
SENATE BILL 6746

State of Washington 59th Legislature 2006 Regular Session

By Senators Kohl-Welles, Poulsen, Pridemore, Thibaudeau and Kline

Read first time 01/20/2006. Referred to Committee on Ways & Means.

1 AN ACT Relating to the excise taxation of petroleum businesses;
2 amending RCW 82.03.130 and 82.03.140; adding a new title to the Revised
3 Code of Washington to be codified as Title 82A RCW; creating a new
4 section; prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds
7 that Washington citizens and businesses are paying historically high
8 prices for gasoline while the major oil companies are reaping windfall
9 profits. As a result, tens of millions of dollars are being taken from
10 the budgets of families and businesses. The legislature intends to
11 reverse this economic injustice by developing a state windfall profits
12 tax. This tax will create an incentive for major oil companies to keep
13 retail gasoline prices at historically reasonable levels and a
14 disincentive to increase prices to gain windfall profits. If the major
15 oil companies are unresponsive to this incentive, the tax will generate
16 substantial revenue which can be used to partially offset the adverse
17 effects of high gasoline prices by providing additional funding for
18 public goods and services that are linked to the current costs of
19 energy and/or the development of renewable in-state energy resources.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
2 requires otherwise, the definitions in this section apply throughout
3 this title. Except as provided in this section, any term used in this
4 title has the same meaning as when used in a comparable context in the
5 internal revenue code.

6 (1) "Affiliated corporation" means a corporation that is a member
7 of a group of two or more corporations with a common owner or owners,
8 either corporate or noncorporate, when more than fifty percent of the
9 voting stock of each member corporation is directly or indirectly owned
10 by the common owner or owners or by one or more of the member
11 corporations.

12 (2) "Business activity" means any activity engaged in with the
13 object of gain, benefit, or advantage to the taxpayer or to another
14 person or class, directly or indirectly.

15 (3) "Corporation" means any corporation as defined by the laws of
16 this state or organization of any kind treated as a corporation for tax
17 purposes under the laws of this state, wherever located, which if it
18 were doing business in this state would be a taxpayer. The business
19 conducted by a partnership which is directly or indirectly held by a
20 corporation is considered the business of the corporation to the extent
21 of the corporation's distributive share of the partnership income,
22 inclusive of guaranteed payments to the extent prescribed by rule.

23 (4) "Combined group" means the group of all persons whose income
24 and apportionment factors are required to be taken into account under
25 section 9 (1) or (2) of this act in determining the taxpayer's share of
26 the net business income or loss apportionable to this state.

27 (5) "Department" means the department of revenue.

28 (6) "Gasoline price" means the average of the retail gasoline
29 prices published during the taxable year for the west coast less
30 California, as published by the federal energy information
31 administration or its successor agency.

32 (7) "Internal revenue code" means Title 26 of the United States
33 Code of 1986, and amendments thereto, as existing on January 1, 2006.

34 (8) "Person" means any individual, firm, partnership, general
35 partner of a partnership, limited liability company, registered limited
36 liability partnership, foreign limited liability partnership,
37 association, corporation (whether or not the corporation is, or would
38 be if doing business in this state, subject to tax under this title),

1 company, syndicate, estate, trust, business trust, trustee, trustee in
2 bankruptcy, receiver, executor, administrator, assignee, or
3 organization of any kind.

4 (9) "Partnership" means a general or limited partnership, or
5 organization of any kind treated as a partnership for business purposes
6 under the laws of this state.

7 (10) "Petroleum business" means a corporation engaged in any of the
8 following activities: Exploration, production, refining,
9 manufacturing, processing, transportation, and marketing of oil and gas
10 or any commodity, product, or feedstock derived from oil or gas,
11 including petrochemicals.

12 (11) "Petroleum refining" means refining crude petroleum into
13 refined petroleum by fractionation, straight distillation of crude oil,
14 cracking, or similar methods.

15 (12) "Tax haven" means a jurisdiction that, during the tax year in
16 question:

17 (a) Is identified by the organization for economic cooperation and
18 development (OECD) as a tax haven or as having a harmful preferential
19 tax regime; or

20 (b) Exhibits the following characteristics established by the OECD
21 in its 1998 report entitled harmful tax competition: An emerging
22 global issue as indicative of a tax haven or as a jurisdiction having
23 a harmful preferential tax regime, regardless of whether it is listed
24 by the OECD as an uncooperative tax haven:

25 (i) Has no or nominal effective tax on the relevant income; and

26 (ii)(A) Has laws or practices that prevent effective exchange of
27 information for tax purposes with other governments on taxpayers
28 benefiting from the tax regime;

29 (B) Has tax regime which lacks transparency. A tax regime lacks
30 transparency if the details of legislative, legal, or administrative
31 provisions are not open and apparent or are not consistently applied
32 among similarly situated taxpayers, or if the information needed by tax
33 authorities to determine a taxpayer's correct tax liability, such as
34 accounting records and underlying documentation, is not adequately
35 available;

36 (C) Facilitates the establishment of foreign-owned entities without
37 the need for a local substantive presence or prohibits these entities
38 from having any commercial impact on the local economy;

1 (D) Explicitly or implicitly excludes the jurisdiction's resident
2 taxpayers from taking advantage of the tax regime's benefits or
3 prohibits enterprises that benefit from the regime from operating in
4 the jurisdiction's domestic market; or

5 (E) Has created a tax regime which is favorable for tax avoidance,
6 based upon an overall assessment of relevant factors, including whether
7 the jurisdiction has a significant untaxed offshore financial/other
8 services sector relative to its overall economy.

9 (13) "Taxable income" means federal taxable income after making the
10 additions, subtractions, apportionments, and allocations provided under
11 this title.

12 (14) "Taxable year" means the taxpayer's taxable year as defined
13 under the internal revenue code.

14 (15) "Taxpayer" means a corporation receiving income subject to tax
15 under this title.

16 (16) "Unitary business" means a single economic enterprise that is
17 made up either of separate parts of a single business entity or of a
18 commonly controlled group of business entities that are sufficiently
19 interdependent, integrated, and interrelated through their activities
20 so as to provide a synergy and mutual benefit that produces a sharing
21 or exchange of value among them and a significant flow of value to the
22 separate parts. Any business conducted by a partnership shall be
23 treated as conducted by its partners, whether directly held or
24 indirectly held through a series of partnerships, to the extent of the
25 partner's distributive share of the partnership's income, regardless of
26 the percentage of the partner's ownership interest or its distributive
27 or any other share of partnership income. A business conducted
28 directly or indirectly by one corporation is unitary with that portion
29 of a business conducted by another corporation through its direct or
30 indirect interest in a partnership if the conditions under this
31 subsection are satisfied.

32 (17) "United States" means the fifty states of the United States,
33 the District of Columbia, and United States' territories and
34 possessions.

35 NEW SECTION. **Sec. 3.** PRIVILEGE TAX IMPOSED. A tax is imposed for
36 each taxable year on the taxable income of each petroleum business for

1 the privilege of engaging in any business activity within this state.
2 The tax is equal to the taxable income multiplied by the rate according
3 to the following table.

4	If the gasoline price is:	The tax rate is:
5	Less than \$1.75	zero
6	Equal to or greater than \$1.75, but less than \$1.85	10%
7	Equal to or greater than \$1.85, but less than \$1.95	12%
8	Equal to or greater than \$1.95, but less than \$2.05	14%
9	Equal to or greater than \$2.05, but less than \$2.15	16%
10	Equal to or greater than \$2.15, but less than \$2.25	18%
11	Equal to or greater than \$2.25, but less than \$2.35	20%
12	Equal to or greater than \$2.35, but less than \$2.45	22%
13	Equal to or greater than \$2.45, but less than \$2.55	24%
14	Equal to or greater than \$2.55, but less than \$2.65	26%
15	Equal to or greater than \$2.65, but less than \$2.75	28%
16	Equal to or greater than \$2.75	30%

17 NEW SECTION. **Sec. 4.** EXEMPTION. The tax imposed under this title
18 does not apply to a corporation if neither the corporation nor any
19 affiliated corporation engages in any petroleum refining within or
20 outside this state during the taxable year or the five preceding years.

21 NEW SECTION. **Sec. 5.** TAXABLE INCOME MODIFICATIONS. In computing
22 taxable income, modifications shall be made to the taxpayer's federal
23 taxable income as required under this section, unless the modification
24 has the effect of duplicating an item of income or deduction.

25 (1) Add amounts that have been deducted in computing federal
26 taxable income to the extent the amounts have been carried over from
27 taxable years ending before the effective date of this section.

28 (2) Add amounts that have been deducted in computing federal
29 taxable income to the extent the amounts have been carried back from
30 future taxable years.

31 (3) Add taxes on or measured by net income that have been deducted
32 under the internal revenue code in computing federal taxable income.

33 (4) Add gross income that has been excluded under section 103 of
34 the internal revenue code in computing federal taxable income, except
35 gross income derived from obligations of the state of Washington or

1 political subdivisions of the state of Washington. However, the amount
2 added under this subsection shall be reduced by any expenses incurred
3 in the production of amounts added under this subsection, to the extent
4 the expenses have not been deducted in computing federal taxable
5 income.

6 (5) Deduct gross income that the state is prohibited from taxing
7 under the Constitution or laws of the United States, to the extent the
8 gross income was included in computing federal taxable income.
9 However, the amount deducted under this subsection shall be reduced by
10 any expenses incurred in the production of amounts subtracted under
11 this subsection, to the extent the expenses have been deducted in
12 computing federal taxable income.

13 (6) Deduct income attributable to activities subject to tax under
14 chapter 82.04 RCW for periods prior to the effective date of this
15 section, to the extent the gross income was included in computing
16 federal taxable income. However, the amount deducted under this
17 subsection shall be reduced by any expenses incurred in the production
18 of such income, to the extent the expenses have been deducted in
19 computing federal taxable income.

20 (7) Deduct income attributable to activities subject to tax under
21 chapter 82.16 RCW, to the extent the gross income was included in
22 computing federal taxable income. However, the amount deducted under
23 this subsection shall be reduced by any expenses incurred in the
24 production of such income to the extent the expenses have been deducted
25 in calculating federal taxable income.

26 (8) Deduct income attributable to insurance business upon which a
27 tax based on gross premiums is paid to the state. However, the amount
28 deducted under this subsection shall be reduced by any expense incurred
29 in the production of such income to the extent the expense has been
30 deducted in calculating federal taxable income.

31 (9) Add amounts upon which an S corporation is subject to tax under
32 subchapter S, chapter 1, subtitle A of the internal revenue code.

33 (10) Add amounts that have been deducted as intangible drilling and
34 development expenses under 26 U.S.C. Sec. 263(c) (internal revenue
35 code) in excess of amounts that would have been deducted had the
36 expenses been capitalized and depreciated.

37 (11) Add amounts deducted on the percentage depletion basis under
38 26 U.S.C. Sec. 613 (internal revenue code) in excess of the amounts

1 that would have been deducted had the expenses been determined using
2 the cost depletion basis under 26 U.S.C. Sec. 612 (internal revenue
3 code).

4 (12) Add amounts deducted as depreciation in excess of the amounts
5 allowable under 26 U.S.C. Sec. 167 (internal revenue code) as that
6 section read on June 30, 1981.

7 NEW SECTION. **Sec. 6.** TAX RETURNS FOR FRACTIONAL YEAR. If the
8 first taxable year of any taxpayer with respect to which a tax is
9 imposed by this title ends before December 31st of the calendar year in
10 which this title becomes effective, referred to in this section as a
11 fractional taxable year, the taxable income for the fractional taxable
12 year shall be the taxpayer's taxable income for the entire taxable
13 year, adjusted by one of the following methods, at the taxpayer's
14 election:

15 (1) The taxable income shall be multiplied by a fraction. The
16 numerator of the fraction is the number of days in the fractional
17 taxable year. The denominator of the fraction is the number of days in
18 the entire taxable year.

19 (2) The taxable income shall be adjusted, in accordance with rules
20 of the department, so as to include only such income and be reduced
21 only by such deductions as can be clearly determined from the permanent
22 records of the taxpayer to be attributable to the fractional taxable
23 year.

24 NEW SECTION. **Sec. 7.** ESTIMATION AGREEMENTS. The department may
25 reasonably estimate the items of business or nonbusiness income of a
26 taxpayer having an office within the state and one or more other states
27 or foreign countries that may be apportioned or allocated to the state
28 and may enter into estimation agreements with such taxpayers for the
29 determination of their liability for the tax imposed by this title.

30 NEW SECTION. **Sec. 8.** APPORTIONMENT AND ALLOCATION OF INCOME. All
31 income shall be apportioned and allocated to this state except income
32 that is apportioned or allocated to another state under RCW 82.56.010.

33 NEW SECTION. **Sec. 9.** COMBINED REPORTING. (1) A taxpayer engaged
34 in a unitary business with one or more other corporations shall file a

1 combined report which includes the income, determined under section 10
2 of this act, and apportionment factors, determined under RCW 82.56.010,
3 of all corporations that are members of the unitary business, and such
4 other information as required by the department.

5 (2) The department may, by rule, require the combined report to
6 include the income and associated apportionment factors of any persons
7 that are not included under subsection (1) of this section, but that
8 are members of a unitary business, in order to reflect proper
9 apportionment of income of entire unitary businesses. Authority to
10 require combination by rule under this subsection includes authority to
11 require combination of persons that are not, or would not be if doing
12 business in this state, subject to tax under this chapter.

13 (a) In addition, if the department determines that the reported
14 income or loss of a taxpayer engaged in a unitary business with any
15 person not included under subsection (1) of this section represents an
16 avoidance or evasion of tax by such taxpayer, the department may, on a
17 case-by-case basis, require all or any part of the income and
18 associated apportionment factors of such person to be included in the
19 taxpayer's combined report.

20 (b) With respect to inclusion of associated apportionment factors
21 under this subsection, the department may require the exclusion of any
22 one or more of the factors, the inclusion of one or more additional
23 factors which will fairly represent the taxpayer's business activity in
24 this state, or the employment of any other method to effectuate a
25 proper reflection of the total amount of income subject to
26 apportionment and an equitable allocation and apportionment of the
27 taxpayer's income.

28 NEW SECTION. **Sec. 10.** DETERMINATION OF TAXABLE INCOME OR LOSS
29 USING COMBINED REPORT. The use of a combined report does not disregard
30 the separate identities of the taxpayer members of the combined group.
31 Each taxpayer member is responsible for tax based on its taxable income
32 or loss apportioned or allocated to this state, which includes, in
33 addition to other types of income, the taxpayer member's apportioned
34 share of business income of the combined group, where business income
35 of the combined group is calculated as a summation of the individual
36 net business incomes of all members of the combined group. A member's

1 net business income is determined by removing all but business income,
2 expense, and loss from that member's total income of the combined
3 group, as provided in this section.

4 (1)(a) Each taxpayer member is responsible for tax based on its
5 taxable income or loss apportioned or allocated to this state, which
6 includes:

7 (i) Its share of any business income apportionable to this state of
8 each of the combined groups of which it is a member, determined under
9 subsection (2) of this section;

10 (ii) Its share of any business income apportionable to this state
11 of a distinct business activity conducted within and without the state
12 wholly by the taxpayer member, determined under RCW 82.56.010;

13 (iii) Its income from a business conducted wholly by the taxpayer
14 member entirely within the state;

15 (iv) Its income sourced to this state from the sale or exchange of
16 capital or assets, and from involuntary conversions, as determined
17 under subsection (3)(a)(vii) of this section, below;

18 (v) Its nonbusiness income or loss allocable to this state,
19 determined under RCW 82.56.010;

20 (vi) Its income or loss allocated or apportioned in an earlier
21 year, required to be taken into account as state source income during
22 the income year, other than a net operating loss; and

23 (vii) Its net operating loss carryover or carryback. If the
24 taxable income computed under this section results in a loss for a
25 taxpayer member of the combined group, that taxpayer member has a state
26 net operating loss. Such net operating loss is applied as a deduction
27 in a prior or subsequent year only if that taxpayer has state source
28 positive net income, whether or not the taxpayer is or was a member of
29 a combined reporting group in the prior or subsequent year.

30 (b) Except where otherwise provided, no tax credit or
31 post-apportionment deduction earned by one member of the group, but not
32 fully used by or allowed to that member, may be used in whole or in
33 part by another member of the group or applied in whole or in part
34 against the total income of the combined group; and a
35 post-apportionment deduction carried over into a subsequent year as to
36 the member that incurred it, and available as a deduction to that
37 member in a subsequent year, will be considered in the computation of

1 the income of that member in the subsequent year, regardless of the
2 composition of that income as apportioned, allocated, or wholly within
3 this state.

4 (2) The taxpayer's share of the business income apportionable to
5 this state of each combined group of which it is a member is the
6 product of:

7 (a) The business income of the combined group, determined under
8 subsection (3) of this section; and

9 (b) The taxpayer member's apportionment percentage, determined
10 under RCW 82.56.010, including in the property, payroll, and sales
11 factor numerators the taxpayer's property, payroll, and sales,
12 respectively, associated with the combined group's unitary business in
13 this state, and including in the denominator the property, payroll, and
14 sales of all members of the combined group, including the taxpayer,
15 which property, payroll, and sales are associated with the combined
16 group's unitary business wherever located. The property, payroll, and
17 sales of a partnership must be included in the determination of the
18 partner's apportionment percentage in proportion to a ratio the
19 numerator of which is the amount of the partner's distributive share of
20 partnership's unitary income included in the income of the combined
21 group in accordance with subsection (3)(b)(iii) of this section and the
22 denominator of which is the amount of the partnership's total unitary
23 income.

24 (3) The business income of a combined group is determined as
25 follows:

26 (a) From the total income of the combined group, determined under
27 (b) of this subsection, subtract any income, and add any expense or
28 loss, other than the business income, expense, or loss of the combined
29 group.

30 (b) Except as otherwise provided, the total income of the combined
31 group is the sum of the incomes, separately determined, of each member
32 of the combined group. The income of each member of the combined group
33 must be determined as follows:

34 (i) For any member incorporated in the United States, or included
35 in a consolidated federal corporate income tax return, the income to be
36 included in the total income of the combined group is the taxable
37 income for the corporation after making appropriate adjustments under
38 section 5 of this act.

1 (ii)(A) For any member not included in (a) of this subsection, the
2 income to be included in the total income of the combined group shall
3 be determined as follows:

4 (I) A profit and loss statement shall be prepared for each foreign
5 branch or corporation in the currency in which the books of account of
6 the branch or corporation are regularly maintained.

7 (II) Adjustments shall be made to the profit and loss statement to
8 conform it to the accounting principles generally accepted in the
9 United States for the preparation of such statements except as modified
10 under this title.

11 (III) Adjustments shall be made to the profit and loss statement to
12 conform it to the tax accounting standards required by the department
13 by rule.

14 (IV) Except as otherwise provided by rule, the profit and loss
15 statement of each member of the combined group, and the apportionment
16 factors related thereto, whether United States or foreign, shall be
17 translated into the currency in which the parent company maintains its
18 books and records.

19 (V) Income apportioned to this state shall be expressed in United
20 States dollars.

21 (B) In lieu of the procedures set forth in (b)(ii)(A) of this
22 subsection, and subject to the determination of the department that it
23 reasonably approximates income, any member not included in (b)(i) of
24 this subsection may determine its income on the basis of the
25 consolidated profit and loss statement which includes the member and
26 which is prepared for filing with the securities and exchange
27 commission by related corporations. If the member is not required to
28 file with the securities and exchange commission, the department may
29 allow the use of the consolidated profit and loss statement prepared
30 for reporting to shareholders and subject to review by an independent
31 auditor. If above statements do not reasonably approximate income as
32 determined by the department, the department may accept those
33 statements with appropriate adjustments to approximate that income.

34 (iii) If a unitary business includes income from a partnership, the
35 income to be included in the total income of the combined group shall
36 be the member of the combined group's direct and indirect distributive
37 share of the partnership's unitary business income.

1 (iv) All dividends paid by one to another of the members of the
2 combined group shall, to the extent those dividends are paid out of the
3 earnings and profits of the unitary business included in the combined
4 report, in the current or an earlier year, be eliminated from the
5 income of the recipient. This provision shall not apply to dividends
6 received from members of the unitary business which are not a part of
7 the combined group.

8 (v) Except as otherwise provided by rule, business income from an
9 intercompany transaction between members of the same combined group
10 shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the
11 occurrence of any of the following events, deferred business income
12 resulting from an intercompany transaction between members of a
13 combined group shall be restored to the income of the seller, and shall
14 be apportioned as business income earned immediately before the event:

15 (A) The object of a deferred intercompany transaction is:

16 (I) Resold by the buyer to an entity that is not a member of the
17 combined group;

18 (II) Resold by the buyer to an entity that is a member of the
19 combined group for use outside the unitary business in which the buyer
20 and seller are engaged; or

21 (III) Converted by the buyer to a use outside the unitary business
22 in which the buyer and seller are engaged; or

23 (B) The buyer and seller are no longer members of the same combined
24 group, regardless of whether the members remain unitary.

25 (vi) A charitable expense incurred by a member of a combined group
26 shall, to the extent allowable as a deduction under internal revenue
27 code section 170, be subtracted first from the business income of the
28 combined group (subject to the income limitations of that section
29 applied to the entire business income of the group), and any remaining
30 amount shall then be treated as a nonbusiness expense allocable to the
31 member that incurred the expense (subject to the income limitations of
32 that section applied to the nonbusiness income of that specific
33 member). Any charitable deduction disallowed under the foregoing rule,
34 but allowed as a carryover deduction in a subsequent year, shall be
35 treated as originally incurred in the subsequent year by the same
36 member, and the rules of this section shall apply in the subsequent
37 year in determining the allowable deduction in that year.

1 (vii) Gain or loss from the sale or exchange of capital assets,
2 property described by internal revenue code section 1231(a)(3), and
3 property subject to an involuntary conversion, shall be removed from
4 the total separate net income of each member of a combined group and
5 shall be apportioned and allocated as follows:

6 (A) For each class of gain or loss (short-term capital, long-term
7 capital, internal revenue code section 1231, and involuntary
8 conversions) all members' business gain and loss for the class shall be
9 combined (without netting between such classes), and each class of net
10 business gain or loss separately apportioned to each member using the
11 member's apportionment percentage determined under subsection (2) of
12 this section.

13 (B) Each taxpayer member shall then net its apportioned business
14 gain or loss for all classes, including any such apportioned business
15 gain and loss from other combined groups, against the taxpayer member's
16 nonbusiness gain and loss for all classes allocated to this state,
17 using the rules of internal revenue code sections 1231 and 1222,
18 without regard to any of the taxpayer member's gains or losses from the
19 sale or exchange of capital assets, internal revenue code section 1231
20 property, and involuntary conversions which are nonbusiness items
21 allocated to another state.

22 (C) Any resulting state source income (or loss, if the loss is not
23 subject to the limitations of internal revenue code section 1211) of a
24 taxpayer member produced by the application of this section shall then
25 be applied to all other state source income or loss of that member.

26 (D) Any resulting state source loss of a member that is subject to
27 the limitations of internal revenue code section 1211 shall be carried
28 forward by that member, and shall be treated as state source short-term
29 capital loss incurred by that member for the year for which the
30 carryover applies.

31 (viii) Any expense of one member of the unitary group which is
32 directly or indirectly attributable to the nonbusiness or exempt income
33 of another member of the unitary group shall be allocated to that other
34 member as corresponding nonbusiness or exempt expense, as appropriate.

35 NEW SECTION. **Sec. 11.** DESIGNATION OF SURETY. As a filing
36 convenience, and without changing the respective liability of the group
37 members, members of a combined reporting group may annually elect to

1 designate one taxpayer member of the combined group to file a single
2 return in the form and manner prescribed by the department, in lieu of
3 filing their own respective returns, provided that the taxpayer
4 designated to file the single return consents to act as surety with
5 respect to the tax liability of all other taxpayers properly included
6 in the combined report, and agrees to act as agent on behalf of those
7 taxpayers for the year of the election for tax matters relating to the
8 combined report for that year. If for any reason the surety is
9 unwilling or unable to perform its responsibilities, tax liability may
10 be assessed against the taxpayer members.

11 NEW SECTION. **Sec. 12.** WATER'S-EDGE ELECTION; INITIATION AND
12 WITHDRAWAL. (1) Taxpayer members of a unitary group that meet the
13 requirements of subsection (2) of this section may elect to determine
14 each of their apportioned shares of the net business income or loss of
15 the combined group under a water's-edge election. Under this election,
16 taxpayer members shall take into account all or a portion of the income
17 and apportionment factors of only the following members otherwise
18 included in the combined group under section 9 of this act, as follows:

19 (a) The entire income and apportionment factors of any member
20 incorporated in the United States or formed under the laws of any
21 state, the District of Columbia, or any territory or possession of the
22 United States;

23 (b) The entire income and apportionment factors of any member,
24 regardless of the place incorporated or formed, if the average of its
25 property, payroll, and sales factors within the United States is twenty
26 percent or more;

27 (c) The entire income and apportionment factors of any member which
28 is a domestic international sales corporation as described in internal
29 revenue code sections 991 to 994, inclusive; a foreign sales
30 corporation as described in internal revenue code sections 921 to 927,
31 inclusive; or any member which is an export trade corporation, as
32 described in internal revenue code sections 970 to 971, inclusive;

33 (d) Any member not described in (a) through (c) of this subsection,
34 inclusive, shall include the portion of its income derived from or
35 attributable to sources within the United States, as determined under
36 the internal revenue code without regard to federal treaties, and its
37 apportionment factors related thereto;

1 (e) Any member that is a "controlled foreign corporation," as
2 defined in internal revenue code section 957, to the extent of the
3 income of that member that is defined in section 952 of subpart F of
4 the internal revenue code ("subpart F income") not excluding lower-tier
5 subsidiaries' distributions of such income which were previously taxed,
6 determined without regard to federal treaties, and the apportionment
7 factors related to that income; any item of income received by a
8 controlled foreign corporation shall be excluded if such income was
9 subject to an effective rate of income tax imposed by a foreign country
10 greater than ninety percent of the maximum rate of tax specified in
11 internal revenue code section 11;

12 (f) Any member that earns more than twenty percent of its income,
13 directly or indirectly, from intangible property or service related
14 activities that are deductible against the business income of other
15 members of the combined group, to the extent of that income and the
16 apportionment factors related thereto; and

17 (g) The entire income and apportionment factors of any member that
18 is doing business in a tax haven, where "doing business in a tax haven"
19 is defined as being engaged in activity sufficient for that tax haven
20 jurisdiction to impose a tax under United States constitutional
21 standards. If the member's business activity within a tax haven is
22 entirely outside the scope of the laws, provisions, and practices that
23 cause the jurisdiction to meet the criteria established in section
24 2(12) of this act, the activity of the member must be treated as not
25 having been conducted in a tax haven.

26 (2)(a) A water's-edge election is effective only if made on a
27 timely filed, original return for a taxable year by every member of the
28 unitary business subject to tax under this title. The department shall
29 develop rules, and rules governing the impact if any, on the scope or
30 application of a water's-edge election, including termination or deemed
31 election, resulting from a change in the composition of the unitary
32 group, the combined group, the taxpayer members, and any other similar
33 change.

34 (b) Such election shall constitute consent to the reasonable
35 production of documents and taking of depositions.

36 (c) In the discretion of the department, a water's-edge election
37 may be disregarded in part or in whole, and the income and
38 apportionment factors of any member of the taxpayer's unitary group may

1 be included in the combined report without regard to the provisions of
2 this section, if any member of the unitary group fails to comply with
3 any provision of this title or if a person otherwise not included in
4 the water's-edge combined group was availed of with a substantial
5 objective of avoiding state income tax.

6 (d) A water's-edge election is binding for and applicable to the
7 tax year it is made and all taxable years thereafter. It may be
8 withdrawn or reinstated after withdrawal, only upon written request
9 for reasonable cause based on extraordinary hardship due to unforeseen
10 changes in state tax statutes, law, or policy, and only with the
11 written permission of the department. If the department grants a
12 withdrawal of election, he or she shall impose reasonable conditions as
13 necessary to prevent the evasion of tax or to clearly reflect income
14 for the election period prior to or after the withdrawal.

15 NEW SECTION. **Sec. 13.** ESTIMATED TAX IMPOSED--DUE DATE OF
16 ESTIMATED TAXES--AMOUNT OF ESTIMATED TAX--UNDERPAYMENT PENALTY. (1)

17 Each taxpayer who is required by the internal revenue code to make
18 payment of estimated taxes shall pay to the department on forms
19 prescribed by the department the estimated taxes due under this title.

20 (2) The provisions of the internal revenue code relating to the
21 determination of reporting periods and due dates of payments of
22 estimated tax apply to the estimated tax payments due under this
23 section.

24 (3) The amount of the estimated tax shall be the annualized tax
25 divided by the number of months in the reporting period. No estimated
26 tax shall be due if the annualized tax is less than five hundred
27 dollars. The provisions of RCW 82.32.050 and 82.32.090 shall apply to
28 underpayments of estimated tax but shall not apply to underpayments if
29 the tax remitted to the department under this title is either ninety
30 percent of the tax shown on the return or one hundred percent of the
31 tax shown on the previous year's tax return.

32 (4) For purposes of this section, the annualized tax is the
33 taxpayer's projected tax liability for the taxable year as computed
34 under section 6654 of the internal revenue code and the regulations
35 thereunder.

1 NEW SECTION. **Sec. 14.** METHOD OF ACCOUNTING. (1) A taxpayer's
2 method of accounting for purposes of the tax imposed under this title
3 shall be the same as the taxpayer's method of accounting for federal
4 income tax purposes. If no method of accounting has been regularly
5 used by a taxpayer for federal income tax purposes or if the method
6 used does not clearly reflect income, tax due under this title shall be
7 computed by a method of accounting that in the opinion of the
8 department fairly reflects income.

9 (2) If a corporation's method of accounting is changed for federal
10 income tax purposes, it shall be similarly changed for purposes of this
11 title.

12 NEW SECTION. **Sec. 15.** CORPORATIONS REQUIRED TO FILE RETURNS. (1)
13 All taxpayers shall file with the department, on forms prescribed by
14 the department, an income tax return for each taxable year. A
15 corporation owing no tax for a taxable year is not required to file a
16 return for that year. Each corporation required to file a return under
17 this title shall, without assessment, notice, or demand, pay any tax
18 due thereon to the department on or before the date fixed for the
19 filing of the return.

20 (2) The department may by rule require that certain taxpayers file,
21 on forms prescribed by the department, informational returns for any
22 period.

23 (3) If an adjustment to a taxpayer's federal return is made by the
24 taxpayer or the internal revenue service, the taxpayer shall, within
25 ninety days of the final determination of the adjustment by the
26 internal revenue service or within thirty days of the filing of a
27 federal return adjusted by the taxpayer, file with the department on
28 forms prescribed by the department, a corrected return reflecting the
29 adjustments as finally determined. The taxpayer shall pay any
30 additional tax due resulting from the finally determined internal
31 revenue service adjustment or a taxpayer adjustment without notice and
32 assessment. The period of limitation for the collection of the
33 additional tax, interest, and penalty due as a result of an adjustment
34 by the taxpayer or a finally determined internal revenue service
35 adjustment shall begin at the later of thirty days following the final
36 determination of the adjustment or the date of the filing of the
37 corrected return.

1 NEW SECTION. **Sec. 16.** DUE DATE FOR FILING A RETURN--EXTENSIONS--
2 INTEREST AND PENALTIES. The due date of a return required to be filed
3 with the department shall be the due date of the federal income tax
4 return or informational return for federal income tax purposes. The
5 department has the authority to grant extensions of times by which
6 returns required to be filed by this title may be submitted. The
7 department also has the authority to grant extensions of time to pay
8 tax with regard to taxes imposed by this title. Interest at the rate
9 as specified in RCW 82.32.050 shall accrue during any extension period
10 and the interest and penalty provisions of chapter 82.32 RCW shall
11 apply to late payments and deficiencies. Notwithstanding the
12 limitation of RCW 82.32.090, in the case of the late filing of an
13 informational return, there shall be imposed a penalty the amount of
14 which shall be established by the department by rule. The penalty
15 shall not exceed fifty dollars per month for a maximum of ten months.
16 RCW 82.32.105 shall apply to this section.

17 NEW SECTION. **Sec. 17.** RECORDS--RETURNS. (1) Every taxpayer
18 required to deduct and withhold the tax imposed under this title shall
19 keep records, render statements, make returns, file reports, and
20 perform other acts as the department requires by rule. Each return
21 shall be made under penalty of perjury and on forms prescribed by the
22 department. The department may require other statements and reports be
23 made under penalty of perjury and on forms prescribed by the
24 department. The department may require any taxpayer required to deduct
25 and withhold the tax imposed under this title to furnish to the
26 department a correct copy of any return or document that the taxpayer
27 has filed with the internal revenue service or received from the
28 internal revenue service.

29 (2) All books and records and other papers and documents required
30 to be kept under this title are subject to inspection by the department
31 at all times during business hours of the day.

32 NEW SECTION. **Sec. 18.** PROVISIONS OF INTERNAL REVENUE CODE
33 CONTROL. (1) To the extent possible without being inconsistent with
34 this title, all of the provisions of the internal revenue code relating
35 to the following subjects apply to the taxes imposed under this title:

36 (a) Liability of transferees;

1 (b) Time and manner of making returns, extensions of time for
2 filing returns, verification of returns, and the time when a return is
3 deemed filed.

4 (2) The department by rule may provide modifications and exceptions
5 to the provisions in subsection (1) of this section, if reasonably
6 necessary to facilitate the prompt, efficient, and equitable collection
7 of tax under this title.

8 NEW SECTION. **Sec. 19.** ADMINISTRATIVE PROVISIONS. Chapter 82.32
9 RCW applies to the taxes imposed in this chapter.

10 NEW SECTION. **Sec. 20.** RULES. The department may adopt rules
11 under chapter 34.05 RCW for the administration and enforcement of this
12 title. The rules, to the extent possible without being inconsistent
13 with this title, shall follow the internal revenue code and the
14 regulations and rulings of the United States department of the treasury
15 with respect to the federal income tax. The department may adopt as a
16 part of these rules any portions of the internal revenue code and
17 treasury department regulations and rulings, in whole or in part.

18 NEW SECTION. **Sec. 21.** CRIMES. (1) Any person who knowingly
19 attempts to evade the tax imposed under this title or payment thereof
20 is guilty of a class C felony as provided in chapter 9A.20 RCW.

21 (2) Any person required to collect tax imposed under this title who
22 knowingly fails to collect, truthfully account for, or pay over the tax
23 is guilty of a class C felony as provided in chapter 9A.20 RCW.

24 (3) Any person who knowingly fails to pay tax, pay estimated tax,
25 make returns, keep records, or supply information, as required under
26 this title, is guilty of a gross misdemeanor as provided in chapter
27 9A.20 RCW.

28 **Sec. 22.** RCW 82.03.130 and 2005 c 253 s 7 are each amended to read
29 as follows:

30 (1) The board shall have jurisdiction to decide the following types
31 of appeals:

32 (a) Appeals taken pursuant to RCW 82.03.190.

33 (b) Appeals from a county board of equalization pursuant to RCW
34 84.08.130.

1 (c) Appeals by an assessor or landowner from an order of the
2 director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if
3 filed with the board of tax appeals within thirty days after the
4 mailing of the order, the right to such an appeal being hereby
5 established.

6 (d) Appeals by an assessor or owner of an intercounty public
7 utility or private car company from determinations by the director of
8 revenue of equalized assessed valuation of property and the
9 apportionment thereof to a county made pursuant to chapter 84.12 and
10 84.16 RCW, if filed with the board of tax appeals within thirty days
11 after mailing of the determination, the right to such appeal being
12 hereby established.

13 (e) Appeals by an assessor, landowner, or owner of an intercounty
14 public utility or private car company from a determination of any
15 county indicated ratio for such county compiled by the department of
16 revenue pursuant to RCW 84.48.075: PROVIDED, That

17 (i) Said appeal be filed after review of the ratio under RCW
18 84.48.075(3) and not later than fifteen days after the mailing of the
19 certification; and

20 (ii) The hearing before the board shall be expeditiously held in
21 accordance with rules prescribed by the board and shall take precedence
22 over all matters of the same character.

23 (f) Appeals from the decisions of sale price of second class
24 shorelands on navigable lakes by the department of natural resources
25 pursuant to RCW ((~~79.94.210~~)) 79.125.450.

26 (g) Appeals from urban redevelopment property tax apportionment
27 district proposals established by governmental ordinances pursuant to
28 RCW 39.88.060.

29 (h) Appeals from interest rates as determined by the department of
30 revenue for use in valuing farmland under current use assessment
31 pursuant to RCW 84.34.065.

32 (i) Appeals from revisions to stumpage value tables used to
33 determine value by the department of revenue pursuant to RCW 84.33.091.

34 (j) Appeals from denial of tax exemption application by the
35 department of revenue pursuant to RCW 84.36.850.

36 (k) Appeals pursuant to RCW 84.40.038(3).

37 (l) Appeals pursuant to RCW 84.39.020.

1 (m) Appeals relating to tax deficiencies and refunds including
2 penalties and interest under Title 82A RCW.

3 (2) Except as otherwise specifically provided by law hereafter, the
4 provisions of RCW 1.12.070 shall apply to all notices of appeal filed
5 with the board of tax appeals.

6 **Sec. 23.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to read
7 as follows:

8 In all appeals over which the board has jurisdiction under RCW
9 82.03.130, a party taking an appeal may elect either a formal or an
10 informal hearing, such election to be made according to rules of
11 practice and procedure to be promulgated by the board: PROVIDED, That
12 nothing shall prevent the assessor or taxpayer, as a party to an appeal
13 pursuant to RCW 84.08.130, within twenty days from the date of the
14 receipt of the notice of appeal, from filing with the clerk of the
15 board notice of intention that the hearing be a formal one: PROVIDED,
16 HOWEVER, That nothing herein shall be construed to modify the
17 provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal
18 under RCW 82.03.130(1) (e) or (l), the director of revenue may, within
19 ten days from the date of its receipt of the notice of appeal, file
20 with the clerk of the board notice of its (~~intention that the hearing~~
21 ~~be held pursuant to chapter 34.05 RCW~~) election of a formal hearing.
22 In the event that appeals are taken from the same decision, order, or
23 determination, as the case may be, by different parties and only one of
24 such parties elects a formal hearing, a formal hearing shall be
25 granted.

26 NEW SECTION. **Sec. 24.** CAPTIONS. Captions used in this act
27 constitute no part of the law.

28 NEW SECTION. **Sec. 25.** CODIFICATION. Sections 1 through 21 of
29 this act constitute a new title, to be codified as Title 82A RCW.

30 NEW SECTION. **Sec. 26.** SEVERABILITY CLAUSE. If any provision of
31 this act or its application to any person or circumstance is held
32 invalid, the remainder of the act or the application of the provision
33 to other persons or circumstances is not affected.

1 NEW SECTION. **Sec. 27.** EFFECTIVE DATE. This act takes effect
2 January 1, 2007.

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