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**SUBSTITUTE HOUSE BILL 1678**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Finance (originally sponsored by Representatives Carlyle and Nealey; by request of Department of Revenue)

AN ACT Relating to improving tax fairness for businesses engaged in electronic commerce by eliminating inconsistent tax treatment of digital business inputs, ensuring that prewritten computer software developers remain eligible for the manufacturing machinery and equipment sales and use tax exemption, and providing greater clarity for out-of-state sellers concerning their tax obligations; amending RCW 82.08.02087, 82.12.02087, 82.08.195, and 82.04.067; reenacting and amending RCW 82.08.02565; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.32 RCW; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency.

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

**Part I**

**Sales and use tax exemptions for digital automated services used solely for business purposes**

NEW SECTION. **Sec.**  (1) In 2009 the legislature enacted comprehensive legislation addressing the excise taxation of digital products. The term "digital products" encompasses two categories of electronically transferred goods and services: "Digital goods," such as a digital music file or an e-book, and "digital automated services," such as an online research application.

(2) In general, the legislation provided that retail sales of digital products are subject to retail sales tax, unless specifically exempted. One of the exemptions provided in the 2009 enactment, as modified by 2010 clean-up legislation, was for sales of digital goods used solely for business purposes. The legislature's purpose in enacting this exemption was to provide businesses with a meaningful sales and use tax exemption for digital business inputs. This exemption is not currently subject to an expiration date or to accountability reporting requirements.

(3) The legislature finds that there has been a significant migration of digital business inputs from digital goods to digital automated services in the past several years, which was not anticipated in 2009 and 2010. The legislature further finds that this migration has significantly undermined the effect of the legislature's policy choice to provide substantial sales and use tax relief for the acquisition of digital business inputs. The legislature further finds that electronic commerce has grown and evolved dramatically in recent years. The legislature further finds that our state's tax structure is ill-equipped to adapt to such a quickly evolving digital landscape. The legislature further finds that it is in the best interest of the state to carefully monitor the fiscal impact of tax preferences related to digital products to ensure that the actual revenue loss to the state reasonably conforms to what was anticipated at the time the legislation was adopted.

(4)(a) This subsection is the tax preference performance statement for the sales and use tax exemptions provided in RCW 82.08.02087(2) and 82.12.02087(2). The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the tax structure and provide tax relief, as indicated in RCW 82.32.808(2) (d) and (e).

(c) The legislature's specific public policy objectives are to: (i) Provide more clarity and consistency in the sales and use taxation of digital business inputs; (ii) reaffirm and restore the policy choice it made in 2009 of providing substantial sales and use tax relief to businesses for their acquisition of digital business inputs; and (iii) evaluate whether the fiscal impact of these tax preferences reasonably conforms to what was anticipated at the time the implementing legislation was adopted. These objectives are accomplished by broadening the exemptions for digital business inputs by including digital automated services used solely for business purposes, and requiring the joint legislative audit and review committee, and the legislature, to evaluate the effectiveness and fiscal impact of these tax preferences in ten years.

(d) To measure the effectiveness of the tax preference in achieving the specific public policy objectives described in (c) of this subsection, the joint legislative audit and review committee must, at a minimum, evaluate the following:

(i) The number of businesses claiming the tax preference as reported to the department of revenue pursuant to RCW 82.32.808(6);

(ii) The amount of sales and use taxes exempted under RCW 82.08.02087(2) and 82.12.02087(2) as reported to the department of revenue pursuant to RCW 82.32.808(6); and

(iii) Whether the exemptions provided in RCW 82.08.02087(1) and 82.12.02087(1) are still in effect.

(e) The legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference if a review finds that the exemptions in RCW 82.08.02087(1) and 82.12.02087(1) are still in effect on a permanent basis. If a review finds that the legislature has added an expiration date for the tax exemptions in RCW 82.08.02087(1) and 82.12.02087(1) and such expiration date is after July 1, 2025, the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference to coincide with the expiration date of RCW 82.08.02087(1) and 82.12.02087(1).

(f) The department of revenue must provide data needed to perform the review in (d) of this subsection. The joint legislative audit and review committee may also refer to any other data it deems necessary in conducting the review.

**Sec.**  RCW 82.08.02087 and 2010 c 111 s 402 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of digital goods, and services rendered in respect to digital goods, where the digital goods and services rendered in respect to digital goods are purchased solely for business purposes. The exemption provided by this section also applies to the sale to a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes.

(2) ((~~The exemption is available only when the buyer provides the seller with~~)) Until July 1, 2025, the tax imposed by RCW 82.08.020 does not apply to the sale to a business of digital automated services purchased solely for business purposes. The exemption provided by this subsection (2) also applies to the sale to a business of a digital code if all of the digital automated services to be obtained through the use of the code will be used solely for business purposes.

(3) Sellers making tax-exempt sales under this section must obtain from the purchaser 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.

((~~(3)~~)) (4) For purposes of this section, the following definitions apply:

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Services rendered in respect to digital goods" means those services defined as a retail sale in RCW 82.04.050(2)(g).

**Sec.**  RCW 82.12.02087 and 2010 c 111 s 502 are each amended to read as follows:

(1) The provisions of this chapter do not apply to the use by a business of digital goods, and services rendered in respect to digital goods, where the digital goods and services rendered in respect to digital goods are used solely for business purposes. The exemption provided by this section also applies to the use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes.

(2) Until July 1, 2025, the provisions of this chapter do not apply to the use by a business of digital automated services solely for business purposes. The exemption provided by this subsection (2) also applies to the use by a business of a digital code if all of the digital automated services to be obtained through the use of the code will be used solely for business purposes.

(3) For purposes of this section, the definitions in RCW 82.08.02087 apply.

**Sec.**  RCW 82.08.195 and 2010 c 111 s 601 are each amended to read as follows:

(1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) The tax imposed by RCW 82.08.020 does not apply in respect to a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the sale is to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection 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.

(7) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product or one or more digital products and other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (7).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 nor to that portion of the selling price of the code attributable to any digital ((~~goods~~)) products, the sale of which is exempt under RCW 82.08.02087.

**Part II**

**Clarifying the sales and use tax exemption for machinery equipment used in manufacturing, research and development, or testing operations**

NEW SECTION. **Sec.**  (1) The legislature in 1995 established sales and use tax exemptions for manufacturing machinery and equipment, commonly referred to as the "M&E exemption." In 1996, the legislature expanded the exemption to include machinery and equipment used by a manufacturer in a research and development operation.

(2) The legislature finds that software developers that created and produced prewritten computer software have historically qualified for this exemption because the production of prewritten computer software contained on a disc or other tangible storage media provided to the buyer is considered to be a manufacturing activity. The legislature further finds that changes in the software industry have resulted in most prewritten computer software sold today being delivered to buyers electronically. As a result of this change, questions have been raised about the continued applicability of the machinery and equipment exemption to the development and production of prewritten computer software.

(3) Therefore, the legislature intends in section 202 of this act to clarify its intent that the machinery and equipment exemption applies to developers of prewritten computer software, regardless of how the software is delivered to buyers. As a clarification of its intent, the legislature does not intend section 202 of this act to be considered the expansion of an existing tax preference for purposes of RCW 82.32.805 and 82.32.808.

**Sec.**  RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s 13 are each reenacted and amended to read as follows:

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Except as provided in (c) of this subsection, sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(c)(i) The exemption under this section is in the form of a remittance for a gas distribution business, as defined in RCW 82.16.010, claiming the exemption for machinery and equipment used for the production of compressed natural gas or liquefied natural gas for use as a transportation fuel.

(ii) A gas distribution business claiming an exemption from state and local tax in the form of a remittance under this section must pay the tax under RCW 82.08.020 and all applicable local sales taxes. Beginning July 1, 2017, the gas distribution business may then apply to the department for remittance of state and local sales and use taxes. A gas distribution business may not apply for a remittance more frequently than once a quarter. The gas distribution business must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The gas distribution business must retain, in adequate detail, records to enable the department to determine whether the business is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(iii) The department must determine eligibility under this section based on the information provided by the gas distribution business, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying businesses who submitted applications during the previous quarter.

(iv) Beginning July 1, 2028, a gas distribution business may not apply for a refund under this section or RCW 82.12.02565.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturer" means a person that qualifies as a manufacturer under RCW 82.04.110. "Manufacturer" also includes a person that:

(i) Prints newspapers or other materials; or

(ii) Is engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media.

(e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.

(f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the preparation of food products on the premises of a person selling food products at retail.

(g) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(h) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(i) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(j) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes the testing of tangible personal property for use in that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the testing of tangible personal property for use in the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(3) This section does not apply (a) to sales of machinery and equipment used directly in the manufacturing, research and development, or testing of marijuana, useable marijuana, or marijuana-infused products, or (b) to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

**Part III**

**Remote sellers**

NEW SECTION. **Sec.**  (1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

(3) The legislature further recognizes that the requisite physical presence can be established directly through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives who act on behalf of the taxpayer in the taxing state.

(4) However, the legislature finds that because the United States supreme court has not clearly defined the circumstances under which a physical presence is sufficient to establish a substantial nexus for tax purposes, frequent conflicts have arisen throughout the country among state taxing authorities, taxpayers, tax practitioners, and courts.

(5) Therefore, the legislature intends to provide more clarity for out-of-state sellers that compensate Washington residents for referring customers to the out-of-state seller by providing clear statutory guidelines for determining when these out-of-state sellers are required to collect Washington's retail sales tax.

(6) Nothing in Part III of this act may be construed as relieving in-state businesses and other businesses having a substantial nexus with Washington through a direct physical presence in this state from their Washington sales and use tax collection obligations.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as follows:

(1) For purposes of this chapter, a remote seller is presumed to have a substantial nexus with this state and is obligated to collect retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the remote seller, if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller by all residents with this type of an agreement with the remote seller exceed ten thousand dollars during the preceding calendar year. This presumption may be rebutted by proof that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Proof may be shown by (a) establishing, in a manner acceptable to the department, that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition, or (b) any other means as may be approved by the department.

(2) "Remote seller" means a seller that makes retail sales in this state through one or more agreements described in subsection (1) of this section, and the seller's other physical presence in this state, if any, is not sufficient to establish a retail sales or use tax collection obligation under the commerce clause of the United States Constitution.

(3) Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).

(4) This section is subject to section 304 of this act.

**Sec.**  RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each amended 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 two hundred fifty 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)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

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

(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) Employee 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 June 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 RCW 82.04.462 and, for financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2).

(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 June 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 June 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)(a) Subsections (1) through (5) of this section only apply with respect to the taxes imposed under this chapter on apportionable activities as defined in RCW 82.04.460. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence.

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

(c)(i) A person is also physically present in this state for the purposes of this subsection if 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.

(ii) A remote seller as defined in section 302 of this act is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under section 302 of this act. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in section 302 of this act. To the extent that the presumption in section 302 of this act is no longer operative pursuant to section 304 of this act, the presumption in this subsection (6)(c)(ii) is no longer operative. Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms "agent" or "other representative" in this subsection (6)(c).

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

(1) If the department determines that a change, taking effect after the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of section 302 of this act, such conflicting provision or provisions of section 302 of this act, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with section 302 of this act if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for, under section 302 of this act.

(b) A change in the streamlined sales and use tax agreement conflicts with section 302 of this act if one or more provisions of section 302 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of section 302 of this act, the department:

(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers to the fullest extent allowed under state and federal law; and

(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of section 302 of this act that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller" has the same meaning as in section 302 of this act.

**Part IV**

**Miscellaneous**

NEW SECTION. **Sec.**  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.**  Section 202 of this act applies prospectively and retroactively.

NEW SECTION. **Sec.**  Part III of this act expires July 1, 2025.

NEW SECTION. **Sec.**  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 July 1, 2015.

**--- END ---**