State of Washington
61st Legislature
2010 Regular Session

By Representatives Cody, Pettigrew, Kenney, Hunt, Williams, and Chase

Read first time 03/01/10. Referred to Committee on Finance.

AN ACT Relating to modifying Washington state excise tax laws; amending RCW 82.04.220, 82.04.2907, 82.04.460, 82.32.090, 82.12.020, 82.45.033, 82.45.070, 82.45.080, 82.45.100, 82.45.220, 82.04.4292, 82.04.423, 82.04.4266, 82.04.250, 82.04.250, 82.04.298, 82.04.334, 82.04.4463, 82.08.806, 82.32.545, 82.32.550, 82.32.630, 82.32.632, 82.45.195, 35.102.150, 48.14.080, 82.08.890, 82.12.890, 82.48.010, 82.48.020, 82.48.030, 82.48.070, 82.48.080, 82.48.110, 82.16.050, 82.12.0254, 82.45.010, 82.45.080, 82.32.145, 82.08.0293, 82.12.0293, 82.04.060, 82.04.190, 82.04.215, 82.08.02088, 82.12.010, 82.12.020, 82.12.030, 82.24.020, 82.24.026, 82.26.010, 82.26.020, 82.32.090; reenacting and amending RCW 82.45.010, 82.04.260, 82.04.261, 82.04.440, 82.04.360, 82.04.050, 82.04.050, and 82.04.050; adding new sections to chapter 82.04 RCW; adding new sections to chapter 82.32 RCW; adding a new section to chapter 82.48 RCW; adding a new section to chapter 82.16 RCW; adding new sections to chapter 82.26 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding new sections to chapter 90.48 RCW; adding a new section to chapter 46.68 RCW; adding a new section to chapter 90.71 RCW; creating new sections; repealing RCW 82.08.0273, 82.04.44525, 82.04.29001, 82.24.027, 82.24.028, 82.08.811, 82.12.811, and 82.04.062; providing
effective dates; providing contingent effective dates; providing expiration dates; and declaring an emergency.

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

PART I

Minimum Nexus Standards

NEW SECTION. Sec. 101. (1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income.
(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

Sec. 102. RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended to read as follows:

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

(2) A person who has substantial nexus with this state in any tax year will be deemed to have substantial nexus with this state for the following four tax years.

NEW SECTION. Sec. 103. A new section is added to chapter 82.04 RCW to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

NEW SECTION. Sec. 104. A new section is added to chapter 82.04 RCW to read as follows:

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

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

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

(i) More than fifty thousand dollars of property in this state;
(ii) More than fifty thousand dollars of payroll in this state;
(iii) More than five hundred thousand dollars of receipts from this state; or
(iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

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

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

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

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

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

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

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

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

(ii) The definitions in section 106 of this act apply to this
subsection.

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

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

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

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

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

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are those amounts included in the numerator of the receipts factor under sections 105 and 106 of this act.

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

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

(6) Notwithstanding anything to the contrary in this section, a person is not subject to taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, unless the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state or the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.
NEW SECTION.  Sec. 105. A new section is added to chapter 82.04 RCW to read as follows:

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

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and section 106 of this act.

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

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

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

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

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

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

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

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

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

(c) Gross income of the business from engaging in an apportionable
activity must be excluded from the denominator of the receipts factor
if, in respect to such activity, at least some of the activity is
performed in this state, and the gross income is attributable under (b)
of this subsection (3) to a state in which the taxpayer is not taxable.
For purposes of this subsection (3)(c), "not taxable" means that the
taxpayer is not subject to a business activities tax by that state,
except that a taxpayer is taxable in a state in which it would be
deemed to have substantial nexus with that state under the standards in
section 104(1) of this act regardless of whether that state imposes
such a tax. "Business activities tax" means a tax measured by the
amount of, or economic results of, business activity conducted in a
state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in section 106 of this act and subsection (4) of this section with respect to apportionable income taxable under RCW 82.04.290. For purposes of this subsection, "financial institution" has the same meaning as in section 106 of this act.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

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

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.
(b) "State" has the same meaning as in section 106 of this act.

NEW SECTION. Sec. 106. A new section is added to chapter 82.04 RCW to read as follows:

(1) A financial institution must, for purposes of apportioning gross income of the business taxable under RCW 82.04.290 using the apportionment method provided in section 105(1) of this act, calculate the receipts factor as provided in this section and section 105(4) of this act. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(3)(a) (i) through (v) and (vii) through (ix) must calculate a separate receipts factor, as provided in section 105 of this act, for each of the other tax classifications that the financial institution is taxable under.

(2)(a)(i) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, if the real or personal property is located within this state. If the property securing the loan is located both within this state and one or more other states, the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The denominator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, wherever the property is located.

(iii) The determination of whether the real or personal property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(b) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans not secured by real or personal property if the borrower is located in this state. The denominator of
the receipts factor includes gross income from interest, fees, and penalties on loans that are not secured by real or personal property, regardless of where the borrower is located.

(c) The receipts factor includes gross income from net gains, which may not be less than zero, on the sale of loans. Net gains on the sale of loans includes income recorded under the coupon stripping rules of 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as existing on July 1, 2010.

(i) The amount of net gains, which may not be less than zero, on the sale of loans secured by real property, personal property, or both real and personal property, included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(ii) The amount of net gains, which may not be less than zero, from the sale of loans not secured by real or personal property included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (b) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (b) of this subsection (2).

(iii) The denominator of the receipts factor includes gross income from net gains, which may not be less than zero, on all sales of loans.

(d) Loan servicing fees are included in the receipts factor as provided in (d)(i) and (ii) of this subsection (2).

(i)(A)(I) The numerator of the receipts factor includes gross income from loan servicing fees derived from loans secured by real property, personal property, or both real and personal property, multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(II) The denominator of the receipts factor includes gross income
from all loan servicing fees derived from loans secured by real
property, personal property, or both real and personal property.

(B)(I) The numerator of the receipts factor includes gross income
from loan servicing fees derived from loans not secured by real or
personal property multiplied by a fraction. The numerator of the
fraction is the amount included in the numerator of the receipts factor
under (b) of this subsection (2). The denominator of the fraction is
the amount included in the denominator of the receipts factor under (b)
of this subsection (2).

(II) The denominator of the receipts factor includes gross income
from all loan servicing fees derived from loans not secured by real or
personal property.

(ii) If the financial institution receives loan servicing fees for
servicing either the secured or the unsecured loans of another, the
numerator of the receipts factor includes such fees if the borrower is
located in this state. The denominator of the receipts factor includes
all such fees.

(e)(i) Interest, dividends, net gains (which may not be less than
zero), and other income from investment assets and activities and from
trading assets and activities, as provided in this subsection (2)(e),
are included in the receipts factor. Investment assets and activities
and trading assets and activities include but are not limited to:
Investment securities; trading account assets; federal funds;
securities purchased and sold under agreements to resell or repurchase;
options; futures contracts; forward contracts; notional principal
contracts such as swaps; equities; and foreign currency transactions.

(ii) The numerator of the receipts factor includes gross income
from interest, dividends, net gains (which may not be less than zero),
and other receipts from investment assets and activities and from
trading assets and activities described in (e)(i) of this subsection
(2) that are attributable to this state. The denominator of the
receipts factor includes all such gross income wherever earned.

(A) The amount of interest, dividends, net gains (which may not be
less than zero), and other income from investment assets and activities
in the investment account to be attributed to this state and included
in the numerator of the receipts factor is determined by multiplying
all such income from such assets and activities by a fraction. The
numerator of the fraction is the average value of such assets that are
properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(B)(I) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such funds and such securities.

(II) The amount used for purposes of making the calculation in (e)(ii)(B)(I) of this subsection (2) is the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(C)(I) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in (e)(ii)(A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(C)(II) of this subsection (2) by a fraction. The numerator of the fraction is the average value of such trading assets that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(II) The amount used for purposes of making the calculation in (e)(ii)(C)(I) of this subsection (2) is the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.
(D) For purposes of this subsection (2)(e)(ii), average value must be determined using the rules for determining the average value of property set forth in section 104(2) of this act.

(iii) In lieu of using the method set forth in (e)(ii) of this subsection (2), the financial institution may elect, or the department may require, in order to fairly represent the business activity of the financial institution in this state, the use of the method set forth in this subsection (2)(e)(iii).

(A) The amount of interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction. The numerator of the fraction is the gross income from such assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the gross income from such funds and such securities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in (e)(ii)(A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(C)(II) of this subsection (2) by a fraction. The numerator of the fraction is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The
denominator of the fraction is the gross income from all such assets and activities.

(iv) If the financial institution elects or is required by the department to use the method set forth in (e)(iii) of this subsection (2), it must use this method for subsequent tax returns unless the financial institution receives prior permission from the department to use, or the department requires, a different method.

(v) The financial institution has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the financial institution.

(f) The numerator of the receipts factor includes gross income from interest, fees, and penalties on credit card receivables, and gross income from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state. The denominator of the receipts factor includes gross income from interest, fees, and penalties on all credit card receivables, and gross income from fees charged to all cardholders, such as annual fees.

(g)(i) The numerator of the receipts factor includes gross income from net gains, which may not be less than zero, from the sale of credit card receivables multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income
from net gains, which may not be less than zero, from all sales of credit card receivables.

(h)(i) The numerator of the receipts factor includes gross income from all credit card issuer's reimbursement fees multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income from all credit card issuer's reimbursement fees.

(i) The numerator of the receipts factor includes gross income from merchant discounts if the commercial domicile of the merchant is in this state. The denominator of the receipts factor includes gross income from all merchant discounts. For purposes of this subsection (2)(i), gross income must be computed net of any cardholder charge backs but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.

(j) Apportionable income that would be attributable under this subsection (2) to a state in which the financial institution is not taxable must be excluded from the denominator of the receipts factor if at least some of the activity that generated the income is performed in this state, and the gross income is attributable under this subsection (2) to a state in which the taxpayer is not taxable. For purposes of this subsection (2)(j), "not taxable" has the same meaning as in section 105 of this act.

(k)(i) The numerator of the receipts factor includes apportionable income taxable under RCW 82.04.290 and not otherwise included in the receipts factor under this subsection (2) if the activity producing the apportionable income is performed in this state. If the activity is performed both inside and outside this state, the numerator of the receipts factor includes apportionable income taxable under RCW 82.04.290 and not otherwise included in the receipts factor under this subsection (2) if a greater proportion of the activity producing the apportionable income is performed in this state based on cost of performance.

(ii) The denominator of the receipts factor includes apportionable income taxable under RCW 82.04.290 from activities performed
everywhere, where the apportionable income taxable under RCW 82.04.290 is not otherwise included in the receipts factor under this subsection (2).

(3) Except as otherwise provided in subsection (4) of this section, the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions, adopted November 17, 1994, as existing on the effective date of this section, apply to this section.

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

(a) "Apportionable income" has the same meaning as in RCW 82.04.460.

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

(c) "Financial institution" has the same meaning as in WAC 458-20-14601. However, the department may not make any substantive changes to the definition of "financial institution" in WAC 458-20-14601 unless the changes implement a legislative amendment to this definition of financial institution.

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

Sec. 107. RCW 82.04.2907 and 2009 c 535 s 407 are each amended to read as follows:

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

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

Sec. 108. RCW 82.04.460 and 2004 c 174 s 6 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person \((\text{rendering services})\) earning apportionable income taxable under \((\text{RCW 82.04.290 or 82.04.2908})\) this chapter and \((\text{maintaining places of business both within and without this state which contribute to the rendition of such services shall})\) also taxable in another state, must, for the purpose of computing tax liability under \((\text{RCW 82.04.290 or 82.04.2908})\) this chapter, apportion to this state, in accordance with section 105 of this act, that portion of the person's \((\text{gross})\) apportionable income \((\text{which is})\) derived from \((\text{services rendered})\) business activities performed within this state. \((\text{Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.})\)

(2) \((\text{Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 \((\text{relating to amounts charged for granting the right or privilege to make deferred or installment payments})\) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW \((\text{relating to city taxes on financial institutions})\) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.})\)

(3) The department \((\text{(shall})\) may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service\((\text{(s)})\)
taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. ((The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.)) The rule must provide for an equitable and constitutionally permissible division of the tax base.

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

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

(i) RCW 82.04.255;
(ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);
(iii) RCW 82.04.280(5);
(iv) RCW 82.04.285;
(v) RCW 82.04.286;
(vi) RCW 82.04.290;
(vii) RCW 82.04.2907;
(viii) RCW 82.04.2908; and
(ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and 82.04.280(1) did not exist.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax
on such income under the substantial nexus standards in section 104(1) of this act.

(ii) For purposes of this subsection (3)(b):

(A) "Business activities tax" has the same meaning as in section 105 of this act; and

(B) "State" has the same meaning as in section 106 of this act.

PART II
Abusive Tax Transactions

NEW SECTION. Sec. 201. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Unless otherwise specifically provided in statute, the department must respect the form of a transaction, except where the form of the transaction or a related series of transactions is adopted for the purpose of:

(i) Disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer;

(ii) Disguising the purchase or sale of property or services from or to a person that is not affiliated with the taxpayer; or

(iii) Avoiding the tax imposed in RCW 82.12.020 on the use of property in this state that is owned by an entity organized outside of Washington.

(b) For purposes of this subsection, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(2)(a) The department must, as resources allow, adopt rules to assist in determining when to disregard the form of a transaction or a related series of transactions adopted for the purposes described in subsection (1)(a)(i) through (iii) of this section. In adopting rules, the department may consider the following judicial doctrines, except to the extent such doctrines are inconsistent with express provisions contained in Washington state statutes:

(i) The sham transaction doctrine;

(ii) The economic substance doctrine;

(iii) The business purpose doctrine;
(iv) The substance over form doctrine;
(v) The step transaction doctrine; and
(vi) The assignment of income doctrine.

(b) The adoption of a rule as required under this subsection is not a condition precedent for the department to use the authority provided in this section. Any rules adopted under this section must include examples of transactions that the department will disregard for tax purposes.

(3) The provisions of this section are cumulative and nonexclusive and do not affect any other remedies provided to the department under statutory or common law.

NEW SECTION. Sec. 202. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) The department may not use section 201 of this act to disregard any transaction, plan, or arrangement initiated before July 1, 2010, if, in respect to such transaction, plan, or arrangement, the taxpayer had reported its tax liability in conformance with either specific written instructions provided by the department to the taxpayer, a determination published under the authority of RCW 82.32.410, or other document published by the department.

(b) This section does not apply if the transaction, plan, or arrangement engaged in by the taxpayer differs materially from the transaction, plan, or arrangement that was addressed in the specific written instructions, published determination, or other published document.

(2) For purposes of this section, "specific written instructions" means tax reporting instructions provided to a taxpayer and which specifically identifies the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

Sec. 203. RCW 82.32.090 and 2006 c 256 s 6 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there ((shall be)) is assessed a penalty of five percent of the amount of the
and if the tax is not received on or before the last day of the month following the due date, there ((shall be)) is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there ((shall be)) is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there ((shall be)) is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there ((shall be)) is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there ((shall be)) is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added ((shall)) may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant ((be)) is issued by the department ((of revenue)) for the collection of taxes, increases, and penalties, there ((shall be)) is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department ((shall)) must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department ((shall)) may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as
required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department ((shall)) must add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department ((of revenue)) has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department ((shall)) may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions ((shall)) apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department ((of revenue shall)) must be clearly identified as such and ((shall)) must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in section 201(1)(a)(i), (ii), or (iii) of this act, the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under section 201(1)(a)(i), (ii), or (iii) of this act. The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under section 201(1)(a)(i), (ii), or (iii) of this act, the taxpayer discloses its participation in the transaction to the department.

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(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable (hereunder), a further penalty of fifty percent of the additional tax found to be due (shall) must be added.

(8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(9) The department (of revenue) may not impose both the evasion penalty and the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department (of revenue), and that has a statutorily defined due date.

NEW SECTION. Sec. 204. (1) The legislature finds that this state's tax policy with respect to the taxation of transactions between affiliated entities and the income derived from such transactions (intercompany transactions) has motivated some taxpayers to engage in transactions designed solely or primarily to minimize the tax effects of intercompany transactions. The legislature further finds that some intercompany transactions result from taxpayers that are required to establish affiliated entities to comply with regulatory mandates and that transactions between such affiliates effectively increases the tax burden in this state on the affiliated group of entities.

(2) Therefore, as existing resources allow, the department of revenue is directed to conduct a review of the state's tax policy with respect to the taxation of intercompany transactions. The review must include the impacts of such transactions under the state's business and occupation tax and state and local sales and use taxes. The department may include other taxes in the review as it deems appropriate.

(3) In conducting the review, the department must examine how this state's tax policy compares to the tax policy of other states with respect to the taxation of intercompany transactions. The department's
review must include an analysis of potential alternatives to the current policy of taxing intercompany transactions, including their estimated revenue impacts if practicable.

(4) In conducting this review, the department may seek input from members of the business community and others as it deems appropriate.

(5) The department must report its findings to the fiscal committees of the house of representatives and senate by December 1, 2010. However, if the department has not completed its review by December 1, 2010, the department must provide the fiscal committees of the legislature with a brief status report by December 1, 2010, and the final report by December 1, 2011.

Sec. 205. RCW 82.12.020 and 2009 c 535 s 305 are each amended to read as follows:

(1) There is (hereby) levied and (there shall be) collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property (purchased at retail, or) acquired by (lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7)) the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in

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connection with digital goods, digital codes, or digital automated
services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated
services, and digital codes acquired by purchase, the tax imposed in
this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right
of permanent use;

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

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

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

(iii) With respect to digital goods, digital automated services,
and digital codes acquired other than by purchase, the tax imposed in
this subsection (1)(e) applies regardless of whether or not the
consumer has a right of permanent use or is obligated to make continued
payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the
use of any article of tangible personal property, extended warranty,
digital good, digital code, digital automated service, or service
taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
sale to, or the use by, the present user or the present user's bailor
or donor has already been subjected to the tax under chapter 82.08 RCW
or this chapter and the tax has been paid by the present user or by the
present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax
imposed by this chapter or chapter 82.08 RCW by one purchaser or user
of tangible personal property, extended warranty, digital good, digital
code, digital automated service, or other service does not have the
effect of exempting any other purchaser or user of the same property,
extended warranty, digital good, digital code, digital automated
service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her
bailor or donor has already been subjected to the tax under chapter
82.08 RCW or this chapter and the tax has been paid by the present user
or by his or her bailor or donor;
(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010.

Sec. 206. RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

(a) A transfer by gift, devise, or inheritance.
(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

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

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

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

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

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

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

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

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

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

(n) A sale to a regional transit authority or public corporation.
(o) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than:

(i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner,

(ii) a trust having the transferor and/or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or

(iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

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

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

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

Sec. 207. RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended to read as follows:

(1) As used in this chapter, the term "controlling interest" has the following meaning:

((1)) (a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

((2)) (b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

(2) The department may, at the department's option, enforce the obligation of the seller under this chapter as provided in this subsection (2):

(a) In the transfer or acquisition of a controlling interest as defined in subsection (1)(a) of this section, either against the corporation in which a controlling interest is transferred or acquired, against the person or persons who acquired the controlling interest in the corporation or, when the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and
(b) In the transfer or acquisition of a controlling interest as defined in subsection (1)(b) of this section, either against the entity in which a controlling interest is transferred or acquired or against the person or persons who transferred or acquired the controlling interest in the entity.

Sec. 208. RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each amended to read as follows:

The tax ((herein)) provided for in this chapter and any interest or penalties thereon ((shall be)) is a specific lien upon each ((piece)) parcel of real property located in this state that is either sold or that is owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax ((shall have been)) is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

Sec. 209. RCW 82.45.080 and 1980 c 154 s 3 are each amended to read as follows:

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

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

Sec. 210. RCW 82.45.100 and 2007 c 111 s 112 are each amended to read as follows:

(1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter ((shall)) will bear interest from the time of sale until the date of payment.
(a) Interest imposed before January 1, 1999, (shall be) is computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, (shall be) is computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed (shall) must be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department (of revenue shall) must provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there (shall be) is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there (shall) will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there (shall) will be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection (shall be) is collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee (shall be) is personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless (a) an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located (or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale).

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department (shall) must assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department (shall) must notify the taxpayer by mail, or
electronically as provided in RCW 82.32.135, of the additional amount and the same ((shall)) becomes due and ((shall)) must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (7) ((shall)) must be deposited in the housing trust fund as described in chapter 43.185 RCW.

Sec. 211. RCW 82.45.220 and 2005 c 326 s 3 are each amended to read as follows:

(1) An organization that fails to report a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer, ((shall be)) is subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(6) (7).

(2) Subsection (1) of this section also applies to the failure to report to the secretary of state the granting of an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).

Sec. 212. RCW 43.07.390 and 2005 c 326 s 2 are each amended to read as follows:

(1)(a) The secretary of state ((shall)) must adopt rules requiring any entity that is required to file an annual report with the secretary of state, including entities under Titles 23, 23B, 24, and 25 RCW, to disclose: (i) Any transfer ((in)) of the controlling interest ((of)) in the entity ((and any interest in real property)); and (ii) the granting of any option to acquire an interest in the entity if the
exercise of the option would result in a sale as defined in RCW 82.45.010(2).

(b) The disclosure requirement in this subsection only applies to entities owning an interest in real property located in this state.

(2) This information shall must be made available to the department of revenue upon request for the purposes of tracking the transfer of the controlling interest in entities owning real property and to determine when the real estate excise tax is applicable in such cases.

(3) For the purposes of this section, "controlling interest" has the same meaning as provided in RCW 82.45.033.

PART III
Modifying and Placing a Cap on the First Mortgage Deduction

NEW SECTION. Sec. 301. In 1980, the legislature adopted a business and occupation tax deduction to financial businesses for amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties which was codified in RCW 82.04.4292. However, the Washington state supreme court in Homestreet, Inc. v. Dep't of Revenue, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled to a business and occupation tax deduction under RCW 82.04.4292 for the portion of interest it retained for servicing loans and mortgage-backed securities that it sold on a service-retained basis on the secondary market. The legislature finds that inclusion of interest retained for servicing loans and mortgage-backed securities was not within the legislative intent when the deduction provided in 82.04.4292 was adopted in 1980. Therefore, by this act, the legislature declares that the deduction provided by RCW 82.04.4292 does not apply to fees that are received in exchange for services, regardless of whether the source of the fees is or may have been interest when paid by a borrower.

Sec. 302. RCW 82.04.4292 and 1980 c 37 s 12 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial
businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(2) Interest deductible under this section includes the portion of fees charged to borrowers, including points and loan origination fees, that is recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles.

(3) Subsections (1) and (2) of this section notwithstanding, the following is a nonexclusive list of items that are not deductible under this section:

(a) Fees for specific services such as: Document preparation fees; finder fees; brokerage fees; title examination fees; fees for credit checks; notary fees; loan application fees; interest lock-in fees if the loan is not made; servicing fees, including servicing fees received by lenders when they sell loans or mortgage-backed or mortgage-related securities in the secondary market while retaining the right to service the loans or securities and receive a portion of the interest payments as the servicing fee; and similar fees or amounts;

(b) Fees received in consideration for an agreement to make funds available for a specific period of time at specified terms, commonly referred to as commitment fees;

(c) Any other fees, or portion of a fee, that is not recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles; and

(d) Gains on the sale of valuable rights such as:

(i) Service release premiums, which are amounts received when servicing rights are sold; and

(ii) Gains on the sale of loans.

(4) The total amount a person may deduct under this section for any calendar year may not exceed thirty-five million dollars.

PART IV

Repealing the Nonresident Sales Tax Exemption

NEW SECTION. Sec. 401. RCW 82.08.0273 (Exemptions--Sales to nonresidents of tangible personal property, digital goods, and digital
codes for use outside the state--Proof of nonresident status--Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

PART V

Direct Seller Business and Occupation Tax Exemption

NEW SECTION. Sec. 501. (1) A business and occupation tax exemption is provided in RCW 82.04.423 for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative. The intent of the legislature in enacting this exemption was to provide a narrow exemption for out-of-state businesses engaged in direct sales of consumer products, typically accomplished through in-home parties or door-to-door selling.

(2) In Dot Foods, Inc. v. Dep't of Revenue, Docket No. 81022-2 (September 10, 2009), the Washington supreme court held that the exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products through its representative in addition to consumer products; and (b) whose consumer products were ultimately sold at retail in permanent retail establishments.

(3) The legislature finds that most out-of-state businesses selling consumer products in this state will either be eligible for the exemption under RCW 82.04.423 or could easily restructure their business operations to qualify for the exemption. As a result, the legislature expects that the broadened interpretation of the direct sellers' exemption will lead to large and devastating revenue losses. This comes at a time when the state's existing budget is facing a two billion six hundred million dollar shortfall, which could grow, while at the same time the demand for state and state-funded services is also growing. Moreover, the legislature further finds that RCW 82.04.423 provides preferential tax treatment for out-of-state businesses over their in-state competitors and now creates a strong incentive for in-state businesses to move their operations outside Washington.

(4) Therefore, the legislature finds that it is necessary to reaffirm the legislature's intent in establishing the direct sellers' exemption and prevent the loss of revenues resulting from the expanded interpretation of the exemption by amending RCW 82.04.423 retroactively.
to conform the exemption to the original intent of the legislature and
by prospectively ending the direct sellers' exemption effective July 1,
2010. The legislature recognizes that the department of revenue has
asked the Washington supreme court to reconsider its decision in Dot
Foods. As a result, if the Dot Foods decision is not final on the
effective date of section 502 of this act, it is the legislature's
intent that the amendments in section 502 of this act be considered
clarifying in nature.

Sec. 502. RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
amended to read as follows:

(1) Prior to April 1, 2010, this chapter ((shall)) does not apply
to any person in respect to gross income derived from the business of
making sales at wholesale or retail if such person:
(a) Does not own or lease real property within this state; and
(b) Does not regularly maintain a stock of tangible personal
property in this state for sale in the ordinary course of business; and
(c) Is not a corporation incorporated under the laws of this state;
and
(d) Makes sales in this state exclusively to or through a direct
seller's representative.

(2) For purposes of this section, the term "direct seller's
representative" means a person who buys only consumer products on a
buy-sell basis or a deposit-commission basis for resale, by the buyer
or any other person, in the home or otherwise than in a permanent
retail establishment, or who sells at retail, or solicits the sale at
retail of, only consumer products in the home or otherwise than in a
permanent retail establishment; and
(a) Substantially all of the remuneration paid to such person,
whether or not paid in cash, for the performance of services described
in this subsection is directly related to sales or other output,
including the performance of services, rather than the number of hours
worked; and
(b) The services performed by the person are performed pursuant to
a written contract between such person and the person for whom the
services are performed and such contract provides that the person will
not be treated as an employee with respect to such purposes for federal
tax purposes.
(3) Nothing in this section (shall) may be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to (the enactment of this section) August 23, 1983.

PART VI  
Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

NEW SECTION. Sec. 601. (1)(a) In 1967, the legislature amended RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a preferential business and occupation tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The legislature finds that RCW 82.04.260(4) was interpreted by the state supreme court on January 13, 2005, in Agrilink Foods, Inc. v. Department of Revenue, 153 Wn.2d 392 (2005). The supreme court held that the preferential business and occupation tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable finished products, such as canned food.

(b) The legislature intends to narrow the exemption provided for slaughtering, breaking, and/or processing perishable meat products and/or selling such products at wholesale by requiring that the end product be a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product.

(2)(a) A business and occupation tax exemption is provided for (i) manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and (ii) selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. This exemption expires July 1, 2012, and is replaced by a preferential business and occupation tax rate.

(b) The legislature finds that the rationale of the Agrilink decision, if applied to these tax preferences, could result in preferential tax treatment for any processed food product that contained any fresh fruit or vegetable as an ingredient, however small the amount.
(c) The legislature intends to narrow the tax preference provided to fruit and vegetable manufacturers by requiring that the end product be comprised either (i) exclusively of fruits and/or vegetables, or (ii) of any combination of fruits, vegetables, and certain other substances that, cumulatively, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

NEW SECTION. Sec. 602. A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:
   (a) Perishable meat products, by slaughtering, breaking, or processing, if the finished product is a perishable meat product; as to such persons the tax imposed is equal to the value of the perishable meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;
   (b) Meat products, by dehydration, curing, smoking, or any combination of these activities, if the finished meat products are not canned; as to such persons the tax imposed is equal to the value of the meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;
   (c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured in a rendering plant licensed under chapter 16.68 RCW; as to such persons the tax imposed is equal to the value of the products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of selling at wholesale:
   (a) Perishable meat products; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;
   (b) Meat products that have been manufactured by the seller by dehydration, curing, smoking, or any combination of such activities, if the finished meat products are not canned; as to such persons the tax
imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;

(c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured by the seller in a rendering plant; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

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

(a) "Animal" means all members of the animal kingdom except humans, fish, and insects.

(b) "Carcass" means all or any parts, including viscera, of a slaughtered animal.

(c) "Fish" means any water-breathing animal, including shellfish.

(d) "Hide" means any unprocessed animal pelt or skin.

(e)(i) "Meat products" means:

(A) Products comprised exclusively of animal carcass; and

(B) Except as provided in (e)(ii) of this subsection (3), products, such as jerky, sausage, and other cured meat products, that are comprised primarily of animal carcass by weight or volume and may also contain water; nitrates; nitrites; acids; binders and extenders; natural or synthetic casings; colorings; flavorings such as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and vinegar; and similar substances.

(ii) "Meat products" does not include products containing any cereal grains or cereal-grain products, dairy products, legumes and legume products, fruit or vegetable products as defined in RCW 82.04.260, and similar ingredients, unless the ingredient is used as a flavoring. For purposes of this subsection, "flavoring" means a substance that contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or any other edible substance of plant origin, whose primary function in food is flavoring or seasoning rather than nutritional, and which may legally appear as "natural flavor," "flavor," or "flavorings" in the ingredient statement on the label of the meat product.

(iii) "Meat products" includes only products that are intended for human consumption as food or animal consumption as feed.
(f) "Perishable" means having a high risk of spoilage within thirty
days of manufacture without any refrigeration or freezing.

(g) "Rendering plant" means any place of business or location where
dead animals or any part or portion thereof, or packing house refuse,
are processed for the purpose of obtaining the hide, skin, grease
residue, or any other by-product whatsoever.

Sec. 603. RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
read as follows:

(1) This chapter (shall) does not apply to the value of products
or the gross proceeds of sales derived from:

(a) Manufacturing fruit((©)) or vegetable((©)) products by canning,
preserving, freezing, processing, or dehydrating fresh fruits or
vegetables; or

(b) Selling at wholesale fruit((©)) or vegetable((©)) products
manufactured by the seller by canning, preserving, freezing,
processing, or dehydrating fresh fruits or vegetables and sold to
purchasers who transport in the ordinary course of business the goods
out of this state. A person taking an exemption under this subsection
(1)(b) must keep and preserve records for the period required by RCW
82.32.070 establishing that the goods were transported by the purchaser
in the ordinary course of business out of this state.

(2)(a) "Fruit or vegetable products" means:

(i) Products comprised exclusively of fruits, vegetables, or both;
and

(ii) Products comprised of fruits, vegetables, or both, and which
may also contain water, sugar, salt, seasonings, preservatives,
binders, stabilizers, flavorings, yeast, and similar substances.
However, the amount of all ingredients contained in the product, other
than fruits, vegetables, and water, may not exceed the amount of fruits
and vegetables contained in the product measured by weight or volume.

(b) "Fruit or vegetable products" includes only products that are

intended for human consumption as food or animal consumption as feed.

(3) This section expires July 1, 2012.

Sec. 604. RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
2009 c 162 s 34 are each reenacted and amended to read as follows:
(1) Upon every person engaging within this state in the business of manufacturing:

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

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business ((shall be)) is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed ((shall be)) is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d)(i) Beginning July 1, 2012, fruit((s)) or vegetable((s)) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruit((s)) or vegetable((s)) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount
of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(ii) For purposes of this subsection, "fruit or vegetable products" means:

(A) Products comprised exclusively of fruits, vegetables, or both;

or

(B) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume;

(iii) "Fruit and vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed;

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

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

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

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.
(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

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

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

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

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

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

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

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

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

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

(ii) 0.2904 percent beginning July 1, 2007.

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

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

(d) In addition to all other requirements under this title, a
person eligible for the tax rate under this subsection ((ii)) (ii)
must report as required under RCW 82.32.545.

(e) This subsection ((ii)) (ii) does not apply on and after July
1, 2024.

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

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

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

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

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

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

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

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

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

(v) "Timber products" means:

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

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

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

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

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

(13) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.
Sec. 605. RCW 82.04.250 and 2008 c 81 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business (shall be) is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business (shall be) is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business (shall be) is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

Sec. 606. RCW 82.04.250 and 2007 c 54 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business (shall be) is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(10), as to such persons, the amount of tax with respect to such business (shall be) is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.
Sec. 607. RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are each reenacted and amended to read as follows:

(1) In addition to the taxes imposed under RCW 82.04.260((12)), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260((12)). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260((12)) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section must be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section is suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge is imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) takes effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this
section. The surcharge \((\text{shall be})\) is imposed again on the first day of the following July.

\((4)\)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department \((\text{shall})\) must adjust the surcharge in accordance with this subsection.

\((b)\) The department \((\text{shall})\) must adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

\((c)\) Any adjustment in the surcharge \((\text{shall})\) takes effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection \((5)\) of this section.

\((d)\) The surcharge \((\text{shall be})\) is imposed again at the rate provided in subsection \((1)\) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection \((3)\) of this section or adjusted for that fiscal year under this subsection.

\((e)\) Adjustments of the amount of the surcharge by the department are final and \((\text{shall})\) may not be used to challenge the validity of the surcharge imposed under this section.

\((f)\) The department \((\text{shall})\) must provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

\((5)\) The office of financial management \((\text{shall})\) must make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities.
Sec. 608. RCW 82.04.298 and 2008 c 49 s 1 are each amended to read as follows:

(1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under ((RCW 82.04.260(4))) section 602 of this act, to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under ((RCW 82.04.260(4))) section 602 of this act, to customer-owners of the grocery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

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

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale, within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.
(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise.

Sec. 609. RCW 82.04.334 and 2007 c 48 s 3 are each amended to read as follows:

This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260((41)) (11) apply to this section.

Sec. 610. RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are each reenacted and amended to read as follows:

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

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1) (b), (c), ((4)) or (d), (10), or (11), or ((12)) section 602(2) of this act with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, ((shall be)) are allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit ((shall)) may not exceed the tax liability arising under this chapter with respect to the sale of those products.

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

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), ((4)) (10), or
(11), or ((12)) section 602(1) of this act, including those persons
who are also taxable under RCW 82.04.261, with respect to extracting or
manufacturing products in this state (shall be) are allowed a credit
against those taxes for any (i) gross receipts taxes paid to another
state with respect to the sales of the products so extracted or
manufactured in this state, (ii) manufacturing taxes paid with respect
to the manufacturing of products using ingredients so extracted in this
state, or (iii) manufacturing taxes paid with respect to manufacturing
activities completed in another state for products so manufactured in
this state. The amount of the credit (shall) may not exceed the tax
liability arising under this chapter with respect to the extraction or
manufacturing of those products.

(5) For the purpose of this section:

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

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

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

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

(c) "Manufacturing tax" means a gross receipts tax imposed on the
act or privilege of engaging in business as a manufacturer, and
includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
82.04.2909(1), 82.04.260 (1), (2), ((4)) (10), and (11), ((and
(12)) section 602(1) of this act, and 82.04.294(1); (ii) the tax
imposed under RCW 82.04.261 on persons who are engaged in business as
a manufacturer; and (iii) similar gross receipts taxes paid to other
states.
(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260((11)); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

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

Sec. 611. RCW 82.04.4463 and 2008 c 81 s 8 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development or in providing aerospace
services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(((11)) (10)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;
(B) Property taxes paid, by persons taxable under RCW 82.04.260(((11)) (10)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or
(C) Property taxes paid, by persons taxable under RCW 82.04.260(3) [82.04.250(3)] 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

((11)) (A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(((11)) (10) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

((11)) (B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

((11)) (C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(((11)) (10) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.
((IV))  (D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

((V))  (E) As used in ((III)) (b)(ii)(C) of this subsection (2)((b)(i)(C)), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

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

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024.

Sec. 612.  RCW 82.08.806 and 2009 c 461 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides
the seller with an exemption certificate in a form and manner prescribed by the department. The seller ((shall)) must retain a copy of the certificate for the seller's files.

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

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260((14)) (13) or 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use ((shall)) must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes.

Sec. 613. RCW 82.32.545 and 2008 c 81 s 10 are each amended to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260((14)) (10), 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 ((shall)) must make an annual report to the department detailing employment, wages, and employer-provided health and
retirement benefits for employment positions in Washington. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site. The report (shall) may not include names of employees. The report (shall) must also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection (shall) must include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260((10)), 82.04.250(3), or 82.04.290(3), or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463, unless a survey covering this twelve-month period was filed as required by a statute repealed by chapter 81, Laws of 2008. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260((10)), 82.04.250(3), or 82.04.290(3), is used, or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department (shall) must declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, and by November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, (shall) must report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in regard to keeping Washington competitive. The report (shall) must measure the effect of these laws on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select.
The reports (shall) must include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008.

Sec. 614. RCW 82.32.550 and 2008 c 81 s 12 are each amended to read as follows:

(1)(a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.


(ii) If on December 31, 2007, final assembly of a superefficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(2) The definitions in this subsection apply throughout this section.

(a) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.

(b) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

(c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for
its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.

(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty-six superefficient airplanes a year.

(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.

(f) (3) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market.

Sec. 615. RCW 82.32.630 and 2007 c 48 s 6 are each amended to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260 shall must file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.260. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall must include the amount of tax reduced under the preferential rate in RCW 82.04.260. The survey shall must also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) The first survey filed under this subsection (shall) must include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260((12+)) (11).

(c) As part of the annual survey, the department may request additional information, including the amount of investment in equipment used in the activities taxable under the preferential rate in RCW 82.04.260((12+)) (11), necessary to measure the results of, or determine eligibility for, the preferential tax rate in RCW 82.04.260((12+)) (11).

(d) All information collected under this section, except the amount of the tax reduced under the preferential rate in RCW 82.04.260((12+)) (11), is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax reduced is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (e) of this subsection. If the amount of the tax reduced as reported on the survey is different than the amount actually reduced based on the taxpayer's excise tax returns or otherwise allowed by the department, the amount actually reduced may be disclosed.

(e) Persons for whom the actual amount of the tax reduction is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction as confidential under RCW 82.32.330.

(f) Small harvesters as defined in RCW 84.33.035 are not required to file the annual survey under this section.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department (shall) must declare the amount of taxes reduced under the preferential rate in RCW 82.04.260((12+)) (11) for the period covered by the survey to be immediately due and payable. The department (shall) must assess interest, but not penalties, on the taxes. Interest (shall) must be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the reduced taxes were due, and (shall) will accrue until the amount of the reduced taxes is repaid.
(4) The department ((shall)) must use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. The department ((shall)) must report these statistics to the legislature each year by September 1st. The requirement to prepare and report summary descriptive statistics ((shall)) ceases after September 1, 2025.

(5) By November 1, 2011, and November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, ((shall)) must report to the legislature on the effectiveness of the preferential tax rate provided in RCW 82.04.260(((12))) ((11)). The report shall measure the effect of the preferential tax rate provided in RCW 82.04.260(((12))) ((11)) on job retention, net jobs created for Washington residents, company growth, and other factors as the committees select. The report ((shall)) must include a discussion of principles to apply in evaluating whether the legislature should continue the preferential tax rate provided in RCW 82.04.260(((12))) ((11)).

Sec. 616. RCW 82.32.632 and 2009 c 461 s 6 are each amended to read as follows:

(1)(a) Every person claiming the preferential rate provided in RCW 82.04.260(((14))) ((13)) must file a complete annual report with the department. The report is due by March 31st of the year following any calendar year in which a person is eligible to claim the preferential rate provided in RCW 82.04.260(((14))) ((13)). The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the preferential rate was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and
benefit information for the calendar year immediately preceding the 
calendar year for which the preferential rate provided in RCW 
82.04.260((14)) (13) was claimed.

(2) As part of the annual report, the department may request 
additional information necessary to measure the results of, or 
determine eligibility for, the preferential rate provided in RCW 
82.04.260((14)) (13).

(3) Other than information requested under subsection (2) of this 
section, the information contained in an annual report filed under this 
section is not subject to the confidentiality provisions of RCW 
82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims the 
preferential rate provided in RCW 82.04.260((14)) (13) but fails to 
submit a report by the due date or any extension under RCW 82.32.590, 
the department must declare the amount of the tax preference claimed 
for the previous calendar year to be immediately due and payable. The 
department must assess interest, but not penalties, on the amounts due 
under this subsection. The interest must be assessed at the rate 
provided for delinquent taxes under this chapter, retroactively to the 
date the tax preference was claimed, and accrues until the taxes for 
which the tax preference was claimed are repaid. Amounts due under 
this subsection are not subject to the confidentiality provisions of 
RCW 82.32.330 and may be disclosed to the public upon request.

(5) By November 1, 2014, and November 1, 2016, the fiscal 
committees of the house of representatives and the senate, in 
consultation with the department, must report to the legislature on the 
effectiveness of the preferential rate provided in RCW 
82.04.260((14)) (13). The report must measure the effect of the 
preferential rate provided in RCW 82.04.260((14)) (13) on job 
retention, net jobs created for Washington residents, industry growth, 
and other factors as the committees select. The report must include a 
discussion of principles to apply in evaluating whether the legislature 
should continue the preferential rate provided in RCW 82.04.260((14)) 
(13).

Sec. 617. RCW 82.45.195 and 2007 c 48 s 7 are each amended to read 
as follows:

p. 65 HB 3204
A sale of standing timber is exempt from tax under this chapter if
the gross income from such sale is taxable under RCW 82.04.260((12))
(11)(d).

Sec. 618. RCW 35.102.150 and 2009 c 461 s 4 are each amended to
read as follows:
Notwithstanding RCW 35.102.130, a city that imposes a business and
occupation tax must allocate a person's gross income from the
activities of printing, and of publishing newspapers, periodicals, or
magazines, to the principal place in this state from which the
taxpayer's business is directed or managed. As used in this section,
the activities of printing, and of publishing newspapers, periodicals,
or magazines are those activities to which the tax rates in RCW
82.04.260((14)) (13) and 82.04.280(1) apply.

Sec. 619. RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
read as follows:
(1) As to insurers, other than title insurers and taxpayers under
RCW 48.14.0201, the taxes imposed by this title ((shall be)) are in
lieu of all other taxes, except as otherwise provided in this section.
(2) Subsection (1) of this section does not apply with respect to:
(a) Taxes on real and tangible personal property;
(b) Excise taxes on the sale, purchase, use, or possession of (i)
real property; (ii) tangible personal property; (iii) extended
warranties; (iv) services, including digital automated services as
defined in RCW 82.04.192; and (v) digital goods and digital codes as
those terms are defined in RCW 82.04.192; and
(c) The tax imposed in RCW 82.04.260((10)) (9), regarding public
and nonprofit hospitals.
(3) For the purposes of this section, the term "taxes" includes
taxes imposed by the state or any county, city, town, municipal
corporation, quasi-municipal corporation, or other political
subdivision.

PART VII
Suspending the Sales and Use Tax Exemption for Livestock Nutrient
Equipment and Facilities

HB 3204 p. 66
Sec. 701. RCW 82.08.890 and 2009 c 469 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:
   (a) Qualifying livestock nutrient management equipment;
   (b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and
   (c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.
   (ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is:
   (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.
(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement
parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) A person may not claim the exemption under this section July 1, 2010, through June 30, 2015.

(6) This section expires July 1, 2020.

Sec. 702. RCW 82.12.890 and 2009 c 469 s 602 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;
(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and
(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.
(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.
(2) (a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The definitions in RCW 82.08.890 apply to this section.

(4) A person may not claim the exemption under this section July 1, 2010, through June 30, 2015.

(5) This section expires July 1, 2020.

PART VIII
Ending the Preferential Business and Occupation Tax Treatment Received by Directors of Corporations

NEW SECTION. Sec. 801. (1) In adopting the state's business and occupation tax, the legislature intended to tax virtually all business activities carried on within the state. See Simpson Inv. Co. v. Dep't of Revenue, 141 Wn.2d 139, 149 (2000). The legislature recognizes that the business and occupation tax applies to all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, unless a specific exemption applies.

(2) One of the major business and occupation tax exemptions is provided in RCW 82.04.360 for income earned as an employee or servant as distinguished from income earned as an independent contractor. The legislature's intent in providing this exemption was to exempt employee wages from the business and occupation tax but not to exempt income earned as an independent contractor.

(3) The legislature finds that corporate directors are not employees or servants of the corporation whose board they serve on and therefore are not entitled to a business and occupation tax exemption under RCW 82.04.360. The legislature further finds that there are no
business and occupation tax exemptions for compensation received for
serving as a member of a corporation's board of directors.

(4) The legislature also finds that there is a widespread
misunderstanding among corporate directors that the business and
occupation tax does not apply to the compensation they receive for
serving as a director of a corporation. It is the legislature's
expectation that the department of revenue will take appropriate
measures to ensure that corporate directors understand and comply with
their business and occupation tax obligations with respect to their
director compensation. However, because of the widespread
misunderstanding by corporate directors of their liability for business
and occupation tax on director compensation, the legislature finds that
it is appropriate in this unique situation to provide limited relief
against the retroactive assessment of business and occupation taxes on
corporate director compensation.

(5) The legislature also reaffirms its intent that all income of
all independent contractors is subject to business and occupation tax
unless specifically exempt under the Constitution or laws of this state
or the United States.

Sec. 802. RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
each reenacted and amended to read as follows:

(1) This chapter ((shall)) does not apply to any person in respect
to his or her employment in the capacity of an employee or servant as
distinguished from that of an independent contractor. For the purposes
of this section, the definition of employee ((shall)) includes those
persons that are defined in section 3121(d)(3)(B) of the federal

(2) ((A booth renter, as defined by RCW 18.16.020, is an
independent contractor for purposes of this chapter.)) Until July 1,
2010, this chapter does not apply to amounts received by an individual
from a corporation as compensation for serving as a member of that
corporation's board of directors. Beginning April 1, 2010, such
amounts are taxable under RCW 82.04.290(2).

NEW SECTION. Sec. 803. The sole reason for deleting the language
in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
"booth renter." This should not be construed as a substantive change in the law.

**PART IX**

**Airplane Excise Tax**

**Sec. 901.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

1. "Department" means the department of licensing.
2. "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;
3. "Secretary" means the secretary of transportation;
4. "Person" includes a firm, partnership, limited liability company, or corporation;
5. "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds; and
6. "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more).

**Sec. 902.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to read as follows:

1. An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel (shall) constitutes the necessary evidence of aircraft use or intended use. (The tax shall)
2. The amount of the tax is five-tenths of one percent of the taxable value of the aircraft, as determined under section 903 of this act.
3. The tax imposed under this section must be collected annually or under a staggered collection schedule as required by the department by rule. (No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such
Aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2) (3) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the (Washington) aircraft excise tax imposed under this section are liable for (such) the unpaid excise tax. A violation of this subsection is a misdemeanor.

(4) The department of revenue may, under chapter 82.32 RCW, assess and collect the unpaid excise tax imposed under this section, including the penalties and interest provided in chapter 82.32 RCW.

(5) Except as provided under subsection((s 1) and (2)) (3) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW.

NEW SECTION. Sec. 903. A new section is added to chapter 82.48 RCW to read as follows:

(1) The department of revenue must prepare at least once each year a depreciation schedule for use in the determination of fair market value, which is considered the taxable value for the purposes of this chapter. The schedule must be based upon information available to the department pertaining to the current fair market value of aircraft. Except as otherwise provided in this section, the fair market value of an aircraft for the purposes of this chapter must be based on the most recent purchase price depreciated according to the year of the most recent purchase of the aircraft. The most recent purchase price is the consideration, whether money, credit, rights, or other property expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the aircraft.

(2) If the most recent purchase price of the aircraft is not available or ascertainable, the department of revenue may determine the fair market value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the aviation industry. In the case of aircraft manufactured or produced by the owner, the value of the aircraft may be determined according to the value of the ingredients or components used to
manufacture or produce the aircraft. The amount of the tax is five-tenths of one percent of the taxable value of the aircraft, as determined under this section.

(3) The department of revenue may adopt any rules necessary to implement this section, including any rules necessary to provide a reasonable method or methods to determine the fair market value of an aircraft where the most recent purchase price is not available or ascertainable.

Sec. 904. RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each amended to read as follows:

(1) The amount of the tax imposed by this chapter for each calendar year shall be as follows:

<table>
<thead>
<tr>
<th>Type of aircraft</th>
<th>Registration fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-engine fixed wing</td>
<td>$ 50</td>
</tr>
<tr>
<td>Small multi-engine fixed wing</td>
<td>65</td>
</tr>
<tr>
<td>Large multi-engine fixed wing</td>
<td>80</td>
</tr>
<tr>
<td>Turboprop multi-engine fixed wing</td>
<td>100</td>
</tr>
<tr>
<td>Turbojet multi-engine fixed wing</td>
<td>125</td>
</tr>
<tr>
<td>Helicopter</td>
<td>75</td>
</tr>
<tr>
<td>Sailplane</td>
<td>20</td>
</tr>
<tr>
<td>Lighter-than-air</td>
<td>20</td>
</tr>
<tr>
<td>Home-built</td>
<td>20</td>
</tr>
</tbody>
</table>

(2) The amount of tax imposed under (subsection (1) of this section) RCW 82.48.020 for each calendar year (shall) must be divided into twelve parts corresponding to the months of the calendar year, and the excise tax upon an aircraft registered for the first time in this state after the last day of any month (shall) is only (be) levied for the remaining months of the calendar year including the month in which the aircraft is being registered. However, the minimum amount payable (shall be) is three dollars.

(2) For the purposes of this chapter, an aircraft (shall be) is deemed registered for the first time in this state when such aircraft was not (previously) required to be registered by this state for the
year immediately preceding the year in which application for registration is made and was not so registered.

Sec. 905. RCW 82.48.070 and 1987 c 220 s 7 are each amended to read as follows:
The ((secretary shall)) department must give a receipt to each person paying ((the)) excise tax under this chapter.

Sec. 906. RCW 82.48.080 and 1995 c 170 s 2 are each amended to read as follows:
The ((secretary shall)) department must regularly pay to the state treasurer the excise taxes collected under this chapter((, which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the transportation fund for administrative expenses)) for deposit into the general fund.

Sec. 907. RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended to read as follows:
((The first tax to be collected under this chapter shall be for the calendar year 1968.)) (1) No aircraft with respect to which the excise tax imposed by this chapter is payable ((shall)) may be listed and assessed for ad valorem taxation so long as this chapter remains in effect((, and any such assessment heretofore made except under authority of section 13, chapter 49, Laws of 1949 and section 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled: PROVIDED, That)).

(2) Any aircraft, whether or not subject to the provisions of this chapter, with respect to which the excise tax imposed by this chapter will not be paid or has not been paid for any year ((shall)) must be listed and assessed for ad valorem taxation in that year, and the ad valorem tax liability resulting from such listing and assessment ((shall)) must be collected in the same manner as though this chapter had not been passed((: PROVIDED FURTHER, That this chapter shall not be construed to affect any ad valorem tax based upon assessed valuations made in 1948 and/or any preceding year for taxes payable in 1949 or any preceding year, which ad valorem tax liability tax for any...))
such years shall remain payable and collectible in the same manner as though this chapter had not been passed).

PART X
Public Utility Tax on Interstate Hauls

NEW SECTION.  Sec. 1001.  (1) The legislature finds that at the time the revenue act of 1935 was enacted, the United States supreme court interpreted the commerce clause of the United States Constitution as barring a direct tax on gross receipts from interstate transportation. As a result, the tax commission's rules to implement the revenue act recognized explicitly that the state could not tax the income derived from the transportation of goods across the state's boundaries. The legislature finds that the department of revenue, as successor to the tax commission, has maintained this exemption to this day in a department rule, WAC 458-20-193D.

(2) The legislature recognizes that the commerce clause no longer bars states from taxing the privilege of engaging in an interstate business. The legislature further recognizes that under the United States supreme court's current commerce clause jurisprudence, a state tax affecting interstate commerce will be sustained as long as it is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

(3) The legislature finds that the department of revenue has maintained the tax-exempt treatment of interstate transportation for appropriate reasons, including:

(a) The litigation risk in administratively eliminating the tax exemption for interstate transportation;

(b) The lack of any statutory provisions for apportioning the income of interstate transportation businesses. A legislative determination to end the exemption has the benefit of allowing the legislature to prescribe a specific methodology for apportioning the income of interstate transportation businesses; and

(c) Because the transportation of persons or property across the state's boundaries has been treated as exempt from the state's public utility tax for nearly seventy-five years, the expectation of continued
exemption has been established over the years in the transportation industry. Therefore, the legislature believes that, as the elected representatives of the people, it is appropriate under these unique circumstances for the legislature to have an opportunity to determine the state's tax policy in regards to the public utility taxation of interstate transportation before the department of revenue takes action on its own.

(4) Therefore, by this act, the legislature intends to establish a policy of taxing interstate transportation on an apportioned basis effective July 1, 2010. However, to prevent the retroactive assessment of public utility tax on interstate transportation on an apportioned basis for periods prior to July 1, 2010, this act provides a statutory deduction for income received from interstate transportation for periods before July 1, 2010. This act also revises a use tax exemption for motor carriers so that it is consistent with similar exemptions provided to other interstate transportation businesses.

(5) Nothing in this act may be construed as requiring the department of revenue to receive approval from the legislature before changing a long-standing interpretation of the tax laws it administers.

**Sec. 1002.** RCW 82.16.050 and 2007 c 330 s 1 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof. This subsection may not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for
services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of bad debts, as that term is used in 26 U.S.C. Sec. 166 of the federal internal revenue code, as amended ((or renumbered)) as of January 1, 2003, on which tax was previously paid under this chapter;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Until July 1, 2010, amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination;

(9) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. No deduction is allowed under this subsection when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or
foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213;

(11) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(12) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(13) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage;

(14) Amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. For the purposes of this subsection, "public transportation agency" means a municipality, as defined in RCW 35.58.272, and urban public transportation systems, as defined in RCW 47.04.082. Public transportation agencies (shall) must spend an amount equal to the reduction in tax provided by this tax deduction solely to adjust routes...
to improve access for citizens using food banks and senior citizen services or to extend or add new routes to assist low-income citizens and seniors;

(15) Until July 1, 2010, amounts received from interstate transportation. For purposes of this subsection, "interstate transportation" means transporting persons or property between states or between a state and a foreign country. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

NEW SECTION. Sec. 1003. A new section is added to chapter 82.16 RCW to read as follows:

(1) Persons taxable both within and without this state on the business of transporting persons or property for hire must apportion to this state that portion of gross income as provided in this section.

(2)(a) Except as otherwise provided in this section, gross income must be apportioned to this state based on the ratio that revenue miles of the person in this state during the tax period bear to the revenue miles of the person everywhere during the tax period.
   
   (b)(i) If both property and passengers are transported, a person must determine the portion of gross income apportioned to this state by first computing separate percentages as provided in (a) of this subsection for property transported and for passengers transported.
   
   (ii) Then separately divide gross income for each activity by the total gross income from transporting persons and property for hire.
   
   (iii) Then multiply the percentage for property transported as determined under (a) of this subsection by the percentage of gross income from transporting property as determined under (b)(ii) of this subsection, and multiply the percentage for persons transported as determined under (a) of this subsection by the percentage of gross income from transporting persons as determined under (b)(ii) of this subsection.
   
   (iv) Then sum the results of both calculations in (b)(iii) of this subsection and use this percentage to determine the portion of gross income apportioned to this state from transporting persons and property for hire.

(3) For persons that transport gas, oil, petroleum products, or other products by pipeline, gross income must be apportioned to this
state based on the ratio that the total number of traffic units in this state during the tax period bear to the total number of traffic units everywhere during the tax period.

(4) For purposes of this section, the following definitions apply:
(a) "Revenue mile" means the transportation of one net ton of property or one passenger, for the distance of one mile.
(b)(i) "Traffic unit" means the movement of one unit of product for a distance of one mile.
(ii) For purposes of this subsection (4)(b), "one unit" means one barrel consisting of forty-two United States gallons, except that for natural gas and manufactured gas, "one unit" means one thousand cubic feet of gas.

Sec. 1004. RCW 82.12.0254 and 2009 c 503 s 2 are each amended to read as follows:
(1) The provisions of this chapter do not apply in respect to the use of:
(a) Any airplane used primarily in (i) conducting interstate or foreign commerce or (ii) providing intrastate air transportation by a commuter air carrier as defined in RCW 82.08.0262;
(b) Any locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state;
(c) Tangible personal property that becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; and
(d) Labor and services rendered in respect to such repairing, cleaning, altering, or improving.
(2) The provisions of this chapter do not apply in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such
rules as the department must adopt. However, under circumstances
determined to be justifiable by the department a second fifteen day
period may be authorized consecutive with the first fifteen day period;
and for the purposes of this exemption the term "nonresident" as used
herein includes a user who has one or more places of business in this
state as well as in one or more other states, but the exemption for
nonresidents applies only to those vehicles which are most frequently
dispached, garaged, serviced, maintained, and operated from the user's
place of business in another state.

(3) The provisions of this chapter do not apply in respect to the
use of:

(a) Any motor vehicle or trailer, whether owned by the holder of a
carrier permit issued by the interstate commerce commission or its
successor agency ((of any motor vehicle or trailer whether owned by))
or leased with or without driver to the permit holder and used ((in
substantial part)) in the normal and ordinary course of the user's
business primarily for transporting therein persons or property for
hire across the boundaries of this state; ((and in respect to the use
of))

(b) Any motor vehicle or trailer while being operated under the
authority of a one-transit permit issued by the director of licensing
pursuant to RCW 46.16.160 and moving upon the highways from the point
of delivery in this state to a point outside this state; ((and in
respect to the use of))

(c) Tangible personal property ((which)) that becomes a component
part of any motor vehicle or trailer ((used by the holder of a carrier
permit issued by the interstate commerce commission or its successor
agency authorizing transportation by motor vehicle across the
boundaries of this state whether such motor vehicle or trailer is owned
by or leased with or without driver to the permit holder)) that is
exempt under (a) of this subsection, in the course of repairing,
cleaning, altering, or improving the same; ((also the use of)) and

(d) Labor and services rendered in respect to such repairing,
cleaning, altering, or improving any motor vehicle or trailer that is
exempt under (a) of this subsection.
Sec. 1101. RCW 82.45.010 and 2010 c ... s 206 (section 206 of this act) are each amended to read as follows:

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

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

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

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

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

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the
1 purchasers have negotiated and will consummate the transfer of
2 ownership interests supports a finding that they are acting as a single
3 entity. If the acquisitions are completely independent, with each
4 purchaser buying without regard to the identity of the other
5 purchasers, then the acquisitions are considered separate acquisitions.
6
7 (3) The term "sale" does not include:
8 (a) A transfer by gift, devise, or inheritance.
9 (b) A transfer of any leasehold interest other than of the type
10 mentioned above.
11 (c) A cancellation or forfeiture of a vendee's interest in a
12 contract for the sale of real property, whether or not such contract
13 contains a forfeiture clause, or deed in lieu of foreclosure of a
14 mortgage.
15 (d) The partition of property by tenants in common by agreement or
16 as the result of a court decree.
17 (e) The assignment of property or interest in property from one
18 spouse or one domestic partner to the other spouse or other domestic
19 partner in accordance with the terms of a decree of dissolution of
20 marriage or state registered domestic partnership or in fulfillment of
21 a property settlement agreement.
22 (f) The assignment or other transfer of a vendor's interest in a
23 contract for the sale of real property, even though accompanied by a
24 conveyance of the vendor's interest in the real property involved.
25 (g) Transfers by appropriation or decree in condemnation
26 proceedings brought by the United States, the state or any political
27 subdivision thereof, or a municipal corporation.
28 (h) A mortgage or other transfer of an interest in real property
29 merely to secure a debt, or the assignment thereof.
30 (i) (Any) A transfer or conveyance made (i) to the beneficiary of
31 a deed of trust pursuant to a trustee's sale in the nonjudicial
32 foreclosure of a deed of trust ((or)); (ii) to the mortgagee, beneficary of the deed of trust, or lienholder pursuant to an order of
33 sale by the court in the judicial foreclosure of any mortgage, deed of
34 trust, or lien ((foreclosure proceeded or upon execution of a
35 judgment, or)); (iii) to the mortgagee by the mortgagor or to the
36 beneficiary of a deed of trust by the grantor pursuant to deed in lieu
37 of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the

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judgment creditor pursuant to a writ of execution to enforce a judgment.

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

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

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

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

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

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

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

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

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

Sec. 1102. RCW 82.45.080 and 1980 c 154 s 3 are each amended to
read as follows:

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

(2) For purposes of this section and notwithstanding any other provisions of law, in a sale involving a judicial or nonjudicial foreclosure or enforcement of a judgment, the seller is the:

(a) Beneficiary of a deed of trust in any transfer or conveyance to any party other than such beneficiary pursuant to a trustee's sale in the nonjudicial foreclosure of the deed of trust;

(b) Mortgagee, beneficiary of a deed of trust, or lienholder in any transfer or conveyance to any party other than such mortgagee, beneficiary, or lienholder pursuant to an order of sale by the court in the judicial foreclosure of any mortgage, deed of trust, or lien; and

(c) Judgment creditor in any transfer or conveyance to any party other than such creditor pursuant to a writ of execution to enforce a judgment.

PART XII
Tax Debts

Sec. 1201. RCW 82.32.145 and 1995 c 318 s 2 are each amended to read as follows:

(1) (Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member or manager, or other person shall be liable only for taxes collected which)) Whenever the department has issued a
warrant under RCW 82.32.210 for the collection of unpaid taxes from a
limited liability business entity and that business entity has been
terminated, dissolved, or abandoned, or is insolvent, the department
may pursue collection of the entity's unpaid taxes, including penalties
and interest on those taxes, against any or all of the responsible
individuals. For purposes of this subsection, "insolvent" means the
condition that results when the sum of the entity's debts exceeds the
fair market value of its assets. The department may presume that an
entity is insolvent if the entity refuses to disclose to the department
the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state
and local sales and use taxes, state business and occupation taxes, and
any other state and local taxes collected by the department in respect
to which the provisions of this chapter apply, regardless of whether
the tax is denominated a tax, fee, charge, or some other term.

(3)(a) For a responsible individual who is the current or a former
chief executive or chief financial officer, liability under this
section applies regardless of fault or whether the individual was or
should have been aware of the unpaid tax liability of the limited
liability business entity.

(b) For any other responsible individual, liability under this
section applies only if he or she willfully fails to pay or to cause to
be paid to the department the taxes due from the limited liability
business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible
individual who is the current or a former chief executive or chief
financial officer is liable under this section only for tax liability
accrued during the period that he or she was the chief executive or
chief financial officer. However, if the responsible individual had
the responsibility or duty to remit payment of the limited liability
business entity's taxes to the department during any period of time
that the person was not the chief executive or chief financial officer,
that individual is also liable for tax liability that became due during
the period that he or she had the duty to remit payment of the limited
liability business entity's taxes to the department but was not the
chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section
only for tax liability that became due during the period he or she had
the (control, supervision) responsibility(7)) or duty to (act for
the corporation described in subsection (1) of this section, plus
interest and penalties on those taxes.

(3)) remit payment of the limited liability business entity's
taxes to the department.

(5) Persons ((liable under)) described in subsection ((4))) (3)(b)
of this section are exempt from liability under this section in
situations where nonpayment of the ((retail sales tax funds held in
trust)) limited liability business entity's taxes is due to reasons
beyond their control as determined by the department by rule.

((4))) (6) Any person having been issued a notice of assessment
under this section is entitled to the appeal procedures under RCW
82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

((5)) This section applies only in situations where the department
has determined that there is no reasonable means of collecting the
retail sales tax funds held in trust directly from the corporation.

((4))) (7) This section does not relieve the ((corporation or))
limited liability ((company)) business entity of ((other tax
liabilities)) its tax liability or otherwise impair other tax
collection remedies afforded by law.

((4))) (8) Collection authority and procedures prescribed in this
chapter apply to collections under this section.

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

(a) "Chief executive" means: The president of a corporation; or
for other entities or organizations other than corporations or if the
corporation does not have a president as one of its officers, the
highest ranking executive manager or administrator in charge of the
management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a
corporation; or for entities or organizations other than corporations
or if a corporation does not have a treasurer as one of its officers,
the highest senior manager who is responsible for overseeing the
financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business
entity that generally shields its owners from personal liability for
the debts, obligations, and liabilities of the entity, or a business
entity that is managed or owned in whole or in part by an entity that
generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.005.

(e) "Member" has the same meaning as in RCW 25.15.005, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice-president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

PART XIII
Repealing the Business and Occupation Tax Credit for New Employment for
International Service Activities

NEW SECTION. Sec. 1301. RCW 82.04.44525 (Credit--New employment for international service activities in eligible areas--Designation of census tracts for eligibility--Records--Tax due upon ineligibility--Interest assessment--Information from employment security department) and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each repealed.

PART XIV
Repealing the Sales and Use Tax Exemptions for Candy and Bakery Items

Sec. 1401. RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read as follows:

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

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

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

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section ((shall)) does not apply to prepared food, soft drinks, candy, or dietary supplements.

   (a) "Prepared food" means:

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

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

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

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

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

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

(ii) Food sold in an unheated state by weight or volume as a single item((iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas).

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

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

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

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

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

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

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(e) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

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

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

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

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

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

(ii) That has been partially funded under ((Title)) 42 U.S.C. Sec. 1485 ((of the federal internal revenue code)); and

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

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

(b) This subsection (4) does not apply to hot prepared food and
food ingredients, other than food and food ingredients which are heated
after they have been dispensed from the vending machine.

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

Sec. 1402. RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
read as follows:

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

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

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

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

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

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

Imposing Sales and Use Tax on the Sale of Custom Software

Sec. 1501. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term "shall) includes every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in
(a), (b), (c), (d), or (e) of this subsection following such use. The
term also means every sale of tangible personal property to persons
engaged in any business which is taxable under RCW 82.04.280 (2) and
(7), 82.04.290, and 82.04.2908; or
(f) Purchases for the purpose of satisfying the person's
obligations under an extended warranty as defined in subsection (7) of
this section, if such tangible personal property replaces or becomes an
ingredient or component of property covered by the extended warranty
without intervening use by such person.
(2) The term "sale at retail" or "retail sale" includes the sale of
or charge made for tangible personal property consumed and/or for labor
and services rendered in respect to the following:
(a) The installing, repairing, cleaning, altering, imprinting, or
improving of tangible personal property of or for consumers, including
charges made for the mere use of facilities in respect thereto, but
excluding charges made for the use of self-service laundry facilities,
and also excluding sales of laundry service to nonprofit health care
facilities, and excluding services rendered in respect to live animals,
birds and insects;
(b) The constructing, repairing, decorating, or improving of new or
existing buildings or other structures under, upon, or above real
property of or for consumers, including the installing or attaching of
any article of tangible personal property therein or thereto, whether
or not such personal property becomes a part of the realty by virtue of
installation, and ((shall)) also includes the sale of services or
charges made for the clearing of land and the moving of earth excepting
the mere leveling of land used in commercial farming or agriculture;
(c) The constructing, repairing, or improving of any structure
upon, above, or under any real property owned by an owner who conveys
the property by title, possession, or any other means to the person
performing such construction, repair, or improvement for the purpose of
performing such construction, repair, or improvement and the property
is then reconveyed by title, possession, or any other means to the
original owner;
(d) The cleaning, fumigating, razing, or moving of existing
buildings or structures, but may not include the charge made for
janitorial services; and for purposes of this section the term
"janitorial services" ((shall)) means those cleaning and caretaking
services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

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

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

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

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

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

(a) Amusement and recreation services including but not limited to
golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;
(b) Abstract, title insurance, and escrow services;
(c) Credit bureau services;
(d) Automobile parking and storage garage services;
(e) Landscape maintenance and horticultural services but excluding
(i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional sporting events; and
(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

4(a) The term also includes:
(i) The renting or leasing of tangible personal property to consumers; and
(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.
(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

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

6(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is
no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

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

(i) Custom software; or

(ii) The customization of prewritten computer software.))

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

(7) (a) The term also includes the sale of or charge made for custom software and the customization of prewritten computer software, other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the consumer.

(b) The term also includes the charge made to consumers for the right to access and use custom software and customized prewritten computer software, where possession of the software is maintained by the seller or a third party.

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

((8)) (9)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:
(i) Sales in which the seller has granted the purchaser the right of permanent use;

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

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

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

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection ((8)) (9) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

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

((10)) (11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to:

(a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(b) Farmers for the purpose of producing for sale any agricultural product; and (c) Farmers acting under cooperative habitat development
or access contracts with an organization exempt from federal income tax under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

((11)) (12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

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

Sec. 1502. RCW 82.04.060 and 2009 c 535 s 403 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:
(1) Any sale, which is not a sale at retail, of:
(a) Tangible personal property;
(b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);
(c) Amusement or recreation services as defined in RCW 82.04.050(3)(a);
(d) Prewritten computer software;
(e) Services described in RCW 82.04.050 (6)(b) or (7);
(f) Extended warranties as defined in RCW 82.04.050(7);
(g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or
(h) Digital goods, digital codes, or digital automated services;

and

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100.

Sec. 1503. RCW 82.04.190 and 2009 c 535 s 302 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7),
if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;
(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person (shall be) is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for
tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section (shall) may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular course of business; and

(11)(a) Any end user of a digital product or digital code.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code
is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates.

Sec. 1504.  RCW 82.04.215 and 2003 c 168 s 601 are each amended to read as follows:

(1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means computer software created for a single person.

(4) "Customization of prewritten computer software" means any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or
enhances computer software of which such persons is not the author or
creator, the person ((shall be)) is deemed to be the author or creator
only of the person's modifications or enhancements. Prewritten
computer software or a prewritten portion thereof that is modified or
enhanced to any degree, where such modification or enhancement is
designed and developed to the specifications of a specific purchaser,
remains prewritten computer software; however where there is a
reasonable, separately stated charge or an invoice or other statement
of the price given to the purchaser for the modification or
enhancement, the modification or enhancement ((shall)) does not
constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including
intellectual property rights such as those rights arising from
copyrights, patents, and trade secret laws, that are owned or are held
under contract or license by a software developer, author, inventor,
publisher, licensor, sublicensor, or distributor.

NEW SECTION. Sec. 1505. RCW 82.04.29001 (Creation and
distribution of custom software--Customization of prewritten computer
software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are
each repealed.

Sec. 1506. RCW 82.08.02088 and 2009 c 535 s 701 are each amended
to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale of
digital goods, digital codes, digital automated services, prewritten
computer software, or services defined as a retail sale in RCW
82.04.050 (6)(b) or (7) to a buyer that provides the seller with an
exemption certificate claiming multiple points of use. An exemption
certificate claiming multiple points of use must be in a form and
contain such information as required by the department.

(2) A buyer is entitled to use an exemption certificate claiming
multiple points of use only if the buyer is a business or other
organization and the digital goods or digital automated services
purchased, or the digital goods or digital automated services to be
obtained by the digital code purchased, or the prewritten computer
software or services defined as a retail sale in RCW 82.04.050 (6)(b)
or (7) purchased will be concurrently available for use within and
outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal use.

(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.02088 and 82.14.457.

(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

Sec. 1507.  RCW 82.12.010 and 2009 c 535 s 304 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010;

(2)(a) "Value of the article used" (shall be) is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used (shall) must be determined as nearly as possible according to the retail selling price at place of use of similar
products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used (shall) must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used (shall) must be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used (shall) must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used (shall) must be determined according to the value of the ingredients of such articles.
(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used (shall) must be determined by:

(i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used (shall be) is determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used (shall) must be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used (shall) must be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:
(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050 (6)(b) or (7), the first act within this state by which the taxpayer, as a consumer, accesses the (prewritten) computer software; and

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed;

(7) "Taxpayer" and "purchaser" include all persons included within
the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(8)(a)(i) Except as provided in (a)(ii) of this subsection (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), (6)(b), or (7) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(9) "Extended warranty" has the same meaning as in RCW 82.04.050 (7);

(10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (10), the use of the property is deemed to be by such consumer.
Sec. 1508. RCW 82.12.020 and 2009 c 535 s 305 are each amended to read as follows:

(1) There is hereby levied and shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), (6)(b), or (7), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

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

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

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.
(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), ((6)(b), or (7), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present
user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

### PART XVI

**Increasing Tobacco Taxes**

**Sec. 1601.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to read as follows:

(1) There is levied and ((there shall be)) collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to ((one and fifteen one-hundredths)) 12.125 cents per cigarette.

(2) ((An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to five hundred twenty-five one-thousandths of a cent per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one-hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(4))) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not
pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

((5-)) (3) For purposes of this chapter, "possession" (shall) means both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession (shall be) is deemed to occur at the location of the cigarettes being so transported or held.

((6-)) (4) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection ((7-)) (5) of this section, any person, who purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

((7-)) (5) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement (shall) take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect.

(6) By July 1, 2011, and by July 1st of each year thereafter, the state treasurer must transfer eighteen million dollars from the general fund into the tobacco prevention and control account under RCW 43.79.480.

Sec. 1602. RCW 82.24.026 and 2009 c 479 s 67 are each amended to read as follows:

(1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section (shall) must be deposited as follows:
(a) (28.5) 14 percent (shall) must be deposited into the general fund.

(b) The remainder (shall) must be deposited into the education legacy trust account.

Sec. 1603. RCW 82.26.010 and 2005 c 180 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but (shall) does not include cigarettes as defined in RCW 82.24.010.

(2) "Manufacturer" means a person who manufactures and sells tobacco products.

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(4) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(5)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.
(b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(6) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(7) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(8) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

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

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(13) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(14) "Board" means the liquor control board.

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other
ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(16) "Cigarette" has the same meaning as in RCW 82.24.010.

(17) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(18)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same
tobacco products or similar tobacco products of like quality and
class to unaffiliated distributors, unaffiliated retailers, or
ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only,
"person" includes both persons as defined in subsection (10) of this
section and any person immune from state taxation, including the United
States or its instrumentalities, and federally recognized Indian tribes
and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of
taxable sales price under this subsection.

(19) "Taxpayer" means a person liable for the tax imposed by this
chapter.

(20) "Unaffiliated distributor" means a distributor that is not
affiliated with the manufacturer, distributor, or other person from
whom the distributor has purchased tobacco products.

(21) "Unaffiliated retailer" means a retailer that is not
affiliated with the manufacturer, distributor, or other person from
whom the retailer has purchased tobacco products.

(22) "Moist snuff" means tobacco that is finely cut, ground, or
powdered; is not for smoking; and is intended to be placed in the oral,
but not the nasal, cavity.

(23) "Little cigar" means a cigar that has an integrated filter.

Sec. 1604. RCW 82.26.020 and 2009 c 479 s 70 are each amended to
read as follows:

(1) There is levied and ((there shall be)) collected a tax upon the
sale, handling, or distribution of all tobacco products in this state
at the following rate:

(a) ((Seventy-five)) For cigars except little cigars, ninety-five
percent of the taxable sales price of cigars, not to exceed ((fifty
cents)) one dollar per cigar; ((or))

(b) ((Seventy-five)) For all tobacco products except those covered
under separate provisions of this subsection, ninety-five percent of
the taxable sales price ((of all tobacco products that are not
cigars));

(c) For moist snuff, as established in this subsection (1)(c) and
computed on the net weight listed by the manufacturer:
(i) On each single unit consumer-sized can or package whose net weight is one and two-tenths ounces or less, a rate per single unit that is equal to the greater of 3.025 dollars or the cigarette tax under chapter 82.24 RCW multiplied by twenty; or

(ii) On each single unit consumer-sized can or package whose net weight is more than one and two-tenths ounces, a proportionate tax at the rate established in (c)(i) of this subsection (1) on each ounce or fractional part of an ounce; and

(d) For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW.

(2) Taxes under this section ((shall)) must be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section ((shall)) must be deposited into the state general fund.

NEW SECTION. Sec. 1605. A new section is added to chapter 82.26 RCW to read as follows:

(1)(a) Within one year following the date on which the requirement for a tobacco product code is effective, payment of, or exemption from, the tax imposed in RCW 82.26.020 must be verifiable on each single-unit consumer-sized can or package of moist snuff, as provided in (b) of this subsection.

(b) Within thirty days following the date on which notice of proposed rule making to require a tobacco product code is published in the federal register, the department must commence to develop a method for using a tobacco product code to verify payment of, or exemption from, the tax imposed in RCW 82.26.020; to develop and implement a pilot project to test the method; and to develop a plan for adoption of rules to implement the method. The department must report to the legislature on its progress annually by December 1st through the year following the year in which the method is implemented.
(2) If notice of proposed rule making to require a tobacco product code is not published in the federal register by July 1, 2011, the department must determine and recommend to the legislature by November 1, 2014, a method to verify payment of, or exemption from, the tax imposed in RCW 82.26.020, by means of stamping, use of manufacturers' digitally readable product identifiers, or any other method, and must complete and present to the legislature a study of compliance with the tax imposed in RCW 82.26.020, the effect of noncompliance on state revenue, and the effect of adopting a method to verify payment of, or exemption from, the tax.

(3) For purposes of this section, "tobacco product code" means a code that is required on the label of a tobacco product for purposes of tracking or tracing the product through the distribution system under final regulations adopted by the secretary of the United States department of health and human services.

NEW SECTION. Sec. 1606. A new section is added to chapter 82.26 RCW to read as follows:

Beginning July 1, 2011, distributors subject to the provisions of this chapter must provide information regarding their purchase of other tobacco products as required by the department. Such information may include product description; brand; number of packages; quantity of product per package by weight, count, or other applicable measure; purchase price per package; and other information as determined by the department.

Sec. 1607. RCW 82.26.030 and 2005 c 180 s 1 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state is the distributor liable for the
tax and that (1) for moist snuff the tax will be based on the net weight listed by the manufacturer and (2) in most other instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller.

NEW SECTION. Sec. 1608. The legislature recognizes the role that tax policy plays in the levels of consumption of moist snuff by youth due to impacts on price. Discouraging youth access to moist snuff and youth consumption is an important state policy. The legislature directs the department of health, with the assistance of the department of revenue and the office of financial management, to study this issue. The study must examine the historic, current, and future trends and data, including but not limited to which products are consumed, by which age group, and how the products were acquired. The study should cover the period beginning with the year 2000, if possible. The department of health must report to the appropriate fiscal and health care committees of the legislature by December 1, 2010. The department of health may consult with academics, other experts, and industry representatives in studying this issue and preparing any reports required under this section.

NEW SECTION. Sec. 1609. The following acts or parts of acts are each repealed:

(1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925, & 1986 c 3 s 12; and

(2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

PART XVII

Imposing an Additional Hazardous Substance Tax

NEW SECTION. Sec. 1701. Sections 1701 through 1707 of this act may be known and cited as the clean water act of 2010.

NEW SECTION. Sec. 1702. (1) The legislature finds that nonpoint water pollution and contaminated storm water runoff is a major problem
in the state creating a significant burden on the rivers, aquifers, lakes, streams, and marine receiving waters across Washington.

(2) The legislature recognizes that the burden of nonpoint and storm water pollution is caused by both increased volumes of water runoff due to the expansion of impervious surfaces and the toxic substances that pollute the runoff. The burden of storm water and nonpoint pollution from hazardous substances is difficult to offset because the source of pollution is not a single physical point, but occurs wherever the toxic substances are manufactured, used, or consumed.

(3) The legislature finds that the federal government and the state of Washington have identified control of pollutants in storm water runoff through national pollutant discharge elimination system phase I and II municipal storm water permits as a requirement for the state and local jurisdictions. Impacts from the polluted storm water may be prevented or controlled through retrofit projects for existing infrastructure as well as other means.

(4) The legislature finds that resources available to offset the direct burdens of storm water pollution by hazardous substances are insufficient to meet existing needs. Existing funding is raised largely by local governments and is disproportionately borne by fees levied on individuals and property owners.

(5) Finally, the legislature finds that increasing the tax on hazardous substances is necessary to fund programs that will offset the burdens that pollution places on the environment and the waters of the state.

Sec. 1703. RCW 82.21.030 and 1989 c 2 s 10 are each amended to read as follows:

(1) (a) A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax ((shall be)) is seven-tenths of one percent multiplied by the wholesale value of the substance.

(b) Beginning May 1, 2010, an additional tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax is equal to one and three-tenths percent multiplied by the wholesale value of the substance.
(2)(a) Moneys collected under (this chapter shall) subsection (1)(a) of this section must be deposited in the toxics control accounts under RCW 70.105D.070 and expended in accordance with the purposes stated therein.

(b) Moneys collected under subsection (1)(b) of this section must be deposited into the clean water legacy fund hereby created in the custody of the state treasurer. The state treasurer must transfer the funds deposited into the clean water legacy fund as follows:

(i) For taxes collected through June 30, 2011, twenty percent must be deposited in the storm water account created in section 1704 of this act to be used solely for the purposes of funding the items set forth in section 1704(2)(a) of this act, two and forty-five one-hundredths percent must be deposited in the state oil spill prevention account, two and one-twentieth percent must be deposited into the Puget Sound recovery account to be used as required under section 1706 of this act, two and one-twentieth percent must be deposited into the water quality action account to be used as required under section 1707 of this act, five percent must be deposited into the motor vehicle account to be used as required under section 1705 of this act, and the remainder must be deposited into the general fund.

(ii) For taxes collected between July 1, 2011, and June 30, 2013, twenty percent must be deposited into the storm water account created in section 1704 of this act, one and four-fifths percent must be deposited in the state oil spill prevention account, two and two-fifths percent must be deposited into the Puget Sound recovery account to be used as required under section 1706 of this act, two and two-fifths percent must be deposited in the water quality action account to be used as required under section 1707 of this act, five percent must be deposited into the motor vehicle account to be used as required under section 1705 of this act, and the remainder must be deposited into the general fund.

(iii) For taxes collected between July 1, 2013, and June 30, 2015, forty-five percent must be deposited into the storm water account created in section 1704 of this act, one and four-fifths percent must be deposited in the state oil spill prevention account, four and one-half percent must be deposited into the Puget Sound recovery account to be used as required under section 1706 of this act, four and two-fifths percent must be deposited in the water quality action account to be
used as required under section 1707 of this act, ten percent must be
deposited into the motor vehicle account to be used as required under
section 1705 of this act, and the remainder must be deposited into the
general fund.

(iv) For taxes collected on or after July 1, 2015, one and four-
fifths percent must be deposited in the state oil spill prevention
account, nine and one-half percent must be deposited into the Puget
Sound recovery account to be used as required under section 1706 of
this act, nine and one-half percent must be deposited in the water
quality action account to be used as required under section 1707 of
this act, ten percent must be deposited into the motor vehicle account
to be used as required under section 1705 of this act, and the
remainder must be deposited into the storm water account created in
section 1704 of this act.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter.
The tax due dates, reporting periods, and return requirements
applicable to chapter 82.04 RCW apply equally to the tax imposed in
this chapter.

NEW SECTION. Sec. 1704. A new section is added to chapter 90.48
RCW to read as follows:

(1) The storm water account is created in the state treasury.
Receipts from the tax imposed under RCW 82.21.030(1)(b) must be
deposited in the account as set forth in RCW 82.21.030. Moneys in the
account are allocated to the department and may be spent only after
appropriation. Expenditures from the account must be used on
activities or projects that mitigate or prevent storm water pollution.

(2) After deducting the department's administrative costs of no
more than four percent of the appropriations included in the omnibus
operating and capital appropriations acts associated with administering
a competitive grant process, moneys must be distributed annually based
on the following allocation:

(a) Fifty percent of the remaining moneys must be allocated through
the grant process to local governments covered by national pollutant
discharge elimination system municipal phase I or phase II permits to
fund local government projects or activities that mitigate or prevent
contamination of storm water or the recontamination of receiving waters
previously remediated under federal or state-approved activities. To
be eligible, local governments must provide fifty percent of project or activity costs from other nonstate fund sources. Of the allocation in this subsection, seventy-five thousand dollars must be provided to each jurisdiction that is subject to the national pollutant discharge elimination system phase I or phase II requirements.

(b) Forty percent of the remaining moneys must be allocated through the grant process to local governments for retrofit projects that address contamination of storm water, or projects that directly reduce toxic diesel emissions that result in air deposition of storm water pollutants. The moneys for retrofit projects must be prioritized for projects that utilize low-impact development retrofit strategies, but moneys may be awarded for other retrofit projects if the site does not lend itself to low-impact development techniques or other retrofit techniques that are shown to be more effective in terms of addressing water quality problems associated with the site.

(c) Ten percent of the remaining moneys must be allocated through either existing storm water grant programs or the grant process to projects under (a) or (b) of this subsection and to the highest priority projects based upon ecological and water quality benefits determined by the department. For projects qualifying under this subsection, moneys may be allocated to meet the matching requirements under (a) of this subsection to jurisdictions that demonstrate economic hardship in meeting the matching requirement.

(3) In consultation with stakeholders, the department must develop criteria for administering the program and ranking projects for funding based on water quality benefits. In developing criteria applicable to projects in the Puget Sound basin, the department must consult with the Puget Sound partnership. Consistent with RCW 90.71.340, when making grants under this section that contribute to Puget Sound protection and recovery, the department must consult with the Puget Sound partnership to ensure that grants are for projects and activities that are consistent with the prioritization of the 2020 action agenda. All activities or capital projects approved for funding must demonstrate the potential to achieve clear ecological or water quality benefits. The department must endeavor to distribute the moneys within each geographic region of the state in proportion to the severity of impacts to waterways from storm water pollution.
(4) The department must initiate the grant application process by July 1, 2010.

(5) By December 1, 2013, and every two years thereafter, the department must report to the governor and the appropriate committees of the legislature on the progress of the program and the suitability of the percentage allocations specified in subsection (2)(a) through (c) of this section.

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

(a) "Department" means the department of ecology.

(b) "Low-impact development" means a storm water management and land use strategy applied, where feasible, at the parcel and subdivision, or drainage area, level that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.

(c) "Retrofit" means the renovation of existing development to improve or eliminate storm water problems associated with the site or drainage area.

NEW SECTION. Sec. 1705. A new section is added to chapter 46.68 RCW to read as follows:

(1) The department of transportation must use taxes deposited in the motor vehicle account under RCW 82.21.030(2)(b) to fund activities or projects that address contamination of storm water related to transportation infrastructure through the implementation of the department of transportation's national pollutant discharge elimination system programs permitted under chapter 90.48 RCW. Activities and projects that may be supported with these funds include, but are not limited to: Construction, operation, inspection, monitoring, and maintenance of storm water facilities; purchase, operation, and maintenance of vactor trucks and vactor decant facilities; purchase, maintenance, and operation of storm water management inventory, mapping, and information systems; storm water pollution prevention plan development and implementation; and storm water training. For the purposes of this section, "storm water facilities" includes, but is not limited to, ponds, biofiltration swales, storm water treatment tanks,
detention vaults, oil water separators, dry wells, catch basins, and filters.

(2) The taxes deposited in the motor vehicle account under RCW 82.21.030(2)(b) may not be used for construction of storm water facilities associated with new road construction. For purposes of this section, "new roads" includes roads that are new alignments. Roads that add to or replace an existing roadway are not "new roads."

(3) Beginning January 1, 2011, the department of transportation must deliver a biennial report describing the use of the funds to the governor and the appropriate legislative committees.

NEW SECTION. Sec. 1706. A new section is added to chapter 90.71 RCW to read as follows:
Consistent with RCW 90.71.340, the Puget Sound partnership must use taxes deposited in the Puget Sound recovery account as provided under RCW 82.21.030(2)(b) to fund activities or capital projects that are consistent with the prioritization of the 2020 action agenda.

NEW SECTION. Sec. 1707. A new section is added to chapter 90.48 RCW to read as follows:
(1) The water quality action account is created in the state treasury. Receipts from the tax imposed under RCW 82.21.030(1)(b) must be deposited in the account as provided in RCW 82.21.030. Moneys in the water quality action account are allocated to the department of ecology and may be spent only after appropriation. The account may not be used to fund specific state activities that are required to be funded through fees paid by state and federal water quality permittees.

(2) Moneys in the water quality action account may be used only for state responsibilities to carry out the purposes of this chapter to: Prevent pollution of streams, rivers, aquifers, marine receiving waters, and drinking water; prevent beach and shellfish bed closures due to polluted surface runoff; and protect fish and wildlife habitat from polluted surface runoff. More specifically, moneys may be used for, but not limited to, the following purposes:

(a) Creation and maintenance of a storm water technology center to assist businesses and governmental entities by developing resources for testing, monitoring, adopting, and implementing new clean water practices and technologies;
(b) Improved storm water research, data management, and monitoring;
(c) Development of clean water guidance and best management practices for nonpermitted surface runoff activities; and
(d) Improved source control actions, such as collaboration with local governments to provide local source control inspectors.

PART XVIII
Modifying the Sales Tax Exemption for Certain Fertilizers, Sprays, and Washes

Sec. 1801. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing
magnesium for sale, if the primary purpose of such property is to
create a chemical reaction directly through contact with an ingredient
of ferrosilicon; or

(e) Purchases for the purpose of providing the property to
consumers as part of competitive telephone service, as defined in RCW
82.04.065. The term ((shall)) includes every sale of tangible personal
property which is used or consumed or to be used or consumed in the
performance of any activity classified as a "sale at retail" or "retail
sale" even though such property is resold or utilized as provided in
(a), (b), (c), (d), or (e) of this subsection following such use. The
term also means every sale of tangible personal property to persons
engaged in any business which is taxable under RCW 82.04.280 (2) and
(7), 82.04.290, and 82.04.2908; or

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

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

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

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

(c) The constructing, repairing, or improving of any structure
upon, above, or under any real property owned by an owner who conveys
the property by title, possession, or any other means to the person
performing such construction, repair, or improvement for the purpose of
performing such construction, repair, or improvement and the property
is then reconveyed by title, possession, or any other means to the
original owner;

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

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

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

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

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

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

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;
(b) Abstract, title insurance, and escrow services;
(c) Credit bureau services;
(d) Automobile parking and storage garage services;
(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

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

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

(6)(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or
(ii) The customization of prewritten computer software.

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

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

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:
(i) Sales in which the seller has granted the purchaser the right of permanent use;
(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;
(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.
(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.
(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.
(9) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.
(10) The term also does not include sales of:
(a) Chemical sprays or washes (for persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of), fertilizer, and spray materials as provided in section 1803 of this act; and
(b) Feed, seed, seedlings, (fertilizer,) and agents for enhanced pollination including insects such as bees (and spray materials) to:
((a)) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, (and) or the wildlife habitat incentives
program, or their successors administered by the United States
department of agriculture;
((e)) (ii) Farmers for the purpose of producing for sale any
agricultural product; and
((e)) (iii) Farmers acting under cooperative habitat development
or access contracts with an organization exempt from federal income tax
under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal
revenue code or the Washington state department of fish and wildlife to
produce or improve wildlife habitat on land that the farmer owns or
leases.
(11) The term does not include the sale of or charge made for labor
and services rendered in respect to the constructing, repairing,
decorating, or improving of new or existing buildings or other
structures under, upon, or above real property of or for the United
States, any instrumentality thereof, or a county or city housing
authority created pursuant to chapter 35.82 RCW, including the
installing, or attaching of any article of tangible personal property
therein or thereto, whether or not such personal property becomes a
part of the realty by virtue of installation. Nor does the term
include the sale of services or charges made for the clearing of land
and the moving of earth of or for the United States, any
instrumentality thereof, or a county or city housing authority. Nor
does the term include the sale of services or charges made for cleaning
up for the United States, or its instrumentalities, radioactive waste
and other by-products of weapons production and nuclear research and
development.
(12) The term does not include the sale of or charge made for
labor, services, or tangible personal property pursuant to agreements
providing maintenance services for bus, rail, or rail fixed guideway
equipment when a regional transit authority is the recipient of the
labor, services, or tangible personal property, and a transit agency,
as defined in RCW 81.104.015, performs the labor or services.

Sec. 1802. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
are each reenacted and amended to read as follows:
(1) "Sale at retail" or "retail sale" means every sale of tangible
personal property (including articles produced, fabricated, or
imprinted) to all persons irrespective of the nature of their business
and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

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

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

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

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

(c) The constructing, repairing, or improving of any structure
upon, above, or under any real property owned by an owner who conveys
the property by title, possession, or any other means to the person
performing such construction, repair, or improvement for the purpose of
performing such construction, repair, or improvement and the property
is then reconveyed by title, possession, or any other means to the
original owner;

(d) The cleaning, fumigating, razing, or moving of existing
buildings or structures, but may not include the charge made for
janitorial services; and for purposes of this section the term
"janitorial services" shall mean those cleaning and caretaking services
ordinarily performed by commercial janitor service businesses
including, but not limited to, wall and window washing, floor cleaning
and waxing, and the cleaning in place of rugs, drapes and upholstery.
The term "janitorial services" does not include painting, papering,
repairing, furnace or septic tank cleaning, snow removal or
sandblasting;
(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

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

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

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

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

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning,
trimming, repairing, removing, and clearing of trees and brush near
electric transmission or distribution lines or equipment, if performed
by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional
sporting events; and
(g) The following personal services: Physical fitness services,
tanning salon services, tattoo parlor services, steam bath services,
turkish bath services, escort services, and dating services.
(4)(a) The term also includes:
(i) The renting or leasing of tangible personal property to
consumers; and
(ii) Providing tangible personal property along with an operator
for a fixed or indeterminate period of time. A consideration of this
is that the operator is necessary for the tangible personal property to
perform as designed. For the purpose of this subsection (4)(a)(ii), an
operator must do more than maintain, inspect, or set up the tangible
personal property.
(b) The term does not include the renting or leasing of tangible
personal property where the lease or rental is for the purpose of
sublease or subrent.
(5) The term also includes the providing of "competitive telephone
service," "telecommunications service," or "ancillary services," as
those terms are defined in RCW 82.04.065, to consumers.
(6)(a) The term also includes the sale of prewritten computer
software other than a sale to a person who presents a seller's permit
or uniform exemption certificate in conformity with RCW 82.04.470,
regardless of the method of delivery to the end user. For purposes of
this subsection (6)(a), the sale of prewritten computer software
includes the sale of or charge made for a key or an enabling or
activation code, where the key or code is required to activate
prewritten computer software and put the software into use. There is
no separate sale of the key or code from the prewritten computer
software, regardless of how the sale may be characterized by the vendor
or by the purchaser.
   The term "retail sale" does not include the sale of or charge made
for:
   (i) Custom software; or
   (ii) The customization of prewritten computer software.
(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

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

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

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

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

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

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

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

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the
seller and the purchaser specifies or the circumstances surrounding the
transaction suggest or indicate that the right to use terminates on the
occurrence of a condition subsequent.

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

(10) The term also does not include sales of:

(a) Chemical sprays or washes ((to persons for the purpose of
postharvest treatment of fruit for the prevention of scald, fungus,
mold, or decay, nor does it include sales of)), fertilizer, and spray
materials as provided in section 1804 of this act; and

(b) Feed, seed, seedlings, ((fertilizer,)) and agents for enhanced
pollination including insects such as bees((, and spray materials)) to:

((a)) (i) Persons who participate in the federal conservation
reserve program, the environmental quality incentives program, the
wetlands reserve program, ((and)) or the wildlife habitat incentives
program, or their successors administered by the United States
department of agriculture;

((b)) (ii) Farmers for the purpose of producing for sale any
agricultural product; and

((c)) (iii) Farmers acting under cooperative habitat development
or access contracts with an organization exempt from federal income tax
under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal
revenue code or the Washington state department of fish and wildlife to
produce or improve wildlife habitat on land that the farmer owns or
leases.

(11) The term does not include the sale of or charge made for labor
and services rendered in respect to the constructing, repairing,
decorating, or improving of new or existing buildings or other
structures under, upon, or above real property of or for the United
States, any instrumentality thereof, or a county or city housing
authority created pursuant to chapter 35.82 RCW, including the
installing, or attaching of any article of tangible personal property
therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

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

NEW SECTION. Sec. 1803. A new section is added to chapter 82.04 RCW to read as follows:

(1) As provided by RCW 82.04.050(10), the term "sale at retail" or "retail sale" does not include sales of:

(a) Registered chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay; and

(b) Registered fertilizer and spray materials to:

(i) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, or the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(ii) Farmers for the purpose of producing for sale any agricultural product; and

(iii) Farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(2) The definitions in this subsection apply to this section:

(a) "Brand name materials list" means a list established by the
state department of agriculture of materials allowed for use in organic
production, processing, or handling under standards of the national
organic program.

(b) "National organic program" means a program authorized by the
organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et
seq., and the rules adopted thereunder for agricultural products
marketed and labeled using the term "organic" or a derivative of the
term "organic."

(c) "Registered" means registration by the state department of
agriculture and inclusion in the brand name materials list as provided
under section 9, chapter . . . ([House Bill No. 2460] [Senate Bill No.
6228]), Laws of 2010.

NEW SECTION. Sec. 1804. A new section is added to chapter 82.04
RCW to read as follows:
(1) As provided by RCW 82.04.050(10), the term "sale at retail" or
"retail sale" does not include sales of:
(a) Listed chemical sprays or washes to persons for the purpose of
postharvest treatment of fruit for the prevention of scald, fungus,
mold, or decay; and
(b) Listed fertilizer and spray materials to:
(i) Persons who participate in the federal conservation reserve
program, the environmental quality incentives program, the wetlands
reserve program, or the wildlife habitat incentives program, or their
successors administered by the United States department of agriculture;
(ii) Farmers for the purpose of producing for sale any agricultural
product; and
(iii) Farmers acting under cooperative habitat development or
access contracts with an organization exempt from federal income tax
under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
the Washington state department of fish and wildlife to produce or
improve wildlife habitat on land that the farmer owns or leases.
(2) The definitions in this subsection apply to this section:
(a) "Listed" means inclusion in the OMRI products list published by
the organic materials review institute as of July 1, 2010, or such
subsequent date as the department may provide by rule, consistent with
the purposes of this section.
(b) "National organic program" means a program authorized by the organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic."

(c) "OMRI products list" means a directory of products that the organic materials review institute has reviewed and determined are allowed for use in organic production, processing, or handling under standards of the national organic program.

(d) "Organic materials review institute" means an organization exempt from tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code that provides a third-party review of materials that are allowed for use in organic production, processing, or handling under standards of the national organic program.

PART XIX
Repealing the Sales Tax Exemption for Coal Used at Coal-Fired Thermal Electric Generation Facilities

NEW SECTION. Sec. 1901. The following acts or parts of acts are each repealed:

(1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal electric generation facility--Application--Demonstration of progress in air pollution control--Notice of emissions violations--Reappplication--Payments on cessation of operation) and 1997 c 368 s 4; and

(2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal electric generation facility--Application--Demonstration of progress in air pollution control--Notice of emissions violations--Reappplication--Payments on cessation of operation) and 1997 c 368 s 6.

PART XX
Imposing a One Cent per Ounce Tax on Carbonated Beverages

Sec. 2001. RCW 82.64.010 and 1994 sp.s. c 7 s 905 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.
(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which a tax has been paid under this chapter on the carbonated beverage or on the syrup in the carbonated beverage.

(3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

Sec. 2002. RCW 82.64.020 and 2009 c 479 s 72 are each amended to read as follows:

(1) A tax is imposed on each sale at wholesale of a carbonated beverage or syrup in this state. The rate of the tax ((shall be)) is equal to 0.4167 cents per ounce for carbonated beverages and one dollar per gallon. Fractional amounts ((shall)) must be taxed proportionally.

(2) A tax is imposed on each sale at retail of a carbonated beverage or syrup in this state. The rate of the tax ((shall be)) is equal to the rate imposed under subsection (1) of this section.

(3) (a) Moneys collected under this chapter ((shall)) on the sale of syrup must be deposited in the state general fund.

(b) Moneys collected under this chapter on the sale of carbonated beverages must be deposited in the general fund.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter.

Sec. 2003. RCW 82.64.030 and 1994 sp.s. c 7 s 907 are each amended to read as follows:

The following are exempt from the taxes imposed in this chapter:

(1) Any successive sale of a previously taxed carbonated beverage or syrup.
(2) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state. The department (shall) must provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) Any sale at wholesale of a trademarked carbonated beverage or syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked carbonated beverage or syrup within a specified geographic territory.

(4) Any sale of syrup in respect to which a tax on the privilege of possession was paid under this chapter before June 1, 1991.)

Sec. 2004. RCW 82.64.040 and 1994 sp.s. c 7 s 908 are each amended to read as follows:

(1) Credit (shall be) is allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit (shall) may not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(2) For the purpose of this section:

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of carbonated beverages or syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the carbonated beverage or syrup.

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

PART XXI
Eliminating Tax Preferences for Bullion

NEW SECTION. Sec. 2101. RCW 82.04.062 ("Sale at wholesale," "sale at retail" excludes sale of precious metal bullion and monetized bullion--Computation of tax) and 1985 c 471 s 5 are each repealed.
NEW SECTION. Sec. 2102. The repeal in section 2101 of this act does not affect any existing right acquired or liability or obligation incurred under the statute repealed or under any rule or order adopted under that statute nor does it affect any proceeding instituted under the repealed statute.

NEW SECTION. Sec. 2103. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale of precious metal bullion or monetized bullion.

(2) The definitions in this subsection apply to this section.

(a) "Precious metal bullion" means any precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.

(b) "Monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

NEW SECTION. Sec. 2104. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of precious metal bullion or monetized bullion.

(2) The definitions in section 2103 of this act apply to this section.

PART XXII

Miscellaneous Provisions

NEW SECTION. Sec. 2201. (1) Except as provided in subsection (2) of this section, if any provision of sections 101 through 108 of this act or its application to any person or circumstance is held invalid, the remainder of sections 101 through 108 of this act or the application of the provision to other persons or circumstances is not affected.
If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 104(1)(c) of this act unconstitutional or otherwise invalid, sections 101 through 108 of this act are null and void in their entirety.

NEW SECTION. Sec. 2202. Sections 101 through 108 of this act apply with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after July 1, 2010. For purposes of calculating the thresholds in section 104(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

NEW SECTION. Sec. 2203. Sections 201 through 213 of this act must be construed liberally to effectuate the legislature's intent to ensure that all businesses and individuals pay their fair share of taxes.

NEW SECTION. Sec. 2204. (1) Except as provided in subsection (2) of this section, section 201 of this act applies to tax periods beginning January 1, 2006.

(2) Section 201 of this act does not apply to any tax periods ending before July 1, 2010, that were included in a completed field audit conducted by the department.

NEW SECTION. Sec. 2205. Sections 502 and 802 of this act apply both retroactively and prospectively.

NEW SECTION. Sec. 2206. In accordance with Article VIII, section 5 of the state Constitution, sections 802 and 2205 of this act do not authorize refunds of business and occupation tax validly collected before July 1, 2010, on amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors.

NEW SECTION. Sec. 2207. Section 502 of this act does not affect any final judgments, not subject to appeal, entered by a court of competent jurisdiction before the effective date of this section.
NEW SECTION.  Sec. 2208. Sections 1101 and 1102 of this act apply to transfers or conveyances as described in RCW 82.45.010(3)(i) occurring on and after April 1, 2010.

NEW SECTION.  Sec. 2209. Section 1601 of this act applies only with respect to tax liability incurred under chapter 82.24 RCW on or after July 1, 2010, for the sale, use, consumption, handling, possession, or distribution of cigarettes.

NEW SECTION.  Sec. 2210. Section 1604(1) (a), (b), and (d) of this act applies only with respect to tax liability incurred under chapter 82.24 RCW on or after July 1, 2010, for the sale, handling, or distribution of cigars, little cigars, and other tobacco products.

NEW SECTION.  Sec. 2211. Section 1604(1)(c), chapter . . ., Laws of 2010 (this act) applies only with respect to tax liability incurred under chapter 82.24 RCW on or after October 1, 2010, for the sale, handling, or distribution of moist snuff.

NEW SECTION.  Sec. 2212. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION.  Sec. 2213. Sections 501, 502, and 2205 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION.  Sec. 2214. Except for sections 501, 502, 606, 1701 through 1707, and 2205 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2010.

NEW SECTION.  Sec. 2215. Sections 1701 through 1707 of this act are necessary for the immediate preservation of the public peace,
health, or safety, or support of the state government and its existing
public institutions, and take effect May 1, 2010.

NEW SECTION. Sec. 2216. Section 605 of this act expires July 1,
2011.

NEW SECTION. Sec. 2217. Section 606 of this act takes effect July
1, 2011.

NEW SECTION. Sec. 2218. Sections 1802 and 1804 of this act take
effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
Bill No. 6228]), Laws of 2010 is not enacted as of July 1, 2010.

NEW SECTION. Sec. 2219. Sections 1801 and 1803 of this act take
effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
Bill No. 6228]), Laws of 2010 is enacted as of July 1, 2010.

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