preservation of the
3 public peace, health, or safety, or support of the state government
4 and its existing public institutions, and takes effect immediately.

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

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

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

17 NEW SECTION. **Sec. 506.** Section 212 of this act expires July 23,
18 2017."

19 Correct the title.

EFFECT: Repeals bottled water retail sales tax preference. Narrows state use tax preference for self-produced fuels to only biomass. Requires marketplace facilitators, referrers, and their sellers to collect and remit sales or use tax, or comply with notice and reporting requirements. Modifies the streamlined sales tax mitigation program for fiscal years 2018 and 2019. Eliminates the streamlined sales tax mitigation programs beginning October 1, 2019. Expands economic nexus for Business & Occupation (B&O) tax. Provides the bill with an emergency effective date of: Immediately for Parts II (except for section 213, which takes effect July 23, 2017), IV, and V; August 1, 2017, for Part I; and July 1, 2017, for Part III.

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