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**HOUSE BILL 2150**

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

**By** Representatives MacEwen, Smith, Walsh, Vick, Tharinger, Reykdal, and Buys

AN ACT Relating to reforming the business and occupation tax to provide fairness and administrative simplicity; amending RCW 82.04.050, 82.04.051, 82.04.062, 82.04.190, 82.04.2403, 82.04.255, 82.04.257, 82.04.261, 82.04.285, 82.04.286, 82.04.29001, 82.04.2907, 82.04.297, 82.04.334, 82.04.360, 82.04.4291, 82.04.4295, 82.04.4324, 82.04.433, 82.04.440, 82.04.460, 82.04.462, and 82.04.540; reenacting and amending RCW 82.04.260; adding new sections to chapter 82.04 RCW; repealing RCW 82.04.230, 82.04.240, 82.04.2404, 82.04.250, 82.04.263, 82.04.270, 82.04.272, 82.04.280, 82.04.290, 82.04.29002, 82.04.2905, 82.04.2906, 82.04.2908, 82.04.2909, 82.04.293, 82.04.294, 82.04.298, 82.04.426, 82.04.620, 82.04.4451, 82.04.44525, 82.04.447, 82.04.448, 82.04.4481, 82.04.4482, 82.04.4483, 82.04.4485, 82.04.4486, 82.04.4489, and 82.04.449; and providing an effective date.

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

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

(1) Upon every person engaging within this state primarily in the business of: Manufacturing or processing for hire, extracting or extracting for hire, selling at wholesale, selling at retail, or any combination thereof; as to such persons the amount of the tax is equal to the measure of the tax for all business activities engaged in by the person, multiplied by the rate of 1.6 percent. The tax under this subsection (1) is subject to the deduction allowed under section 2 of this act and any other deductions, exemptions, or credits otherwise allowable under this chapter.

(2)(a) Except as otherwise provided in this subsection, upon every person engaging within this state primarily in any business activity other than an activity described under subsection (1) of this section; as to such persons the amount of tax is equal to the measure of the tax for all activities engaged in by the person multiplied by the rate of 3.75 percent, subject to the deduction allowed under section 2 of this act and any other deductions, exemptions, or credits otherwise allowable under this chapter.

(b) This subsection (2) includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion, or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his or her principal or supplier to be used for informational, educational, and promotional purposes is not considered a part of the agent's remuneration or commission and is not subject to taxation under this section.

(c) Credit intermediation services are subject to the rate in subsection (1) of this section. Telecommunications services are subject to a rate of 1.2 percent.

(3) A taxpayer must use the same tax rate for taxes due and payable during the entire calendar year.

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

(a) "Credit intermediation services" means commercial banking, sales financing, consumer lending, and all other activities related to credit intermediation as described in the three digit North American industry classification system code 522.

(b) "Measure of the tax" means:

(i) For manufacturing or processing for hire, the value of the products, including by-products, manufactured by the business regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(ii) For an extracting or extracting for hire, the value of the products, including by-products, extracted by the business regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(iii) For selling at retail or wholesale, the gross proceeds of sales of the business.

(iv) For the rendition of services or any other apportionable activity as defined in RCW 82.04.460, the gross income of the business.

(c) "Primarily" means more than fifty percent.

(d) "Telecommunications service" has the meaning provided in RCW 82.04.065.

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

(1) In computing tax under this chapter, persons described under section 1(1) of this act may deduct the greater of: Cost of goods sold, compensation, thirty percent of the measure of the tax, or forty-one thousand six hundred sixty-seven dollars for each month in the reporting period, from the measure of the tax. The deduction provided in this subsection is in addition to any other deductions that may be available to the taxpayer.

(2) Persons described under section 1(2) of this act may deduct the greater of: Compensation, thirty percent of the measure of the tax, or forty-one thousand six hundred sixty-seven dollars for each month in the reporting period, from the measure of the tax. The deduction provided in this subsection is in addition to any other deductions that may be available to the taxpayer.

(3) A person may not deduct compensation in excess of two hundred thousand dollars for any employee in a calendar year.

(4)(a) The department must by rule provide a method of apportioning compensation and cost of goods sold to Washington. For apportionable activities, as defined in RCW 82.04.460, the rule adopted by the department must provide for a single factor apportionment based on a receipts factor and, to the extent feasible, be consistent with the apportionment of income for apportionable activities under RCW 82.04.460 and 82.04.462. For nonapportionable activities, the apportionment of compensation and cost of goods sold to Washington must be based on sales within Washington as a percentage of sales made everywhere.

(b) If a person is primarily engaged in selling products manufactured or extracted by the person, the person may apportion all compensation to Washington for employees employed in Washington or apportion all cost of goods sold to Washington with respect to products manufactured in Washington.

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

(a) "Benefits" means the cost of all benefits, to the extent deductible for federal income tax purposes, that it provides to its officers, directors, owners, partners, and employees. The term "benefits" includes employees' health savings accounts, health care insurance, and retirement contributions.

(b) "Compensation" includes wages and benefits but not to exceed two hundred thousand dollars per employee.

(c) "Cost of goods sold" means all direct costs of extracting, manufacturing, or acquiring tangible personal property that are properly reportable as cost of goods sold on the federal income tax return. A person must determine its cost of goods sold in accordance with the methods used on the federal income tax return.

(d) "Wages" means the amount entered in the medicare wages and tips box of internal revenue service form W-2 or any subsequent form with a different number or designation that substantially provides the same information. The term also includes, to the extent not included above:

(i) Net distributive income from a taxable entity treated as a partnership for federal income tax purposes, but only if the person receiving the distribution is a natural person;

(ii) Net distributive income from limited liability companies and corporations treated as S corporations for federal income tax purposes, but only if the person receiving the distribution is a natural person;

(iii) Stock awards and stock options deducted for federal income tax purposes; and

(iv) Net distributive income from a limited liability company treated as a sole proprietorship for federal income tax purposes, but only if the person receiving the distribution is a natural person.

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

(1)RCW 82.04.230 (Tax upon extractors) and 2006 c 300 s 5, 1993 sp.s. c 25 s 101, 1971 ex.s. c 281 s 2, 1969 ex.s. c 262 s 33, 1967 ex.s. c 149 s 7, & 1961 c 15 s 82.04.230;

(2)RCW 82.04.240 (Tax on manufacturers) and 2010 c 114 s 104, 2004 c 24 s 4, 2003 c 149 s 3, 1998 c 312 s 3, 1993 sp.s. c 25 s 102, 1981 c 172 s 1, 1979 ex.s. c 196 s 1, 1971 ex.s. c 281 s 3, 1969 ex.s. c 262 s 34, 1967 ex.s. c 149 s 8, 1965 ex.s. c 173 s 5, & 1961 c 15 s 82.04.240;

(3)RCW 82.04.2404 (Manufacturers—Processors for hire—Semiconductor materials) and 2010 c 114 s 105 & 2006 c 84 s 2;

(4)RCW 82.04.250 (Tax on retailers) and 2014 c 97 s 402, 2013 3rd sp.s. c 2 s 7, 2010 1st sp.s. c 23 s 509, 2010 1st sp.s. c 11 s 1, 2008 c 81 s 5, 2006 c 177 s 5, & 2003 2nd sp.s. c 1 s 2;

(5)RCW 82.04.263 (Tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development) and 2009 c 469 s 202 & 1996 c 112 s 3;

(6)RCW 82.04.270 (Tax on wholesalers) and 2004 c 24 s 5, 2003 2nd sp.s. c 1 s 5, 2001 1st sp.s. c 9 s 3, & 1999 c 358 s 2;

(7)RCW 82.04.272 (Tax on warehousing and reselling prescription drugs) and 2013 c 19 s 127, 2003 c 168 s 401, & 1998 c 343 s 1;

(8)RCW 82.04.280 (Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined) and 2010 c 106 s 206, 2010 c 106 s 205, 2009 c 461 s 3, 2009 c 461 s 2, 2006 c 300 s 7, 2006 c 300 s 6, 2004 c 24 s 6, 2003 c 149 s 4, 1998 c 343 s 3, 1994 c 112 s 1, 1993 sp.s. c 25 s 303, 1993 sp.s. c 25 s 106, 1986 c 226 s 2, 1983 c 132 s 1, 1975 1st ex.s. c 90 s 3, 1971 ex.s. c 299 s 5, 1971 ex.s. c 281 s 7, & 1970 ex.s. c 8 s 2;

(9)RCW 82.04.290 (Tax on international investment management services or other business or service activities) and 2014 c 97 s 404, 2013 3rd sp.s. c 2 s 8, 2013 c 23 s 314, 2011 c 174 s 101, 2008 c 81 s 6, 2005 c 369 s 8, 2004 c 174 s 2, 2003 c 343 s 2, & 2001 1st sp.s. c 9 s 6;

(10)RCW 82.04.29002 (Additional tax on certain business and service activities) and 2010 1st sp.s. c 23 s 1101;

(11)RCW 82.04.2905 (Tax on providing day care) and 1998 c 312 s 7;

(12)RCW 82.04.2906 (Tax on certain chemical dependency services) and 2003 c 343 s 1;

(13)RCW 82.04.2908 (Tax on provision of room and domiciliary care to assisted living facility residents) and 2012 c 10 s 70, 2005 c 514 s 302, & 2004 c 174 s 1;

(14)RCW 82.04.2909 (Tax on aluminum smelters) and 2011 c 174 s 301;

(15)RCW 82.04.293 (International investment management services—Definitions) and 1997 c 7 s 3 & 1995 c 229 s 1;

(16)RCW 82.04.294 (Tax on manufacturers or wholesalers of solar energy systems) and 2013 2nd sp.s. c 13 s 902, 2011 c 179 s 1, 2010 c 114 s 109, 2009 c 469 s 501, 2007 c 54 s 8, & 2005 c 301 s 2;

(17)RCW 82.04.298 (Tax on qualified grocery distribution cooperatives) and 2011 c 2 s 204, 2010 1st sp.s. c 23 s 511, 2008 c 49 s 1, & 2001 1st sp.s. c 9 s 1;

(18)RCW 82.04.426 (Exemptions—Semiconductor microchips) and 2010 c 114 s 110 & 2003 c 149 s 2;

(19)RCW 82.04.620 (Exemptions—Certain prescription drugs) and 2007 c 447 s 1;

(20)RCW 82.04.4451 (Credit against tax due—Maximum credit—Table) and 2010 1st sp.s. c 23 s 1102, 1997 c 238 s 2, & 1994 sp.s. c 2 s 1;

(21)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;

(22)RCW 82.04.447 (Credit—Natural or manufactured gas purchased by direct service industrial customers—Reports) and 2001 c 214 s 9;

(23)RCW 82.04.448 (Credit—Manufacturing semiconductor materials) and 2010 c 114 s 117 & 2003 c 149 s 9;

(24)RCW 82.04.4481 (Credit—Property taxes paid by aluminum smelter) and 2011 c 174 s 302;

(25)RCW 82.04.4482 (Credit—Sales of electricity or gas to an aluminum smelter) and 2004 c 24 s 9;

(26)RCW 82.04.4483 (Credit—Programming or manufacturing software in rural counties) and 2010 c 114 s 119 & 2004 c 25 s 1;

(27)RCW 82.04.4485 (Credit—Mechanical lifting devices purchased by hospitals) and 2006 c 165 s 5;

(28)RCW 82.04.4486 (Credit—Syrup taxes paid by buyer) and 2006 c 245 s 1;

(29)RCW 82.04.4489 (Credit—Motion picture competitiveness program) and 2012 c 189 s 4, 2008 c 85 s 3, & 2006 c 247 s 5

(30)RCW 82.04.449 (Credit—Washington customized employment training program) and 2012 c 46 s 3, 2010 c 114 s 121, 2009 c 296 s 3, & 2006 c 112 s 5.

**Sec.**  RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each amended to read as follows:

(1)(a) "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:

(i) 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

(ii) 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

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as 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

(iv) 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

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

(vi) 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.

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

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under ((~~RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908~~)) section 1(2) of this act.

(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 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 does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" 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 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)(i) 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.

(ii) Until July 1, 2017, amusement and recreation services do not include the opportunity to dance provided by an establishment in exchange for a cover charge.

(iii) For purposes of this subsection (3)(a):

(A) "Cover charge" means a charge, regardless of its label, to enter an establishment or added to the purchaser's bill by an establishment or otherwise collected after entrance to the establishment, and the purchaser is provided the opportunity to dance in exchange for payment of the charge.

(B) "Opportunity to dance" means that an establishment provides a designated physical space, on either a temporary or permanent basis, where customers are allowed to dance and the establishment either advertises or otherwise makes customers aware that it has an area for dancing;

(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 the renting or leasing of tangible personal property to consumers.

(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 to a consumer, 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)(i) 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.

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

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

(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 also includes the charge made for 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 (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(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.

(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 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.

(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.

(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.

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

**Sec.**  RCW 82.04.051 and 1999 c 212 s 2 are each amended to read as follows:

(1) As used in RCW 82.04.050, the term "services rendered in respect to" means those services that are directly related to the constructing, building, repairing, improving, and decorating of buildings or other structures and that are performed by a person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. The term does not include services such as engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services provided to the consumer of, or person responsible for performing, the constructing, building, repairing, improving, or decorating services.

(2) A contract or agreement under which a person is responsible for both services that would otherwise be subject to tax as a service under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act and also constructing, building, repairing, improving, or decorating activities that would otherwise be subject to tax under another section of this chapter is subject to the tax that applies to the predominant activity under the contract or agreement.

(3) Unless otherwise provided by law, a contract or agreement under which a person is responsible for activities that are subject to tax as a service under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act, and a subsequent contract or agreement under which the same person is responsible for constructing, building, repairing, improving, or decorating activities subject to tax under another section of this chapter, ((~~shall~~)) may not be combined and taxed as a single activity if at the time of the first contract or agreement it was not contemplated by the parties, as evidenced by the facts, that the same person would be awarded both contracts.

(4) As used in this section "responsible for the performance" means that the person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work. A person who is financially obligated for the work, such as a bank, but who does not have control over the work itself is not responsible for the performance of the work.

**Sec.**  RCW 82.04.062 and 1985 c 471 s 5 are each amended to read as follows:

(1) For purposes of this chapter, "wholesale sale," "sale at wholesale," "retail sale," and "sale at retail" do not include the sale of precious metal bullion or monetized bullion.

(2) ((~~In computing tax under this chapter on the business of making sales of precious metal bullion or monetized bullion, the tax shall be imposed on the amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, but no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.~~

~~(3)~~)) For purposes of this section, "precious metal bullion" means any precious metal which 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. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter 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.

**Sec.**  RCW 82.04.190 and 2014 c 97 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 of:

(a) Resale as tangible personal property in the regular course of business;

(b) 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;

(c) Consuming such property in producing for sale as 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;

(d) 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) 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~~)) section 1(2) of this act; (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~~)) that 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~~)) may 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 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 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) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(b) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(b);

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(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;

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section;

(13) Any person who purchases, acquires, owns, holds, or uses chemical sprays or washes for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, or who purchases feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials, is not a consumer of such items, but only to the extent that the items:

(a) Are used in relation to the person's participation in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(b) Are for use by a farmer for the purpose of producing for sale any agricultural product; or

(c) Are for use by a farmer to produce or improve wildlife habitat on land the farmer owns or leases while 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; and

(14) A regional transit authority is not a consumer with respect to labor, services, or tangible personal property purchased pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a transit agency, as defined in RCW 81.104.015, performs the labor or services.

**Sec.**  RCW 82.04.2403 and 1994 c 167 s 1 are each amended to read as follows:

The tax imposed by ((~~RCW 82.04.240~~)) section 1(1) of this act does not apply to cleaning fish. "Cleaning fish" means the removal of the head, fins, or viscera from fresh fish without further processing, other than freezing.

**Sec.**  RCW 82.04.255 and 2011 c 322 s 2 are each amended to read as follows:

(1) ((~~Upon every person engaging within the state in the business of providing real estate brokerage services; as to such persons, the amount of the tax with respect to such business is equal to the gross income of the business, multiplied by the rate of 1.5 percent.~~

~~(2)~~)) The measure of the tax on real estate commissions earned by the real estate firm is the gross commission earned by the particular real estate firm including that portion of the commission paid to brokers, including designated and managing brokers, in the same firm on a particular transaction. However, when a real estate commission on a particular transaction is divided among real estate firms at the closing of the transaction, including a firm located out of state, each firm must pay the tax only upon its respective shares of said commission. Moreover, when the real estate firm has paid the tax as provided herein, brokers, including designated and managing brokers, within the same real estate firm may not be required to pay a similar tax upon the same transaction. If any firm located out of state receives a share of commission on a particular transaction, that company or broker must pay the tax based on the requirements of this section and RCW 82.04.067.

((~~(3)~~)) (2) For the purposes of this section, "broker," "designated broker," "managing broker," and "real estate firm" have the same meaning as provided in RCW 18.85.011.

**Sec.**  RCW 82.04.257 and 2010 c 111 s 301 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate ((~~of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales~~)) provided under section 1(1) of this act.

(2) Persons providing subscription television services or subscription radio services are subject to tax under ((~~RCW 82.04.290(2)~~)) section 1(1) of this act on the gross income of the business received from providing such services.

(3) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) A person subject to tax under this section is subject to the mandatory electronic filing and payment requirements in RCW 82.32.080.

**Sec.**  RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4 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 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, 2015, 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 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)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed 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 or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.~~

~~(ii) For the purposes of this subsection (1)(c), "dairy products" means:~~

~~(A) Products, not including any marijuana-infused product, 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; and~~

~~(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.~~

~~(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;~~

~~(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables 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 (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;~~

~~(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) Wood biomass fuel as 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 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 is 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)~~)) (2)(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) 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) 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)~~)) (3)(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 is, in the case of manufacturers, 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, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through 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 ((~~(11)~~)) (3) 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 is, in the case of manufacturers, 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 equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection ((~~(11)~~)) (3), "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 reporting under the tax rate provided in this subsection ((~~(11)~~)) (3) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection ((~~(11)~~)) (3), this subsection ((~~(11)~~)) (3) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection ((~~(11)~~)) (3) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection ((~~(11)~~)) (3)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(f) Sections 1 and 2 of this act do not apply to a person eligible to report under (a) of this subsection (3).

((~~(12)(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 is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, 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 is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, 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 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 is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(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)(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.~~

~~(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.~~

~~(13) 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 is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.~~

~~(14)(a) 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.~~

~~(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.~~))

**Sec.**  RCW 82.04.261 and 2010 1st sp.s. c 23 s 510 are each amended to read as follows:

(1) In addition to the taxes imposed under ((~~RCW 82.04.260(11)~~)) section 1(1) of this act, a surcharge is imposed on those persons who are subject to ((~~any of the taxes imposed under RCW 82.04.260(11)~~)) tax under section 1(1) of this act on the extracting or extracting for hire, manufacturing or manufacturing for hire, selling timber, timber products, or wood products, or selling standing timber, as described under section 1, chapter 300, Laws of 2006. 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(11) (a), (b), (c), and (d)~~)) tax rate under section 1(1) of this act and must be imposed on the gross income of the business. 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 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 must adjust the surcharge in accordance with this subsection.

(b) The department 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 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 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 may not be used to challenge the validity of the surcharge imposed under this section.

(f) The department 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 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.**  RCW 82.04.285 and 2014 c 97 s 303 are each amended to read as follows:

(1) ((~~Upon every person engaging within this state in the business of operating contests of chance; as to such persons, the amount of tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 1.5 percent.~~

~~(2)~~)) An additional tax is imposed on those persons ((~~subject to tax in subsection (1) of this section~~)) engaging within this state in the business of operating contests of chance. The amount of the additional tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this subsection (2) ((~~shall~~)) must be deposited in the problem gambling account created in RCW 43.20A.892. This subsection does not apply to businesses operating contests of chance when the gross income from the operation of contests of chance is less than fifty thousand dollars per year.

(3)(a) For the purpose of this section, "contests of chance" means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punchboard games, and pull-tabs as defined in chapter 9.46 RCW.

(b) The term does not include: (i) Race meet for the conduct of which a license must be secured from the Washington horse racing commission, (ii) "amusement game" as defined in RCW 9.46.0201, or (iii) any activity that is not subject to regulation by the gambling commission.

(4) "Gross income of the business" does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes.

**Sec.**  RCW 82.04.286 and 2005 c 369 s 6 are each amended to read as follows:

(1) ((~~Upon every person engaging within this state in the business of conducting race meets for the conduct of which a license must be secured from the Washington horse racing commission; as to such persons, the amount of tax with respect to the business of parimutuel wagering is equal to the gross income of the business derived from parimutuel wagering multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this section shall~~)) The money collected under this chapter on parimutuel wagering by a business conducting race meets that require a license secured from the Washington horse racing commission must be deposited in the problem gambling account created in RCW 43.20A.892.

(2) For purposes of this section, "gross income of the business" does not include amounts paid to players for winning wagers, or taxes imposed or other distributions required under chapter 67.16 RCW.

(3) The tax imposed under this section is in addition to any tax imposed under chapter 67.16 RCW.

**Sec.**  RCW 82.04.29001 and 2003 c 168 s 602 are each amended to read as follows:

(1) The creation and distribution of custom software is a service taxable under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act. Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of prewritten computer software is a service taxable under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act.

**Sec.**  RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties, the amount of tax ((~~with respect to the business is equal to the gross income from royalties multiplied by the rate of 0.484 percent~~)) must be determined using the tax rate provided in section 1(1) of this act.

(2) For the purposes of this section, "((~~gross~~)) income from royalties" means compensation for the use of intangible property, 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. "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 of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

**Sec.**  RCW 82.04.297 and 2010 c 111 s 303 are each amended to read as follows:

(1) The provision of internet access is subject to tax under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act.

(2)(a) Except as provided in (b) of this subsection, "internet" and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.

(b) "Internet access" does not include telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold: (i) To provide such service; or (ii) to otherwise enable users to access content, information, or other services offered over the internet.

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

**Sec.**  RCW 82.04.334 and 2010 1st sp.s. c 23 s 512 are each amended to read as follows:

(1) This chapter does not apply to any ((~~sale~~)) selling of standing timber excluded from the definition of "sale" in RCW 82.45.010(3).

(2) The definitions in ((~~RCW 82.04.260(11) apply to this section~~)) this subsection apply to this section.

(a) "Selling of 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.

(b) "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.

**Sec.**  RCW 82.04.360 and 2010 1st sp.s. c 23 s 702 are each amended to read as follows:

(1) This chapter 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 includes those persons that are defined in section 3121(d)(3)(B) of the federal internal revenue code of 1986, as amended through January 1, 1991.

(2) 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 on July 1, 2010, such amounts are taxable under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act.

(3) A booth renter is an independent contractor for purposes of this chapter. For purposes of this section, "booth renter" means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

**Sec.**  RCW 82.04.4291 and 1980 c 37 s 11 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services ((~~which~~)) that are within the purview of ((~~RCW 82.04.290~~)) section 1(2) of this act.

**Sec.**  RCW 82.04.4295 and 1980 c 37 s 15 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to ((~~RCW 82.04.240~~)) section 1(1) of this act, the value of articles to the extent of manufacturing activities completed outside the United States, if:

(1) Any additional processing of such articles in this state consists of minor final assembly only; ((~~and~~))

(2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; ((~~and~~))

(3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and

(4) The articles are sold and shipped outside the state.

**Sec.**  RCW 82.04.4324 and 1981 c 140 s 2 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturing under ((~~RCW 82.04.240~~)) section 1(1) of this act, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

**Sec.**  RCW 82.04.433 and 2009 c 494 s 2 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax imposed under ((~~RCW 82.04.250 and 82.04.270~~)) section 1(1) of this act on amounts derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce.

(2) The deduction in subsection (1) of this section does not apply with respect to the tax imposed under ((~~RCW 82.04.240~~)) section 1(1) of this act on persons taxable as a manufacturer, whether the value of the fuel under that tax is measured by the gross proceeds derived from the sale thereof or otherwise under RCW 82.04.450.

**Sec.**  RCW 82.04.440 and 2011 c 2 s 205 are each 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~~)) section 1 of this act, inclusive, 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), or (d), (4), (11), or (12)~~)) section 1(1) of this act with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, 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 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), including those persons who are also taxable under RCW 82.04.261~~)) section 1(1) of this act, 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 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), (11), or (12), including those persons who are also taxable under RCW 82.04.261~~)) section 1(1) of this act, with respect to extracting or manufacturing products in this state 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 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), (11), and (12), and 82.04.294(1)~~)) section 1(1) of this act; (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(12)~~)) section 1(1) of this act; (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 [82.04.217]~~)) 82.04.217, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

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

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

(2) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under ((~~RCW 82.04.290~~)) section 1(2) of this act. The rule adopted by the department must, to the extent feasible, be consistent with 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, except that:

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

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

(3) The department may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service 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 rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) 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(1)(e);~~

~~(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;~~

~~(ix) RCW 82.04.263, 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 (4) if the tax classification in RCW 82.04.263 did not exist; and~~

~~(x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect to advertising~~)) section 1(2) of this act.

(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 RCW 82.04.067(1).

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

**Sec.**  RCW 82.04.462 and 2014 c 97 s 305 are each amended 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(4)(a) (i) through (x)~~)) section 1(2) of this act 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, for financial institutions, as provided in the rule adopted by the department under the authority of RCW 82.04.460(2).

(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. When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state and if the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) of this subsection (3), 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 a substantial nexus with that state under the standards in RCW 82.04.067(1) 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~~)) section 1(2) of this act. Financial institutions must calculate the receipts factor as provided in subsection (4) of this section and the rule adopted by the department under the authority of RCW 82.04.460(2) with respect to apportionable income taxable under ((~~RCW 82.04.290. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x) must calculate a separate receipts factor, as provided in this section, for each of the other tax classifications that the financial institution is taxable under~~)) section 1(2) 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 computed and assessed as provided in RCW 82.32.050 and accrues 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" 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.**  RCW 82.04.540 and 2006 c 301 s 1 are each amended to read as follows:

(1) The provision of professional employer services by a professional employer organization is taxable under ((~~RCW 82.04.290(2)~~)) section 1(2) of this act.

(2) ((~~A professional employer organization is allowed a deduction from the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.~~

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

(a) "Client" means any person who enters into a professional employer agreement with a professional employer organization. For purposes of this subsection ((~~(3)~~)) (2)(a), "person" has the same meaning as "buyer" in RCW 82.08.010.

(b) "Coemployer" means either a professional employer organization or a client.

(c) "Coemployment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and applicable state law. In such a coemployment relationship:

(i) The professional employer organization is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer agreement or applicable state law;

(ii) The client is entitled to enforce those rights and obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement and applicable state law; and

(iii) The client is entitled to enforce any right and obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or applicable state law.

(d) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client who meets all of the following criteria: (i) The individual has received written notice of coemployment with the professional employer organization, and (ii) the individual's coemployment relationship is pursuant to a professional employer agreement. Individuals who are officers, directors, shareholders, partners, and managers of the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals would be covered employees and provided such individuals meet the criteria of this subsection and act as operational managers or perform day-to-day operational services for the client.

(e) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides:

(i) For the coemployment of covered employees; and

(ii) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees.

(f) "Professional employer organization" means any person engaged in the business of providing professional employer services. The following shall not be deemed to be professional employer organizations or the providing of professional employer services for purposes of this section:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; or

(iii) Providing staffing services.

(g) "Professional employer services" means the service of entering into a coemployment relationship with a client in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

(h) "Staffing services" means services consisting of a person:

(i) Recruiting and hiring its own employees;

(ii) Finding other organizations that need the services of those employees;

(iii) Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment.

NEW SECTION. **Sec.**  This act takes effect January 1, 2016.

**--- END ---**