
SECOND SUBSTITUTE HOUSE BILL 1904

State of Washington 65th Legislature 2017 Regular Session

By House Finance (originally sponsored by Representative Smith)

READ FIRST TIME 03/17/17.

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

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

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

19 (2) The legislature further recognizes that technological
20 advances have made it possible to more easily and quickly gather,

1 analyze, and export vast amounts of personal information, whether
2 such information is obtained through electronic or other means.

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
17 RCW to be codified between RCW 82.04.230 and 82.04.298 to read as
18 follows:

19 (1) Upon every person engaging within this state in the business
20 of making sales of personal information or exchanging personal
21 information for consideration; as to such persons the amount of tax
22 with respect to such business is equal to the gross income of the
23 business multiplied by the rate of 3.3 percent.

24 (2) For the purposes of this section, "personal information"
25 means information that identifies, relates to, describes, or is
26 capable of being associated with, a particular individual, including
27 but not limited to his or her name; physical address, mailing
28 address, or other location information; telephone number; email
29 address; internet protocol address; signature; physical
30 characteristics or description; biometric data; driver's license
31 number, state identification card number, passport number, social
32 security number, or other government-issued identification number;
33 bank account number, debit card number, credit card number, or any
34 other financial information; insurance information; medical
35 information; employment information; and educational information.
36 "Personal information" also includes browser habits, consumer
37 preferences and any other data that can be attributed to an
38 individual and can be used for marketing, or determining access and

1 costs related to insurance, credit, or health care. "Personal
2 information" does not include photographs or internet access.

3 (3) For the purposes of this section, "engaging within this
4 state" has the same meaning as provided in RCW 82.04.066, and also
5 means that a person generates gross income of the business from
6 personal information, as defined in subsection (2) of this section,
7 of individuals located in this state. For purposes of this
8 subsection, an individual is located in this state if any of the
9 addresses, as defined in RCW 82.04.462(5), utilized by that
10 individual is located in this state.

11 (4) Nothing in this section may be construed as to impose a tax
12 on internet access.

13 **Sec. 3.** RCW 82.04.050 and 2015 3rd sp.s. c 6 s 1105 are each
14 amended to read as follows:

15 (1)(a) "Sale at retail" or "retail sale" means every sale of
16 tangible personal property (including articles produced, fabricated,
17 or imprinted) to all persons irrespective of the nature of their
18 business and including, among others, without limiting the scope
19 hereof, persons who install, repair, clean, alter, improve,
20 construct, or decorate real or personal property of or for consumers
21 other than a sale to a person who:

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

26 (ii) Installs, repairs, cleans, alters, imprints, improves,
27 constructs, or decorates real or personal property of or for
28 consumers, if such tangible personal property becomes an ingredient
29 or component of such real or personal property without intervening
30 use by such person; or

31 (iii) Purchases for the purpose of consuming the property
32 purchased in producing for sale as a new article of tangible personal
33 property or substance, of which such property becomes an ingredient
34 or component or is a chemical used in processing, when the primary
35 purpose of such chemical is to create a chemical reaction directly
36 through contact with an ingredient of a new article being produced
37 for sale; or

38 (iv) Purchases for the purpose of consuming the property
39 purchased in producing ferrosilicon which is subsequently used in

1 producing magnesium for sale, if the primary purpose of such property
2 is to create a chemical reaction directly through contact with an
3 ingredient of ferrosilicon; or

4 (v) Purchases for the purpose of providing the property to
5 consumers as part of competitive telephone service, as defined in RCW
6 82.04.065; or

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

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

17 (c) The term also means every sale of tangible personal property
18 to persons engaged in any business that is taxable under RCW
19 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

23 (a) The installing, repairing, cleaning, altering, imprinting, or
24 improving of tangible personal property of or for consumers,
25 including charges made for the mere use of facilities in respect
26 thereto, but excluding charges made for the use of self-service
27 laundry facilities, and also excluding sales of laundry service to
28 nonprofit health care facilities, and excluding services rendered in
29 respect to live animals, birds and insects;

30 (b) The constructing, repairing, decorating, or improving of new
31 or existing buildings or other structures under, upon, or above real
32 property of or for consumers, including the installing or attaching
33 of any article of tangible personal property therein or thereto,
34 whether or not such personal property becomes a part of the realty by
35 virtue of installation, and also includes the sale of services or
36 charges made for the clearing of land and the moving of earth
37 excepting the mere leveling of land used in commercial farming or
38 agriculture;

39 (c) The constructing, repairing, or improving of any structure
40 upon, above, or under any real property owned by an owner who conveys

1 the property by title, possession, or any other means to the person
2 performing such construction, repair, or improvement for the purpose
3 of performing such construction, repair, or improvement and the
4 property is then reconveyed by title, possession, or any other means
5 to the original owner;

6 (d) The cleaning, fumigating, razing, or moving of existing
7 buildings or structures, but does not include the charge made for
8 janitorial services; and for purposes of this section the term
9 "janitorial services" means those cleaning and caretaking services
10 ordinarily performed by commercial janitor service businesses
11 including, but not limited to, wall and window washing, floor
12 cleaning and waxing, and the cleaning in place of rugs, drapes and
13 upholstery. The term "janitorial services" does not include painting,
14 papering, repairing, furnace or septic tank cleaning, snow removal or
15 sandblasting;

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

19 (f) The furnishing of lodging and all other services by a hotel,
20 rooming house, tourist court, motel, trailer camp, and the granting
21 of any similar license to use real property, as distinguished from
22 the renting or leasing of real property, and it is presumed that the
23 occupancy of real property for a continuous period of one month or
24 more constitutes a rental or lease of real property and not a mere
25 license to use or enjoy the same. For the purposes of this
26 subsection, it is presumed that the sale of and charge made for the
27 furnishing of lodging for a continuous period of one month or more to
28 a person is a rental or lease of real property and not a mere license
29 to enjoy the same;

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

32 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
33 of this subsection when such sales or charges are for property, labor
34 and services which are used or consumed in whole or in part by such
35 persons in the performance of any activity defined as a "sale at
36 retail" or "retail sale" even though such property, labor and
37 services may be resold after such use or consumption. Nothing
38 contained in this subsection may be construed to modify subsection
39 (1) of this section and nothing contained in subsection (1) of this
40 section may be construed to modify this subsection.

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

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

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

8 ~~(+))~~) Automobile parking and storage garage services;

9 ~~((+d))~~) (c) Landscape maintenance and horticultural services but
10 excluding (i) horticultural services provided to farmers and (ii)
11 pruning, trimming, repairing, removing, and clearing of trees and
12 brush near electric transmission or distribution lines or equipment,
13 if performed by or at the direction of an electric utility;

14 ~~((+e))~~) (d) Service charges associated with tickets to
15 professional sporting events;

16 ~~((+f))~~) (e) The following personal services: Tanning salon
17 services, tattoo parlor services, steam bath services, turkish bath
18 services, escort services, and dating services; and

19 ~~((+g))~~) (f)(i) Operating an athletic or fitness facility,
20 including all charges for the use of such a facility or for any
21 associated services and amenities, except as provided in ~~((+g))~~) (f)
22 (ii) of this subsection.

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

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

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

33 (C) Separately stated charges for services, such as advertising,
34 massage, nutritional consulting, and body composition testing, that
35 do not require the customer to engage in physical fitness activities
36 to receive the service. The exclusion in this subsection (3)~~((+g))~~)
37 (f)(ii)(C) does not apply to personal training services and
38 instruction in a physical fitness activity;

39 (D) Separately stated charges for physical therapy provided by a
40 physical therapist, as those terms are defined in RCW 18.74.010, or

1 occupational therapy provided by an occupational therapy
2 practitioner, as those terms are defined in RCW 18.59.020, when
3 performed pursuant to a referral from an authorized health care
4 practitioner or in consultation with an authorized health care
5 practitioner. For the purposes of this subsection (3)((~~g~~)) (f)
6 (ii)(D), an authorized health care practitioner means a health care
7 practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57,
8 18.57A, 18.71, or 18.71A RCW;

9 (E) Rent or association fees charged by a landlord or residential
10 association to a tenant or residential owner with access to an
11 athletic or fitness facility maintained by the landlord or
12 residential association, unless the rent or fee varies depending on
13 whether the tenant or owner has access to the facility;

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

18 (G) The provision of access to an athletic or fitness facility by
19 an educational institution to its students and staff. However,
20 charges made by an educational institution to its alumni or other
21 members of the public for the use of any of the educational
22 institution's athletic or fitness facilities are a retail sale under
23 this subsection (3)((~~g~~)) (f). For purposes of this subsection (3)
24 ((~~g~~)) (f)(ii)(G), "educational institution" has the same meaning as
25 in RCW 82.04.170; and

26 (H) Yoga, tai chi, or chi gong classes held at a community
27 center, park, gymnasium, college or university, hospital or other
28 medical facility, private residence, or any facility that is not
29 primarily used for physical fitness activities other than yoga, tai
30 chi, or chi gong classes.

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

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

38 (A) "Athletic or fitness facility" means an indoor or outdoor
39 facility or portion of a facility that is primarily used for:
40 Exercise classes; strength and conditioning programs; personal

1 training services; tennis, racquetball, handball, squash, or
2 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or
3 mixed martial arts training; or other activities requiring the use of
4 exercise or strength training equipment, such as treadmills,
5 elliptical machines, stair climbers, stationary cycles, rowing
6 machines, pilates equipment, balls, climbing ropes, jump ropes, and
7 weightlifting equipment.

8 (B) "Physical fitness activities" means activities that involve
9 physical exertion for the purpose of improving or maintaining the
10 general fitness, strength, flexibility, conditioning, or health of
11 the participant.

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

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

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

20 (6)(a) The term also includes the sale of prewritten computer
21 software to a consumer, regardless of the method of delivery to the
22 end user. For purposes of (a) and (b) of this subsection, the sale of
23 prewritten computer software includes the sale of or charge made for
24 a key or an enabling or activation code, where the key or code is
25 required to activate prewritten computer software and put the
26 software into use. There is no separate sale of the key or code from
27 the prewritten computer software, regardless of how the sale may be
28 characterized by the vendor or by the purchaser.

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

31 (i) Custom software; or

32 (ii) The customization of prewritten computer software.

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

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

1 (B) For purposes of this subsection (6)(c)(ii), "data processing"
2 means the systematic performance of operations on data to extract the
3 required information in an appropriate form or to convert the data to
4 usable information. Data processing includes check processing, image
5 processing, form processing, survey processing, payroll processing,
6 claim processing, and similar activities.

7 (7) The term also includes the sale of or charge made for an
8 extended warranty to a consumer. For purposes of this subsection,
9 "extended warranty" means an agreement for a specified duration to
10 perform the replacement or repair of tangible personal property at no
11 additional charge or a reduced charge for tangible personal property,
12 labor, or both, or to provide indemnification for the replacement or
13 repair of tangible personal property, based on the occurrence of
14 specified events. The term "extended warranty" does not include an
15 agreement, otherwise meeting the definition of extended warranty in
16 this subsection, if no separate charge is made for the agreement and
17 the value of the agreement is included in the sales price of the
18 tangible personal property covered by the agreement. For purposes of
19 this subsection, "sales price" has the same meaning as in RCW
20 82.08.010.

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

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

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

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

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

31 (b) A retail sale of digital goods, digital codes, or digital
32 automated services under this subsection (8) includes any services
33 provided by the seller exclusively in connection with the digital
34 goods, digital codes, or digital automated services, whether or not a
35 separate charge is made for such services.

36 (c) For purposes of this subsection, "permanent" means perpetual
37 or for an indefinite or unspecified length of time. A right of
38 permanent use is presumed to have been granted unless the agreement
39 between the seller and the purchaser specifies or the circumstances

1 surrounding the transaction suggest or indicate that the right to use
2 terminates on the occurrence of a condition subsequent.

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

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

17 (11) The term also does not include sales of chemical sprays or
18 washes to persons for the purpose of postharvest treatment of fruit
19 for the prevention of scald, fungus, mold, or decay, nor does it
20 include sales of feed, seed, seedlings, fertilizer, agents for
21 enhanced pollination including insects such as bees, and spray
22 materials to: (a) Persons who participate in the federal conservation
23 reserve program, the environmental quality incentives program, the
24 wetlands reserve program, and the wildlife habitat incentives
25 program, or their successors administered by the United States
26 department of agriculture; (b) farmers for the purpose of producing
27 for sale any agricultural product; (c) farmers for the purpose of
28 providing bee pollination services; and (d) farmers acting under
29 cooperative habitat development or access contracts with an
30 organization exempt from federal income tax under 26 U.S.C. Sec.
31 501(c)(3) of the federal internal revenue code or the Washington
32 state department of fish and wildlife to produce or improve wildlife
33 habitat on land that the farmer owns or leases.

34 (12) The term does not include the sale of or charge made for
35 labor and services rendered in respect to the constructing,
36 repairing, decorating, or improving of new or existing buildings or
37 other structures under, upon, or above real property of or for the
38 United States, any instrumentality thereof, or a county or city
39 housing authority created pursuant to chapter 35.82 RCW, including
40 the installing, or attaching of any article of tangible personal

1 property therein or thereto, whether or not such personal property
2 becomes a part of the realty by virtue of installation. Nor does the
3 term include the sale of services or charges made for the clearing of
4 land and the moving of earth of or for the United States, any
5 instrumentality thereof, or a county or city housing authority. Nor
6 does the term include the sale of services or charges made for
7 cleaning up for the United States, or its instrumentalities,
8 radioactive waste and other by-products of weapons production and
9 nuclear research and development.

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

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

19 (15)(a) The term "sale at retail" or "retail sale" includes
20 amounts charged, however labeled, to consumers to engage in any of
21 the activities listed in this subsection (15)(a), including the
22 furnishing of any associated equipment or, except as otherwise
23 provided in this subsection, providing instruction in such
24 activities, where such charges are not otherwise defined as a "sale
25 at retail" or "retail sale" in this section:

26 (i)(A) Golf, including any variant in which either golf balls or
27 golf clubs are used, such as miniature golf, hitting golf balls at a
28 driving range, and golf simulators, and including fees charged by a
29 golf course to a player for using his or her own cart. However,
30 charges for golf instruction are not a retail sale, provided that if
31 the instruction involves the use of a golfing facility that would
32 otherwise require the payment of a fee, such as green fees or driving
33 range fees, such fees, including the applicable retail sales tax,
34 must be separately identified and charged by the golfing facility
35 operator to the instructor or the person receiving the instruction.

36 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
37 as otherwise provided in this subsection (15)(a)(i)(B), the term
38 "sale at retail" or "retail sale" does not include amounts charged to
39 participate in, or conduct, a golf tournament or other competitive
40 event. However, amounts paid by event participants to the golf

1 facility operator are retail sales under this subsection (15)(a)(i).
2 Likewise, amounts paid by the event organizer to the golf facility
3 are retail sales under this subsection (15)(a)(i), if such amounts
4 vary based on the number of event participants;

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

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

9 (iv) Access to amusement park, theme park, and water park
10 facilities, including but not limited to charges for admission and
11 locker or cabana rentals. Discrete charges for rides or other
12 attractions or entertainment that are in addition to the charge for
13 admission are not a retail sale under this subsection (15)(a)(iv).
14 For the purposes of this subsection, an amusement park or theme park
15 is a location that provides permanently affixed amusement rides,
16 games, and other entertainment, but does not include parks or zoos
17 for which the primary purpose is the exhibition of wildlife, or
18 fairs, carnivals, and festivals as defined in (b)(i) of this
19 subsection;

20 (v) Batting cage activities;

21 (vi) Bowling, but not including competitive events, except that
22 amounts paid by the event participants to the bowling alley operator
23 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
24 paid by the event organizer to the operator of the bowling alley are
25 retail sales under this subsection (15)(a)(vi), if such amounts vary
26 based on the number of event participants;

27 (vii) Climbing on artificial climbing structures, whether indoors
28 or outdoors;

29 (viii) Day trips for sightseeing purposes;

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

32 (x) Horseback riding offered to the public, where the seller
33 furnishes the horse to the buyer and providing instruction is not the
34 primary focus of the activity, including guided rides, but not
35 including therapeutic horseback riding provided by an instructor
36 certified by a nonprofit organization that offers national or
37 international certification for therapeutic riding instructors;

38 (xi) Fishing, including providing access to private fishing areas
39 and charter or guided fishing, except that fishing contests and

1 license fees imposed by a government entity are not a retail sale
2 under this subsection;

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

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

14 (xiv) Go-karting, bumper cars, and other motorized activities
15 where the seller provides the vehicle and the premises where the
16 buyer will operate the vehicle;

17 (xv) Indoor or outdoor playground activities, such as inflatable
18 bounce structures and other inflatables; mazes; trampolines; slides;
19 ball pits; games of tag, including laser tag and soft-dart tag; and
20 human gyroscope rides, regardless of whether such activities occur at
21 the seller's place of business, but not including playground
22 activities provided for children by a licensed child day care center
23 or licensed family day care provider as those terms are defined in
24 RCW 43.215.010;

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

31 (xvii) Paintball and airsoft activities;

32 (xviii) Skating, including ice skating, roller skating, and
33 inline skating, but only in respect to discrete charges to members of
34 the public to engage in skating activities, but not including skating
35 lessons, competitive events, team activities, or fees to join or
36 renew a membership at a skating facility, club, or other
37 organization;

38 (xix) Nonmotorized snow sports and activities, such as downhill
39 and cross-country skiing, snowboarding, ski jumping, sledding, snow
40 tubing, snowshoeing, and similar snow sports and activities, whether

1 engaged in outdoors or in an indoor facility with or without snow,
2 but only in respect to discrete charges to the public for the use of
3 land or facilities to engage in nonmotorized snow sports and
4 activities, such as fees, however labeled, for the use of ski lifts
5 and tows and daily or season passes for access to trails or other
6 areas where nonmotorized snow sports and activities are conducted.
7 However, fees for the following are not retail sales under this
8 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
9 issued by a governmental entity to park a vehicle on or access public
10 lands; and (C) permits or leases granted by an owner of private
11 timberland for recreational access to areas used primarily for
12 growing and harvesting timber; and

13 (xx) Scuba diving; snorkeling; river rafting; surfing;
14 kiteboarding; flyboarding; water slides; inflatables, such as water
15 pillows, water trampolines, and water rollers; and similar water
16 sports and activities.

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

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

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

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

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

1 **Sec. 4.** RCW 82.04.192 and 2010 c 111 s 203 are each amended to
2 read as follows:

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

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

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

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

13 (i) Any service that primarily involves the application of human
14 effort by the seller, and the human effort originated after the
15 customer requested the service;

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

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

23 (iv) Payment processing services;

24 (v) Parimutuel wagering and handicapping contests as authorized
25 by chapter 67.16 RCW;

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

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

30 (viii) The service described in RCW 82.04.050(6)((~~b~~)) (c);

31 (ix) Online educational programs provided by a:

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

33 (B) An institution of higher education as defined in sections
34 1001 or 1002 of the federal higher education act of 1965 (Title 20
35 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For
36 purposes of this subsection (3)(b)(ix)(B), an online educational
37 program must be encompassed within the institution's accreditation;

38 (x) Live presentations, such as lectures, seminars, workshops, or
39 courses, where participants are connected to other participants via
40 the internet or telecommunications equipment, which allows audience

1 members and the presenter or instructor to give, receive, and discuss
2 information with each other in real time;

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

5 (xii)(A) A service that allows the person receiving the service
6 to make online sales of products or services, digital or otherwise,
7 using either: (I) The service provider's web site; or (II) the
8 service recipient's web site, but only when the service provider's
9 technology is used in creating or hosting the service recipient's web
10 site or is used in processing orders from customers using the service
11 recipient's web site.

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

15 (xiii) Advertising services. For purposes of this subsection
16 (3)(b)(xiii), "advertising services" means all services directly
17 related to the creation, preparation, production, or the
18 dissemination of advertisements. Advertising services include layout,
19 art direction, graphic design, mechanical preparation, production
20 supervision, placement, and rendering advice to a client concerning
21 the best methods of advertising that client's products or services.
22 Advertising services also include online referrals, search engine
23 marketing and lead generation optimization, web campaign planning,
24 the acquisition of advertising space in the internet media, and the
25 monitoring and evaluation of web site traffic for purposes of
26 determining the effectiveness of an advertising campaign. Advertising
27 services do not include web hosting services and domain name
28 registration;

29 (xiv) The mere storage of digital products, digital codes,
30 computer software, or master copies of software. This exclusion from
31 the definition of digital automated services includes providing space
32 on a server for web hosting or the backing up of data or other
33 information;

34 (xv) Data processing services. For purposes of this subsection
35 (3)(b)(xv), "data processing service" means a primarily automated
36 service provided to a business or other organization where the
37 primary object of the service is the systematic performance of
38 operations by the service provider on data supplied in whole or in
39 part by the customer to extract the required information in an
40 appropriate form or to convert the data to usable information. Data

1 processing services include check processing, image processing, form
2 processing, survey processing, payroll processing, claim processing,
3 and similar activities. Data processing does not include the service
4 described in RCW 82.04.050(6)((~~b~~)) (c); (~~and~~)

5 (xvi) Any business activity taxable under section 2 of this act;
6 and

7 (xvii) Digital goods.

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

10 (5) "Digital code" means a code that provides a purchaser with
11 the right to obtain one or more digital products, if all of the
12 digital products to be obtained through the use of the code have the
13 same sales and use tax treatment. "Digital code" does not include a
14 code that represents a stored monetary value that is deducted from a
15 total as it is used by the purchaser. "Digital code" also does not
16 include a code that represents a redeemable card, gift card, or gift
17 certificate that entitles the holder to select digital products of an
18 indicated cash value. A digital code may be obtained by any means,
19 including email or by tangible means regardless of its designation as
20 song code, video code, book code, or some other term.

21 (6)(a) "Digital goods," except as provided in (b) of this
22 subsection (6), means sounds, images, data, facts, or information, or
23 any combination thereof, transferred electronically, including, but
24 not limited to, specified digital products and other products
25 transferred electronically not included within the definition of
26 specified digital products.

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

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

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

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

33 (iv)(A) Except as provided in (b)(iv)(B) of this subsection (6),
34 the representation of a personal or professional service in
35 electronic form, such as an electronic copy of an engineering report
36 prepared by an engineer, where the service primarily involves the
37 application of human effort by the service provider, and the human
38 effort originated after the customer requested the service.

39 (B) The exclusion in (b)(iv)(A) of this subsection (6) does not
40 apply to photographers in respect to amounts received for the taking

1 of photographs that are transferred electronically to the customer,
2 but only if the customer is an end user, as defined in RCW
3 82.04.190(11), of the photographs. Such amounts are considered to be
4 for the sale of digital goods; (~~and~~)

5 (v) Personal information as defined in section 2 of this act; and
6 (vi) Services and activities excluded from the definition of
7 digital automated services in subsection (3)(b)(i) through (~~xv~~)
8 (xvi) of this section and not otherwise described in (b)(i) through
9 (~~iv~~) (v) of this subsection (6).

10 (7) "Digital products" means digital goods and digital automated
11 services.

12 (8) "Electronically transferred" or "transferred electronically"
13 means obtained by the purchaser by means other than tangible storage
14 media. It is not necessary that a copy of the product be physically
15 transferred to the purchaser. So long as the purchaser may access the
16 product, it will be considered to have been electronically
17 transferred to the purchaser.

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

20 (10) "Subscription radio services" means the sale of audio
21 programming by a radio broadcaster as defined in RCW 82.08.02081,
22 except as otherwise provided in this subsection. "Subscription radio
23 services" does not include audio programming that is sold on a pay-
24 per-program basis or that allows the buyer to access a library of
25 programs at any time for a specific charge for that service.

26 (11) "Subscription television services" means the sale of video
27 programming by a television broadcaster as defined in RCW
28 82.08.02081, except as otherwise provided in this subsection.
29 "Subscription television services" does not include video programming
30 that is sold on a pay-per-program basis or that allows the buyer to
31 access a library of programs at any time for a specific charge for
32 that service, but only if the seller is not subject to a franchise
33 fee in this state under the authority of Title 47 U.S.C. Sec. 542(a)
34 on the gross revenue derived from the sale.

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

37 (1) Upon every person engaging within this state in the business
38 of receiving income from royalties, the amount of tax with respect to

1 the business is equal to the gross income from royalties multiplied
2 by the rate provided in RCW 82.04.290(2)(a).

3 (2) For the purposes of this section, "gross income from
4 royalties" means compensation for the use of intangible property,
5 including charges in the nature of royalties, regardless of where the
6 intangible property will be used. For purposes of this subsection,
7 "intangible property" includes copyrights, patents, licenses,
8 franchises, trademarks, trade names, and similar items. "Gross income
9 from royalties" does not include compensation for any natural
10 resource, gross income of the business from the sale of, or exchange
11 for consideration, personal information as defined in section 2 of
12 this act, the licensing of prewritten computer software to the end
13 user, or the licensing of digital goods, digital codes, or digital
14 automated services to the end user as defined in RCW 82.04.190(11).

15 **Sec. 6.** RCW 82.04.460 and 2014 c 97 s 304 are each amended to
16 read as follows:

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

23 (2) The department must by rule provide a method of apportioning
24 the apportionable income of financial institutions, where such
25 apportionable income is taxable under RCW 82.04.290. The rule adopted
26 by the department must, to the extent feasible, be consistent with
27 the multistate tax commission's recommended formula for the
28 apportionment and allocation of net income of financial institutions
29 as existing on June 1, 2010, or such subsequent date as may be
30 provided by the department by rule, consistent with the purposes of
31 this section, except that:

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

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

38 (3) The department may by rule provide a method or methods of
39 apportioning or allocating gross income derived from sales of

1 telecommunications service and competitive telephone service taxed
2 under this chapter, if the gross proceeds of sales subject to tax
3 under this chapter do not fairly represent the extent of the
4 taxpayer's income attributable to this state. The rule must provide
5 for an equitable and constitutionally permissible division of the tax
6 base.

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

9 (a) "Apportionable income" means gross income of the business
10 generated from engaging in apportionable activities, including income
11 received from apportionable activities performed outside this state
12 if the income would be taxable under this chapter if received from
13 activities in this state, less the exemptions and deductions
14 allowable under this chapter. For purposes of this subsection,
15 "apportionable activities" means only those activities taxed under:

- 16 (i) RCW 82.04.255;
- 17 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);
- 18 (iii) RCW 82.04.280(1)(e);
- 19 (iv) RCW 82.04.285;
- 20 (v) RCW 82.04.286;
- 21 (vi) RCW 82.04.290;
- 22 (vii) RCW 82.04.2907;
- 23 (viii) RCW 82.04.2908;
- 24 (ix) RCW 82.04.263, but only to the extent of any activity that
25 would be taxable under any of the provisions enumerated under (a)(i)
26 through (viii) of this subsection (4) if the tax classification in
27 RCW 82.04.263 did not exist; (~~and~~)
- 28 (x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect
29 to advertising; and
- 30 (xi) Section 2 of this act.

31 (b)(i) "Taxable in another state" means that the taxpayer is
32 subject to a business activities tax by another state on its income
33 received from engaging in apportionable activities; or the taxpayer
34 is not subject to a business activities tax by another state on its
35 income received from engaging in apportionable activities, but any
36 other state has jurisdiction to subject the taxpayer to a business
37 activities tax on such income under the substantial nexus standards
38 in RCW 82.04.067(1).

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

1 **Sec. 7.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to
2 read as follows:

3 (1) The apportionable income of a person within the scope of RCW
4 82.04.460(1) is apportioned to Washington by multiplying its
5 apportionable income by the receipts factor. Persons who are subject
6 to tax under more than one of the tax classifications enumerated in
7 RCW 82.04.460(4)(a) (i) through ~~((x))~~ (xi) must calculate a
8 separate receipts factor for each tax classification that the person
9 is taxable under.

10 (2) For purposes of subsection (1) of this section, the receipts
11 factor is a fraction and is calculated as provided in subsections (3)
12 ~~((and)),~~ (4), and (5) of this section and, for financial
13 institutions, as provided in the rule adopted by the department under
14 the authority of RCW 82.04.460(2).

15 (3)(a) The numerator of the receipts factor is the total gross
16 income of the business of the taxpayer attributable to this state
17 during the tax year from engaging in an apportionable activity. The
18 denominator of the receipts factor is the total gross income of the
19 business of the taxpayer from engaging in an apportionable activity
20 everywhere in the world during the tax year.

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

24 (i) Where the customer received the benefit of the taxpayer's
25 service or, in the case of gross income from royalties, where the
26 customer used the taxpayer's intangible property. When a customer
27 receives the benefit of the taxpayer's services or uses the
28 taxpayer's intangible property in this and one or more other states
29 and the amount of gross income of the business that was received by
30 the taxpayer in return for the services received or intangible
31 property used by the customer in this state can be reasonably
32 determined by the taxpayer, such amount of gross income must be
33 attributed to this state.

34 (ii) If the customer received the benefit of the service or used
35 the intangible property in more than one state and if the taxpayer is
36 unable to attribute gross income of the business under the provisions
37 of (b)(i) of this subsection (3), gross income of the business must
38 be attributed to the state in which the benefit of the service was
39 primarily received or in which the intangible property was primarily
40 used.

1 (iii) If the taxpayer is unable to attribute gross income of the
2 business under the provisions of (b)(i) or (ii) of this subsection
3 (3), gross income of the business must be attributed to the state
4 from which the customer ordered the service or, in the case of
5 royalties, the office of the customer from which the royalty
6 agreement with the taxpayer was negotiated.

7 (iv) If the taxpayer is unable to attribute gross income of the
8 business under the provisions of (b)(i), (ii), or (iii) of this
9 subsection (3), gross income of the business must be attributed to
10 the state to which the billing statements or invoices are sent to the
11 customer by the taxpayer.

12 (v) If the taxpayer is unable to attribute gross income of the
13 business under the provisions of (b)(i), (ii), (iii), or (iv) of this
14 subsection (3), gross income of the business must be attributed to
15 the state from which the customer sends payment to the taxpayer.

16 (vi) If the taxpayer is unable to attribute gross income of the
17 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
18 this subsection (3), gross income of the business must be attributed
19 to the state where the customer is located as indicated by the
20 customer's address: (A) Shown in the taxpayer's business records
21 maintained in the regular course of business; or (B) obtained during
22 consummation of the sale or the negotiation of the contract for
23 services or for the use of the taxpayer's intangible property,
24 including any address of a customer's payment instrument when readily
25 available to the taxpayer and no other address is available.

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

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

36 (c) Gross income of the business from engaging in an
37 apportionable activity must be excluded from the denominator of the
38 receipts factor if, in respect to such activity, at least some of the
39 activity is performed in this state, and the gross income is
40 attributable under (b) of this subsection (3) to a state in which the

1 taxpayer is not taxable. For purposes of this subsection (3)(c), "not
2 taxable" means that the taxpayer is not subject to a business
3 activities tax by that state, except that a taxpayer is taxable in a
4 state in which it would be deemed to have a substantial nexus with
5 that state under the standards in RCW 82.04.067(1) regardless of
6 whether that state imposes such a tax. "Business activities tax"
7 means a tax measured by the amount of, or economic results of,
8 business activity conducted in a state. The term includes taxes
9 measured in whole or in part on net income or gross income or
10 receipts. "Business activities tax" does not include a sales tax, use
11 tax, or a similar transaction tax, imposed on the sale or acquisition
12 of goods or services, whether or not denominated a gross receipts tax
13 or a tax imposed on the privilege of doing business.

14 (d) This subsection (3) does not apply to financial institutions
15 with respect to apportionable income taxable under RCW 82.04.290.
16 Financial institutions must calculate the receipts factor as provided
17 in subsection (4) of this section and the rule adopted by the
18 department under the authority of RCW 82.04.460(2) with respect to
19 apportionable income taxable under RCW 82.04.290. Financial
20 institutions that are subject to tax under any other tax
21 classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and
22 (vii) through (~~(+x+)~~) (xi) must calculate a separate receipts factor,
23 as provided in this section, for each of the other tax
24 classifications that the financial institution is taxable under.

25 (4) A taxpayer may calculate the receipts factor for the current
26 tax year based on the most recent calendar year for which information
27 is available for the full calendar year. If a taxpayer does not
28 calculate the receipts factor for the current tax year based on
29 previous calendar year information as authorized in this subsection,
30 the business must use current year information to calculate the
31 receipts factor for the current tax year. In either case, a taxpayer
32 must correct the reporting for the current tax year when complete
33 information is available to calculate the receipts factor for that
34 year, but not later than October 31st of the following tax year.
35 Interest will apply to any additional tax due on a corrected tax
36 return. Interest must be computed and assessed as provided in RCW
37 82.32.050 and accrues until the additional taxes are paid. Penalties
38 as provided in RCW 82.32.090 will apply to any such additional tax
39 due only if the current tax year reporting is not corrected and the
40 additional tax is not paid by October 31st of the following tax year.

1 Interest as provided in RCW 82.32.060 will apply to any tax paid in
2 excess of that properly due on a return as a result of a taxpayer
3 using previous calendar year data or incomplete current-year data to
4 calculate the receipts factor.

5 (5)(a)(i) Except as provided in (a)(ii) of this subsection (5),
6 for purposes of computing the receipts factor under subsection (3) of
7 this section, gross income of the business generating sales of, or
8 exchanging for consideration, personal information must be
9 attributable to this state in the ratio, expressed as a percentage,
10 that the number of Washington addresses in the personal information
11 bears to all addresses in the personal information. Only personal
12 information used to generate the gross income of the business to be
13 attributed under this subsection (5)(a)(i) is applicable in
14 calculating the ratio described in this subsection (5)(a)(i).

15 (ii) If the taxpayer is unable to attribute gross income of the
16 business under the provisions of (a)(i) of this subsection (5), gross
17 income of the business generated from making sales of, or exchanging
18 for consideration, personal information must be attributed to this
19 state in the ratio, expressed as a percentage, that the population of
20 this state bears to all the states of the United States in the
21 taxpayer's market, or by any other reasonable methods of attribution
22 allowed by the department.

23 (b) For the purposes of this subsection:

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

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

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

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

32 (b) "State" means a state of the United States, the District of
33 Columbia, the Commonwealth of Puerto Rico, any territory or
34 possession of the United States, or any foreign country or political
35 subdivision of a foreign country.

36 **Sec. 8.** RCW 82.08.0291 and 2015 c 169 s 4 are each amended to
37 read as follows:

38 The tax imposed by RCW 82.08.020 does not apply to sales defined
39 as a sale at retail and retail sale under RCW 82.04.050 (3)((+g))

1 (f) or (15), by a nonprofit youth organization, as defined in RCW
2 82.04.4271, to members of the organization; and the tax does not
3 apply to physical fitness classes provided by a local government.

4 **Sec. 9.** RCW 82.32.087 and 2015 c 169 s 11 are each amended to
5 read as follows:

6 (1) The director may grant a direct pay permit to a taxpayer who
7 demonstrates, to the satisfaction of the director, that the taxpayer
8 meets the requirements of this section. The direct pay permit allows
9 the taxpayer to accrue and remit directly to the department use tax
10 on the acquisition of tangible personal property or sales tax on the
11 sale of or charges made for labor and/or services, in accordance with
12 all of the applicable provisions of this title. Any taxpayer that
13 uses a direct pay permit must remit state and local sales or use tax
14 directly to the department. The agreement by the purchaser to remit
15 tax directly to the department, rather than pay sales or use tax to
16 the seller, relieves the seller of the obligation to collect sales or
17 use tax and requires the buyer to pay use tax on the tangible
18 personal property and sales tax on the sale of or charges made for
19 labor and/or services.

20 (2)(a) A taxpayer may apply for a permit under this section if:
21 (i) The taxpayer's cumulative tax liability is reasonably expected to
22 be two hundred forty thousand dollars or more in the current calendar
23 year; or (ii) the taxpayer makes purchases subject to the taxes
24 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
25 dollars per calendar year. For the purposes of this section, "tax
26 liability" means the amount required to be remitted to the department
27 for taxes administered under this chapter, except for the taxes
28 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,
29 82.29A, and 84.33 RCW.

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

34 (c) The director must review a direct pay permit application in a
35 timely manner and must notify the applicant, in writing, of the
36 approval or denial of the application. The department must approve or
37 deny an application based on the applicant's ability to comply with
38 local government use tax coding capabilities and responsibilities;
39 requirements for vendor notification; recordkeeping obligations;

1 electronic data capabilities; and tax reporting procedures.
2 Additionally, an application may be denied if the director determines
3 that denial would be in the best interest of collecting taxes due
4 under this title. The department must provide a direct pay permit to
5 an approved applicant with the notice of approval. The direct pay
6 permit must clearly state that the holder is solely responsible for
7 the accrual and payment of the tax imposed under chapters 82.08 and
8 82.12 RCW and that the seller is relieved of liability to collect tax
9 imposed under chapters 82.08 and 82.12 RCW on all sales to the direct
10 pay permit holder. The taxpayer may petition the director for
11 reconsideration of a denial.

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

17 (3) Taxes for which the direct pay permit is used are due and
18 payable on the tax return for the reporting period in which the
19 taxpayer (a) receives the tangible personal property purchased or in
20 which the labor and/or services are performed or (b) receives an
21 invoice for such property or such labor and/or services, whichever
22 period is earlier.

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

30 (5) A direct pay permit is subject to revocation by the director
31 at any time the department determines that the taxpayer has violated
32 any provision of this section or that revocation would be in the best
33 interests of collecting the taxes due under this title. The notice of
34 revocation must be in writing and is effective either as of the end
35 of the taxpayer's next normal reporting period or a date deemed
36 appropriate by the director and identified in the revocation notice.
37 The taxpayer may petition the director for reconsideration of a
38 revocation and reinstatement of the permit.

39 (6) Any taxpayer who chooses to no longer use a direct pay permit
40 or whose permit is revoked by the department, must return the permit

1 to the department and immediately make a good faith effort to notify
2 all vendors to whom the permit was given, advising them that the
3 permit is no longer valid.

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

8 (a) Purchases of meals or beverages;

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

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

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

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

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

25 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2018.

--- END ---