

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1361**

Chapter 320, Laws of 2001

(partial veto)

57th Legislature  
2001 Regular Legislative Session

EXCISE TAX APPLICATION AND ADMINISTRATION

EFFECTIVE DATE: 7/1/01

Passed by the House April 17, 2001  
Yeas 92 Nays 0

FRANK CHOPP  
**Speaker of the House of Representatives**

CLYDE BALLARD  
**Speaker of the House of Representatives**

Passed by the Senate April 12, 2001  
Yeas 47 Nays 0

BRAD OWEN  
**President of the Senate**

Approved May 15, 2001, with the  
exception of section 19, which is  
vetoed.

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1361** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER  
**Chief Clerk**

TIMOTHY A. MARTIN  
**Chief Clerk**

FILED  
May 15, 2001 - 2:44 p.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 1361

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AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Jackley, Cairnes and Dunshee; by request of  
Department of Revenue

Read first time 01/24/2001. Referred to Committee on Finance.

1            AN ACT Relating to simplifying excise tax application and  
2 administration; amending RCW 11.02.005, 82.04.2635, 82.04.2907,  
3 82.08.0287, 82.12.0282, 82.12.834, 82.14.055, 82.27.020, 82.32.410,  
4 82.32.430, 82.62.010, 82.62.030, 82.62.050, 83.100.020, and 84.33.200;  
5 adding a new section to chapter 82.16 RCW; adding a new section to  
6 chapter 84.33 RCW; adding a new section to chapter 82.04 RCW; creating  
7 new sections; prescribing penalties; providing an effective date;  
8 providing expiration dates; and declaring an emergency.

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

10            **Sec. 1.** RCW 11.02.005 and 2000 c 130 s 1 are each amended to read  
11 as follows:

12            When used in this title, unless otherwise required from the  
13 context:

14            (1) "Personal representative" includes executor, administrator,  
15 special administrator, and guardian or limited guardian and special  
16 representative.

17            (2) "Net estate" refers to the real and personal property of a  
18 decedent exclusive of homestead rights, exempt property, the family

1 allowance and enforceable claims against, and debts of, the deceased or  
2 the estate.

3 (3) "Representation" refers to a method of determining distribution  
4 in which the takers are in unequal degrees of kinship with respect to  
5 the intestate, and is accomplished as follows: After first determining  
6 who, of those entitled to share in the estate, are in the nearest  
7 degree of kinship, the estate is divided into equal shares, the number  
8 of shares being the sum of the number of persons who survive the  
9 intestate who are in the nearest degree of kinship and the number of  
10 persons in the same degree of kinship who died before the intestate but  
11 who left issue surviving the intestate; each share of a deceased person  
12 in the nearest degree shall be divided among those of the deceased  
13 person's issue who survive the intestate and have no ancestor then  
14 living who is in the line of relationship between them and the  
15 intestate, those more remote in degree taking together the share which  
16 their ancestor would have taken had he or she survived the intestate.  
17 Posthumous children are considered as living at the death of their  
18 parent.

19 (4) "Issue" includes all the lawful lineal descendants of the  
20 ancestor and all lawfully adopted children.

21 (5) "Degree of kinship" means the degree of kinship as computed  
22 according to the rules of the civil law; that is, by counting upward  
23 from the intestate to the nearest common ancestor and then downward to  
24 the relative, the degree of kinship being the sum of these two counts.

25 (6) "Heirs" denotes those persons, including the surviving spouse,  
26 who are entitled under the statutes of intestate succession to the real  
27 and personal property of a decedent on the decedent's death intestate.

28 (7) "Real estate" includes, except as otherwise specifically  
29 provided herein, all lands, tenements, and hereditaments, and all  
30 rights thereto, and all interest therein possessed and claimed in fee  
31 simple, or for the life of a third person.

32 (8) "Will" means an instrument validly executed as required by RCW  
33 11.12.020.

34 (9) "Codicil" means a will that modifies or partially revokes an  
35 existing earlier will. A codicil need not refer to or be attached to  
36 the earlier will.

37 (10) "Guardian" or "limited guardian" means a personal  
38 representative of the person or estate of an incompetent or disabled

1 person as defined in RCW 11.88.010 and the term may be used in lieu of  
2 "personal representative" wherever required by context.

3 (11) "Administrator" means a personal representative of the estate  
4 of a decedent and the term may be used in lieu of "personal  
5 representative" wherever required by context.

6 (12) "Executor" means a personal representative of the estate of a  
7 decedent appointed by will and the term may be used in lieu of  
8 "personal representative" wherever required by context.

9 (13) "Special administrator" means a personal representative of the  
10 estate of a decedent appointed for limited purposes and the term may be  
11 used in lieu of "personal representative" wherever required by context.

12 (14) "Trustee" means an original, added, or successor trustee and  
13 includes the state, or any agency thereof, when it is acting as the  
14 trustee of a trust to which chapter 11.98 RCW applies.

15 (15) "Nonprobate asset" means those rights and interests of a  
16 person having beneficial ownership of an asset that pass on the  
17 person's death under a written instrument or arrangement other than the  
18 person's will. "Nonprobate asset" includes, but is not limited to, a  
19 right or interest passing under a joint tenancy with right of  
20 survivorship, joint bank account with right of survivorship, payable on  
21 death or trust bank account, transfer on death security or security  
22 account, deed or conveyance if possession has been postponed until the  
23 death of the person, trust of which the person is grantor and that  
24 becomes effective or irrevocable only upon the person's death,  
25 community property agreement, individual retirement account or bond, or  
26 note or other contract the payment or performance of which is affected  
27 by the death of the person. "Nonprobate asset" does not include: A  
28 payable-on-death provision of a life insurance policy, annuity, or  
29 other similar contract, or of an employee benefit plan; a right or  
30 interest passing by descent and distribution under chapter 11.04 RCW;  
31 a right or interest if, before death, the person has irrevocably  
32 transferred the right or interest, the person has waived the power to  
33 transfer it or, in the case of contractual arrangement, the person has  
34 waived the unilateral right to rescind or modify the arrangement; or a  
35 right or interest held by the person solely in a fiduciary capacity.  
36 For the definition of "nonprobate asset" relating to revocation of a  
37 provision for a former spouse upon dissolution of marriage or  
38 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For  
39 the definition of "nonprobate asset" relating to revocation of a

1 provision for a former spouse upon dissolution of marriage or  
2 declaration of invalidity of marriage, see RCW 11.07.010(5). For the  
3 definition of "nonprobate asset" relating to testamentary disposition  
4 of nonprobate assets, see RCW 11.11.010(7).

5 (16) "Internal Revenue Code" means the United States Internal  
6 Revenue Code of 1986, as amended or renumbered (~~(1999)~~) as of January 1,  
7 (~~(1999)~~) 2001.

8 (17) References to "section 2033A" of the Internal Revenue Code in  
9 wills, trust agreements, powers of appointment, beneficiary  
10 designations, and other instruments governed by or subject to this  
11 title shall be deemed to refer to the comparable or corresponding  
12 provisions of section 2057 of the Internal Revenue Code, as added by  
13 section 6006(b) of the Internal Revenue Service Restructuring Act of  
14 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A  
15 "exclusion" shall be deemed to mean the section 2057 deduction.

16 Words that import the singular number may also be applied to the  
17 plural of persons and things.

18 Words importing the masculine gender only may be extended to  
19 females also.

20 **Sec. 2.** RCW 82.04.2635 and 1998 c 308 s 3 are each amended to read  
21 as follows:

22 (1) Upon every person engaging within this state in the business of  
23 environmental remedial action, the amount of tax with respect to such  
24 business shall be equal to the value of the gross income of the  
25 business multiplied by the rate 0.471 percent.

26 (2) For purposes of this chapter, "environmental remedial action"  
27 means:

28 (a) Those services related to the identification, investigation, or  
29 cleanup arising out of the release or threatened release of hazardous  
30 substances that are conducted under contract with the department of  
31 ecology or under an enforcement order, agreed order, or consent decree  
32 executed by the department of ecology, or those services, when  
33 evaluated as a whole, that are the substantial equivalent of a  
34 department of ecology-conducted or supervised remedial action under the  
35 model toxics control act, chapter 70.105D RCW; or

36 (b) Those services related to the identification, investigation, or  
37 cleanup of a facility that are conducted under contract with the United  
38 States environmental protection agency or under an order or consent

1 decree executed by the United States environmental protection agency,  
2 or that are consistent with the national contingency plan adopted under  
3 the comprehensive environmental response compensation and liability  
4 act, 42 U.S.C. Sec. 9605 as it exists on July 1, 1998, and those  
5 services are conducted at facilities that are included on the national  
6 priorities list adopted under 42 U.S.C. Sec. 9605 as it exists on July  
7 1, 1998, or at facilities subject to a removal action authorized under  
8 42 U.S.C. Sec. 9604 as it exists on July 1, 1998.

9 (3) A site is eligible for environmental remedial action upon  
10 submittal, via certified mail to the department of ecology and the  
11 department of revenue, of the following:

12 (a) A certification from the owner, the department of ecology, or  
13 the United States environmental protection agency, containing the  
14 following information:

15 (i) The location of the site, shown on a map and identified by  
16 parcel number or numbers and street address;

17 (ii) The name and address and daytime phone number of a contact  
18 person;

19 (iii) A statement that the proposed environmental remedial actions  
20 will be conducted by the department of ecology or its authorized  
21 contractor under chapter 70.105D RCW or will be substantially  
22 equivalent to a department of ecology-conducted or supervised remedial  
23 action under the model toxics control act, chapter 70.105D RCW, or will  
24 be conducted by the United States environmental protection agency or  
25 its authorized contractor or will be consistent with the national  
26 contingency plan under 42 U.S.C. Sec. 9605 as it exists on July 1,  
27 1998; and

28 (iv) A description of the proposed environmental remedial actions  
29 to be taken; and

30 (b)(i) A certification from a certified underground storage tank  
31 service supervisor as authorized in chapter 90.76 RCW, from a  
32 professional engineer licensed in the state of Washington, or from an  
33 environmental professional who subscribes to a code of professional  
34 responsibility administered by a recognized organization representing  
35 such professions containing the following information:

36 (A) Confirmation that an environmental remedial action as defined  
37 in this section is to be conducted at the site;

1 (B) The location of the site, shown on a map and identified by  
2 parcel number or numbers and street address, and the approximate  
3 location of the proposed environmental remedial action; and

4 (C) The name, address, telephone number, and uniform business  
5 identifier of the person providing the certification; or

6 (ii) If applicable to the site, a copy of an enforcement order,  
7 agreed order, or consent decree executed by the department of ecology  
8 or the United States environmental protection agency.

9 (4) The department of revenue shall respond in writing to the owner  
10 within thirty days confirming receipt of the certification, or  
11 certifications, of eligibility. Under RCW 82.32.330(3)(m),  
12 certification is subject to disclosure and copies may be obtained from  
13 the department upon request. The request shall be in writing and shall  
14 identify the site by county and parcel number or numbers.

15 (5) The owner shall provide a copy of the confirmation from the  
16 department of revenue to each person who renders environmental remedial  
17 action at the site. Each person who renders such action shall  
18 separately state the charges for labor and services associated with the  
19 environmental remedial action.

20 (6) Upon completion of the environmental remedial action, the owner  
21 shall submit to the department of ecology a report documenting the  
22 environmental remedial actions conducted at the site and documenting  
23 compliance with the requirements of chapter 70.105D RCW.

24 (7) In addition to any other penalties, a person who files a  
25 certificate with the department of ecology or the department of revenue  
26 that contains falsehoods or misrepresentations are subject to penalties  
27 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a  
28 person who improperly reports the person's tax class shall be assessed  
29 a penalty of fifty percent of the tax due, in addition to other taxes  
30 or penalties, together with interest. The department of revenue shall  
31 waive the penalty imposed under this section if it finds that the  
32 falsehoods or misrepresentations or improper reporting of the tax  
33 classification was due to circumstances beyond the control of the  
34 person.

35 (8) This section expires July 1, 2003.

36 **Sec. 3.** RCW 82.04.2907 and 1998 c 331 s 1 are each amended to read  
37 as follows:

1       Upon every person engaging within this state in the business of  
2 receiving income from royalties or charges in the nature of royalties  
3 for the granting of intangible rights, such as copyrights, licenses,  
4 patents, or franchise fees, the amount of tax with respect to such  
5 business shall be equal to the gross income from royalties or charges  
6 in the nature of royalties from the business multiplied by the rate of  
7 0.484 percent.

8       "Royalties" means compensation for the use of intangible property,  
9 such as copyrights, patents, licenses, franchises, trademarks, trade  
10 names, and similar items. It does not include compensation for any  
11 natural resource or licensing of canned software to the end user.

12       **Sec. 4.** RCW 82.08.0287 and 1996 c 244 s 4 are each amended to read  
13 as follows:

14       The tax imposed by this chapter shall not apply to sales of  
15 passenger motor vehicles which are to be used for commuter ride sharing  
16 or ride sharing for persons with special transportation needs, as  
17 defined in RCW 46.74.010, if the vehicles are used as ride-sharing  
18 vehicles ((are exempt under RCW 82.44.015)) for thirty-six consecutive  
19 months beginning ~~((within thirty days of application for exemption~~  
20 ~~under this section. If used as a ride sharing vehicle for less than~~  
21 ~~thirty six consecutive months, the registered owner of one of these~~  
22 ~~vehicles shall notify the department of revenue upon termination of~~  
23 ~~primary use of the vehicle as a ride sharing vehicle and is liable for~~  
24 ~~the tax imposed by this chapter))~~ from the date of purchase.

25       To qualify for the tax exemption, those passenger motor vehicles  
26 with five or six passengers, including the driver, used for commuter  
27 ride-sharing, must be operated either within the state's eight largest  
28 counties that are required to develop commute trip reduction plans as  
29 directed by chapter 70.94 RCW or in other counties, or cities and towns  
30 within those counties, that elect to adopt and implement a commute trip  
31 reduction plan. Additionally at least one of the following conditions  
32 must apply:     (1) The vehicle must be operated by a public  
33 transportation agency for the general public; or (2) the vehicle must  
34 be used by a major employer, as defined in RCW 70.94.524 as an element  
35 of its commute trip reduction program for their employees; or (3) the  
36 vehicle must be owned and operated by individual employees and must be  
37 registered either with the employer as part of its commute trip  
38 reduction program or with a public transportation agency serving the



1 area where the employees live or work. Individual employee owned and  
2 operated motor vehicles will require certification that the vehicle is  
3 registered with a major employer or a public transportation agency.  
4 Major employers who own and operate motor vehicles for their employees  
5 must certify that the commuter ride-sharing arrangement conforms to a  
6 carpool/vanpool element contained within their commute trip reduction  
7 program.

8 **Sec. 5.** RCW 82.12.0282 and 1999 c 358 s 11 are each amended to  
9 read as follows:

10 The tax imposed by this chapter shall not apply with respect to the  
11 use of passenger motor vehicles used as ride-sharing vehicles by not  
12 less than five persons, including the driver, with a gross vehicle  
13 weight not to exceed 10,000 pounds where the primary usage is for  
14 commuter ride-sharing, as defined in RCW 46.74.010, by not less than  
15 four persons including the driver when at least two of those persons  
16 are confined to wheelchairs when riding, or passenger motor vehicles  
17 where the primary usage is for ride-sharing for persons with special  
18 transportation needs, as defined in RCW 46.74.010, if the vehicles are  
19 (~~exempt under RCW 82.44.015~~) used as ride-sharing vehicles for  
20 thirty-six consecutive months beginning (~~within thirty days of~~  
21 ~~application for exemption under this section. If used as a ride-~~  
22 ~~sharing vehicle for less than thirty six consecutive months, the~~  
23 ~~registered owner of one of these vehicles shall notify the department~~  
24 ~~of revenue upon termination of primary use of the vehicle as a ride-~~  
25 ~~sharing vehicle and is liable for the tax imposed by this chapter))  
26 with the date of first use.~~

27 To qualify for the tax exemption, those passenger motor vehicles  
28 with five or six passengers, including the driver, used for commuter  
29 ride-sharing, must be operated either within the state's eight largest  
30 counties that are required to develop commute trip reduction plans as  
31 directed by chapter 70.94 RCW or in other counties, or cities and towns  
32 within those counties, that elect to adopt and implement a commute trip  
33 reduction plan. Additionally at least one of the following conditions  
34 must apply: (1) The vehicle must be operated by a public  
35 transportation agency for the general public; or (2) the vehicle must  
36 be used by a major employer, as defined in RCW 70.94.524 as an element  
37 of its commute trip reduction program for their employees; or (3) the  
38 vehicle must be owned and operated by individual employees and must be

1 registered either with the employer as part of its commute trip  
2 reduction program or with a public transportation agency serving the  
3 area where the employees live or work. Individual employee owned and  
4 operated motor vehicles will require certification that the vehicle is  
5 registered with a major employer or a public transportation agency.  
6 Major employers who own and operate motor vehicles for their employees  
7 must certify that the commuter ride-sharing arrangement conforms to a  
8 carpool/vanpool element contained within their commute trip reduction  
9 program.

10 **Sec. 6.** RCW 82.12.834 and 2000 2nd sp.s. c 4 s 22 are each amended  
11 to read as follows:

12 This chapter does not apply to the use of tangible personal  
13 property by a seller/lessee (~~to a lessor~~) under a sale/leaseback  
14 agreement under RCW 81.112.300 in respect to tangible personal property  
15 used by the seller/lessee, or to the (~~purchase amount paid by the~~  
16 ~~lessee~~) use of tangible personal property under an exercise of an  
17 option to purchase at the end of the lease term, but only if the  
18 seller/lessee previously paid any tax otherwise due under this chapter  
19 or chapter 82.08 RCW at the time of acquisition of the tangible  
20 personal property.

21 **Sec. 7.** RCW 82.14.055 and 2000 c 104 s 2 are each amended to read  
22 as follows:

23 (1) Except as provided in subsection (2) of this section, a local  
24 sales and use tax change shall take effect (a) no sooner than seventy-  
25 five days after the department receives notice of the change and (b)  
26 only on the first day of January, April, July, or October.

27 (2) In the case of a local sales and use tax that is a credit  
28 against the state sales tax or use tax, a local sales and use tax  
29 change shall take effect (a) no sooner than thirty days after the  
30 department receives notice of the change and (b) only on the first day  
31 of a month.

32 (3) For the purposes of this section, "local sales and use tax  
33 change" means enactment or revision of local sales and use taxes under  
34 this chapter or any other statute, including changes resulting from  
35 referendum or annexation.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 82.16 RCW  
2 to read as follows:

3        The business of collection, receipt, transfer, including  
4 transportation between any locations, storage, or disposal of solid  
5 waste is not subject to this chapter. Any such business activities are  
6 subject to taxation under the classification in RCW 82.04.290(2).  
7 "Solid waste" for purposes of this section is defined in RCW 82.18.010.

8        **Sec. 9.**    RCW 82.27.020 and 1999 c 126 s 3 are each amended to read  
9 as follows:

10        (1) In addition to all other taxes, licenses, or fees provided by  
11 law there is established an excise tax on the commercial possession of  
12 enhanced food fish as provided in this chapter. The tax is levied upon  
13 and shall be collected from the owner of the enhanced food fish whose  
14 possession constitutes the taxable event. The taxable event is the  
15 first possession in Washington by an owner after the enhanced food fish  
16 has been landed. Processing and handling of enhanced food fish by a  
17 person who is not the owner is not a taxable event to the processor or  
18 handler.

19        (2) A person in possession of enhanced food fish and liable to this  
20 tax may deduct from the price paid to the person from which the  
21 enhanced food fish (except oysters) are purchased an amount equal to a  
22 tax at one-half the rate levied in this section upon these products.

23        (3) The measure of the tax is the value of the enhanced food fish  
24 at the point of landing.

25        (4) The tax shall be equal to the measure of the tax multiplied by  
26 the rates for enhanced food fish as follows:

27        (a) Chinook, coho, and chum salmon and anadromous game fish: Five  
28 and twenty-five one-hundredths percent;

29        (b) Pink and sockeye salmon: Three and fifteen one-hundredths  
30 percent;

31        (c) Other food fish and shellfish, except oysters, sea urchins, and  
32 sea cucumbers: Two and one-tenth percent;

33        (d) Oysters: Eight one-hundredths of one percent;

34        (e) Sea urchins: Four and six-tenths percent through December 31,  
35 2005, and two and one-tenth percent thereafter; and

36        (f) Sea cucumbers: Four and six-tenths percent through December  
37 31, 2005, and two and one-tenth percent thereafter.

1 (5) An additional tax is imposed equal to the rate specified in RCW  
2 82.02.030 multiplied by the tax payable under subsection (4) of this  
3 section.

4 **Sec. 10.** RCW 82.32.410 and 1997 c 409 s 211 are each amended to  
5 read as follows:

6 (1) The director may designate certain written determinations as  
7 precedents.

8 (a) By rule adopted pursuant to chapter 34.05 RCW, the director  
9 shall adopt criteria which he or she shall use to decide whether a  
10 determination is precedential. These criteria shall include, but not  
11 be limited to, whether the determination clarifies an unsettled  
12 interpretation of Title 82 RCW or where the determination modifies or  
13 clarifies an earlier interpretation.

14 (b) Written determinations designated as precedents by the director  
15 shall be (~~indexed by subject matter. The determinations and indexes~~  
16 ~~shall be~~) made available for public inspection and shall be published  
17 by the department.

18 (c) The department shall disclose any written determination upon  
19 which it relies to support any assessment of tax, interest, or penalty  
20 against such taxpayer, after making the deletions provided by  
21 subsection (2) of this section.

22 (2) Before making a written determination available for public  
23 inspection under subsection (1) of this section, the department shall  
24 delete:

25 (a) The names, addresses, and other identifying details of the  
26 person to whom the written determination pertains and of another person  
27 identified in the written determination; and

28 (b) Information the disclosure of which is specifically prohibited  
29 by any statute applicable to the department of revenue, and the  
30 department may also delete other information exempted from disclosure  
31 by chapter 42.17 RCW or any other statute applicable to the department  
32 of revenue.

33 **Sec. 11.** RCW 82.32.430 and 2000 c 104 s 4 are each amended to read  
34 as follows:

35 A person who collects and remits sales or use tax to the department  
36 and who calculates the tax using geographic information system  
37 technology developed and provided by the department shall be held

1 harmless and is not liable for the difference in amount due nor subject  
2 to penalties or interest in regards to rate calculation errors  
3 resulting from the proper use of such technology.

4 **Sec. 12.** RCW 82.62.010 and 1999 sp.s. c 9 s 3 are each amended to  
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) "Applicant" means a person applying for a tax credit under this  
9 chapter.

10 (2) "Department" means the department of revenue.

11 (3) "Eligible area" means an area as defined in RCW 82.60.020.

12 (4)(a) "Eligible business project" means manufacturing or research  
13 and development activities which are conducted by an applicant in an  
14 eligible area at a specific facility, provided the applicant's average  
15 full-time qualified employment positions at the specific facility will  
16 be at least fifteen percent greater in the year for which the credit is  
17 being sought than the applicant's average full-time qualified  
18 employment positions at the same facility in the immediately preceding  
19 year.

20 (b) "Eligible business project" does not include any portion of a  
21 business project undertaken by a light and power business as defined in  
22 RCW 82.16.010(5) or that portion of a business project creating  
23 qualified full-time employment positions outside an eligible area (~~or~~  
24 ~~those recipients of a sales tax deferral under chapter 82.61 RCW~~)).

25 (5) "Manufacturing" means the same as defined in RCW 82.04.120.  
26 "Manufacturing" also includes computer programming, the production of  
27 computer software, and other computer-related services, and the  
28 activities performed by research and development laboratories and  
29 commercial testing laboratories.

30 (6) "Person" has the meaning given in RCW 82.04.030.

31 (7) "Qualified employment position" means a permanent full-time  
32 employee employed in the eligible business project during the entire  
33 tax year.

34 (8) "Tax year" means the calendar year in which taxes are due.

35 (9) "Recipient" means a person receiving tax credits under this  
36 chapter.

37 (10) "Research and development" means the development, refinement,  
38 testing, marketing, and commercialization of a product, service, or

1 process before commercial sales have begun. As used in this  
2 subsection, "commercial sales" excludes sales of prototypes or sales  
3 for market testing if the total gross receipts from such sales of the  
4 product, service, or process do not exceed one million dollars.

5 **Sec. 13.** RCW 82.62.030 and 1999 c 164 s 306 are each amended to  
6 read as follows:

7 (1) A person shall be allowed a credit against the tax due under  
8 chapter 82.04 RCW as provided in this section. The credit shall equal:

9 (a) Four thousand dollars for each qualified employment position with  
10 wages and benefits greater than forty thousand dollars annually that is  
11 directly created in an eligible business and (b) two thousand dollars  
12 for each qualified employment position with wages and benefits less  
13 than or equal to forty thousand dollars annually that is directly  
14 created in an eligible business.

15 (2) The department shall keep a running total of all credits  
16 ~~((granted))~~ allowed under this chapter during each fiscal year. The  
17 department shall not allow any credits which would cause the  
18 ~~((tabulation))~~ total to exceed seven million five hundred thousand  
19 dollars in any fiscal year. If all or part of an application for  
20 credit is disallowed under this subsection, the disallowed portion  
21 shall be carried over ~~((for approval))~~ to the next fiscal year.  
22 However, the ~~((applicant's))~~ carryover into the next fiscal year is  
23 only permitted ~~((if))~~ to the extent that the ~~((tabulation))~~ cap for the  
24 next fiscal year ~~((does))~~ is not ~~((exceed the cap for that fiscal year~~  
25 ~~as of the date on which the department has disallowed the application))~~  
26 exceeded.

27 (3) No recipient may use the tax credits to decertify a union or to  
28 displace existing jobs in any community in the state.

29 (4) ~~((No recipient may receive a tax credit on taxes which have not~~  
30 ~~been paid during the taxable year))~~ The credit may be used against any  
31 tax due under chapter 82.04 RCW, and may be carried over until used.  
32 No refunds may be granted for credits under this section.

33 **Sec. 14.** RCW 82.62.050 and 1986 c 116 s 18 are each amended to  
34 read as follows:

35 (1) Each recipient shall submit a report to the department on  
36 ~~((December))~~ January 31st ~~((of each year))~~ following the year the  
37 application for credit was allowed. The report shall contain

1 information, as required by the department, from which the department  
2 may determine whether the recipient is meeting the requirements of this  
3 chapter. If the recipient fails to submit a report or submits an  
4 inadequate report, the department may declare the amount of taxes for  
5 which a credit has been used to be immediately assessed and payable.  
6 The recipient must keep records, such as payroll records showing the  
7 date of hire and employment security reports, to verify eligibility  
8 under this section.

9 (2) If, on the basis of a report under this section or other  
10 information, the department finds that a business project is not  
11 eligible for tax credit under this chapter for reasons other than  
12 failure to create the required number of qualified employment  
13 positions, the amount of taxes for which a credit has been used for the  
14 project shall be immediately due.

15 (3) If, on the basis of a report under this section or other  
16 information, the department finds that a business project has failed to  
17 create the specified number of qualified employment positions, the  
18 department shall assess interest, but not penalties, on the credited  
19 taxes for which a credit has been used for the project. The interest  
20 shall be assessed at the rate provided for delinquent excise taxes,  
21 shall be assessed retroactively to the date of the tax credit, and  
22 shall accrue until the taxes for which a credit has been used are  
23 repaid.

24 **Sec. 15.** RCW 83.100.020 and 1999 c 358 s 19 are each amended to  
25 read as follows:

26 As used in this chapter:

27 (1) "Decedent" means a deceased individual;

28 (2) "Department" means the department of revenue, the director of  
29 that department, or any employee of the department exercising authority  
30 lawfully delegated to him by the director;

31 (3) "Federal credit" means (a) for a transfer, the maximum amount  
32 of the credit for state taxes allowed by section 2011 of the Internal  
33 Revenue Code; and (b) for a generation-skipping transfer, the maximum  
34 amount of the credit for state taxes allowed by section 2604 of the  
35 Internal Revenue Code;

36 (4) "Federal return" means any tax return required by chapter 11 or  
37 13 of the Internal Revenue Code;

1 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11  
2 of the Internal Revenue Code; and (b) for a generation-skipping  
3 transfer, the tax under chapter 13 of the Internal Revenue Code;

4 (6) "Generation-skipping transfer" means a "generation-skipping  
5 transfer" as defined and used in section 2611 of the Internal Revenue  
6 Code;

7 (7) "Gross estate" means "gross estate" as defined and used in  
8 section 2031 of the Internal Revenue Code;

9 (8) "Nonresident" means a decedent who was domiciled outside  
10 Washington at his death;

11 (9) "Person" means any individual, estate, trust, receiver,  
12 cooperative association, club, corporation, company, firm, partnership,  
13 joint venture, syndicate, or other entity and, to the extent permitted  
14 by law, any federal, state, or other governmental unit or subdivision  
15 or agency, department, or instrumentality thereof;

16 (10) "Person required to file the federal return" means any person  
17 required to file a return required by chapter 11 or 13 of the Internal  
18 Revenue Code, such as the personal representative of an estate; or a  
19 transferor, trustee, or beneficiary of a generation-skipping transfer;  
20 or a qualified heir with respect to qualified real property, as defined  
21 and used in section 2032A(c) of the Internal Revenue Code;

22 (11) "Property" means (a) for a transfer, property included in the  
23 gross estate; and (b) for a generation-skipping transfer, all real and  
24 personal property subject to the federal tax;

25 (12) "Resident" means a decedent who was domiciled in Washington at  
26 time of death;

27 (13) "Transfer" means "transfer" as used in section 2001 of the  
28 Internal Revenue Code, or a disposition or cessation of qualified use  
29 as defined and used in section 2032A(c) of the Internal Revenue Code;

30 (14) "Trust" means "trust" under Washington law and any arrangement  
31 described in section 2652 of the Internal Revenue Code; and

32 (15) "Internal Revenue Code" means, for the purposes of this  
33 chapter and RCW 83.110.010, the United States Internal Revenue Code of  
34 1986, as amended or renumbered (~~(en)~~) as of January 1, ((1999)) 2001.

35 NEW SECTION. **Sec. 16.** A new section is added to chapter 84.33 RCW  
36 to read as follows:

37 (1) A purchaser of privately owned timber in an amount in excess of  
38 two hundred thousand board feet in a voluntary sale made in the



1 ordinary course of business shall, on or before the last day of the  
2 month following the purchase of the timber, report the particulars of  
3 the purchase to the department.

4 (2) The report required in subsection (1) of this section shall  
5 contain all information relevant to the value of the timber purchased  
6 including, but not limited to, the following, as applicable:  
7 Purchaser's name and address, sale date, termination date in sale  
8 agreement, total sale price, total acreage involved in the sale, net  
9 volume of timber purchased, legal description of the area involved in  
10 the sale, road construction or improvements required or completed,  
11 timber cruise data, and timber thinning data. A report may be  
12 submitted in any reasonable form or, at the purchaser's option, by  
13 submitting relevant excerpts of the timber sales contract. A purchaser  
14 may comply by submitting the information in the following form:

15 Purchaser's name: . . . . .  
16 Purchaser's address: . . . . .  
17 Sale date: . . . . .  
18 Termination date: . . . . .  
19 Total sale price: . . . . .  
20 Total acreage involved: . . . . .  
21 Net volume of timber purchased: . . . . .  
22 Legal description of sale area: . . . . .  
23 Property improvements: . . . . .  
24 Timber cruise data: . . . . .  
25 Timber thinning data: . . . . .

26 (3) A purchaser of privately owned timber involved in a purchase  
27 described in subsection (1) of this section who fails to report a  
28 purchase as required may be liable for a penalty of two hundred fifty  
29 dollars for each failure to report, as determined by the department.

30 (4) This section expires July 1, 2004.

31 **Sec. 17.** RCW 84.33.200 and 1998 c 245 s 170 are each amended to  
32 read as follows:

33 (1) The legislature shall review the system of distribution and  
34 allocation of all timber excise tax revenues in January 1975 and each  
35 year thereafter to provide a uniform and equitable distribution and  
36 allocation of such revenues to the state and local taxing districts.

1 (2) In order to allow legislative review of the rules to be adopted  
2 by the department of revenue establishing the stumpage values provided  
3 for in RCW 84.33.091, such rules shall be effective not less than  
4 (~~sixty~~) thirty days after transmitting to the staffs of the senate  
5 and house ways and means committees (or their successor committees) the  
6 same proposed rules as have been previously filed with the office of  
7 the code reviser pursuant to RCW 34.05.320.

8 (3) The department of revenue and the department of natural  
9 resources shall make available to the revenue committees of the senate  
10 and house of representatives of the state legislature information and  
11 data, as it may be available, pertaining to the status of forest land  
12 grading throughout the state, the collection of timber excise tax  
13 revenues, the distribution and allocation of timber excise tax revenues  
14 to the state and local taxing districts, and any other information as  
15 may be necessary for the proper legislative review and implementation  
16 of the timber excise tax system, and in addition, the departments shall  
17 provide an annual report of such matters in January of each year to  
18 such committees.

19 NEW SECTION. **Sec. 18.** The legislature finds that the application  
20 of the business and occupation tax deduction provided in RCW 82.04.4281  
21 for investment income of persons other than those engaging in banking,  
22 loan, security, or other financial businesses has been the subject of  
23 disagreement between taxpayers and the state. Decisions of the supreme  
24 court have provided some broad guidelines and principles for  
25 interpretation of the deduction provided in RCW 82.04.4281, but these  
26 decisions have not provided the certainty and clarity that is desired  
27 by taxpayers and the state. Therefore, it is the intent of the  
28 legislature to delay change in the manner or extent of taxation of the  
29 investment income until definitions or standards can be developed and  
30 enacted by the legislature.

31 \*NEW SECTION. **Sec. 19.** *A new section is added to chapter 82.04*  
32 *RCW to read as follows:*

33 *(1) The department of revenue shall not assess nor impose business*  
34 *and occupation tax on investment income of persons engaging in business*  
35 *activities of a character that have not previously been determined by*  
36 *the department to be an other financial business under RCW 82.04.4281*  
37 *through:*

1 (a) A final decision of a court of record. However, this  
2 subsection shall not be construed to deny the deduction to any person  
3 other than the specific taxpayer covered in the court's decision;

4 (b) Excise tax advisories published prior to January 1, 2001; or

5 (c) Rulings or determinations issued by the department of revenue  
6 to a specific taxpayer prior to January 1, 2001. However, this  
7 subsection shall not be construed to deny the deduction to any person  
8 other than the specific taxpayer covered in the ruling or  
9 determination.

10 (2) Nothing in this act shall be construed to prohibit the  
11 department of revenue from granting the deduction by means of  
12 revocation of previous determinations set forth in subsection (1)(a),  
13 (b), or (c) of this section.

14 (3) This section expires July 1, 2002.

15 \*Sec. 19 was vetoed. See message at end of chapter.

16 NEW SECTION. **Sec. 20.** The department of revenue shall report to  
17 the fiscal committees of the legislature by November 30, 2001, on the  
18 progress made in working with affected businesses on potential  
19 amendments to RCW 82.04.4281 which would clarify the application of RCW  
20 82.04.4281 to other financial businesses.

21 NEW SECTION. **Sec. 21.** The code reviser shall place cross-  
22 reference sections to RCW 82.14.055 and 82.32.430 in chapters 67.28 and  
23 67.40 RCW.

24 NEW SECTION. **Sec. 22.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 July 1, 2001.

Passed the House April 17, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 15, 2001, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 2001.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 19,  
3 House Bill No. 1361 entitled:

4 "AN ACT Relating to simplifying excise tax application and  
5 administration;"

1 House Bill No. 1361 was introduced as the Department of Revenue's  
2 annual housekeeping bill. It makes several technical corrections and  
3 clarifications to the law implemented by the Department. However, it  
4 was amended to include sections 18 and 19, provisions that affect the  
5 Business & Occupation (B&O) tax treatment of money earned from  
6 investments by businesses other than banks, loan, security or other  
7 financial businesses.

8 Section 19 of the bill would have implemented the intent expressed  
9 in section 18, which is to delay any change in the manner or extent of  
10 taxation of certain investment income as a result of the recent  
11 Washington Supreme Court decision, *Simpson Investment Co. v. Department*  
12 *of Revenue*. However, parties on both sides of the discussion agree  
13 that section 19 is clearly unconstitutional. Section 19 would require  
14 the Department to treat similarly situated taxpayers differently,  
15 contrary to principles of sound tax administration and the equal  
16 protection clauses of the state and federal constitutions. Also, the  
17 fiscal cost of a successful challenge would be much greater than the  
18 legislature assumed when it enacted this bill.

19 I fully support the goals inherent in section 19 of this bill.  
20 However, we should not make tax policy or administrative changes until  
21 there has been a thorough evaluation of the implications of the  
22 Washington Supreme Court's ruling on the affected parties.

23 I have directed the Department to adhere to the spirit of section  
24 19 and to not change or expand the application of the law to include  
25 activities that heretofore have not been made subject to the tax. The  
26 Department will continue to apply pre-*Simpson Investment Co.* policies  
27 and interpretations with respect to RCW 82.04.4281. I have further  
28 directed the Department to work closely with all affected parties to  
29 develop a suitable, constitutional proposal that can be considered by  
30 the legislature in 2002.

31 The Director has formed a task force including representatives of  
32 Frank Russell Co., Microsoft, Washington Mutual Bank, Safeco, Allied  
33 Daily Newspapers, and Eagle River Partners, as well as Arthur Anderson,  
34 Perkins Coie, Davis Wright Tremaine, Stoel Rives, the Association of  
35 Washington Business and the Washington State Bar Association on behalf  
36 of clients and general interests. I fully anticipate that this group,  
37 working cooperatively with the Department, will be able to reach a  
38 consensus.

39 It is important that actions of the legislative and executive  
40 branches of government not result in actual or perceived damage to our  
41 business climate. The business community is understandably concerned  
42 about the implications of the *Simpson Investment Co.* case. However, I  
43 cannot in good conscience sign into a law a provision that is clearly  
44 unconstitutional and unfair to some businesses. Additionally, I  
45 reiterate that the Department will continue to apply only pre-*Simpson*  
46 *Investment Co.* policies and interpretations with respect to RCW  
47 82.04.4281.

48 For these reasons, I have vetoed section 19 of House Bill No. 1361.

49 With the exception of section 19, House Bill No. 1361 is approved."