

**SSB 6138 - S AMD 505**

By Senators Hill, Hargrove

**ADOPTED 6/30/2015**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Part I**

4 **Repealing the Preferential B&O Tax Rate for Royalty Income**

5 **Sec. 101.** RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each  
6 amended to read as follows:

7 (1) Upon every person engaging within this state in the business  
8 of receiving income from royalties, the amount of tax with respect to  
9 the business is equal to the gross income from royalties multiplied  
10 by the rate (~~(of 0.484 percent)~~) provided in RCW 82.04.290(2)(a).

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

21 **Part II**

22 **Nexus**

23 NEW SECTION. **Sec. 201.** (1) The commerce clause of the United  
24 States Constitution as currently interpreted by the United States  
25 supreme court prohibits states from imposing sales or use tax  
26 collection obligations on out-of-state businesses unless the business  
27 has a substantial nexus with the taxing state.

28 (2) The legislature recognizes that under the United States  
29 supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298

1 (1992), a substantial nexus for sales and use tax collection purposes  
2 requires that the taxpayer have a physical presence in the taxing  
3 state.

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

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

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

20 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.08  
21 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as  
22 follows:

23 (1) For purposes of this chapter, a remote seller is presumed to  
24 have a substantial nexus with this state and is obligated to collect  
25 retail sales tax if the remote seller enters into an agreement with a  
26 resident of this state under which the resident, for a commission or  
27 other consideration, directly or indirectly refers potential  
28 customers, whether by a link on an internet web site or otherwise, to  
29 the remote seller, if the cumulative gross receipts from sales by the  
30 remote seller to customers in this state who are referred to the  
31 remote seller by all residents with this type of an agreement with  
32 the remote seller exceed ten thousand dollars during the preceding  
33 calendar year. This presumption may be rebutted by proof that the  
34 resident with whom the remote seller has an agreement did not engage  
35 in any solicitation in this state on behalf of the remote seller that  
36 would satisfy the nexus requirement of the United States Constitution  
37 during the calendar year in question. Proof may be shown by (a)  
38 establishing, in a manner acceptable to the department, that (i) each  
39 in-state person with whom the remote seller has an agreement is

1 prohibited from engaging in any solicitation activities in this state  
2 that refer potential customers to the remote seller, and (ii) such  
3 in-state person or persons have complied with that prohibition; or  
4 (b) any other means as may be approved by the department.

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

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

13 (4) This section is subject to section 205 of this act.

14 **Sec. 203.** RCW 82.04.066 and 2010 1st sp.s. c 23 s 103 are each  
15 amended to read as follows:

16 "Engaging within this state" and "engaging within the state,"  
17 when used in connection with any apportionable activity as defined in  
18 RCW 82.04.460 or wholesale sales taxable under RCW 82.04.257(1) or  
19 82.04.270, means that a person generates gross income of the business  
20 from sources within this state, such as customers or intangible  
21 property located in this state, regardless of whether the person is  
22 physically present in this state.

23 **Sec. 204.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each  
24 amended to read as follows:

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

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

28 (b) A business entity and is organized or commercially domiciled  
29 in this state; or

30 (c) A nonresident individual or a business entity that is  
31 organized or commercially domiciled outside this state, and in  
32 (~~any~~) the immediately preceding tax year the person (~~has~~) had:

33 (i) More than fifty thousand dollars of property in this state;

34 (ii) More than fifty thousand dollars of payroll in this state;

35 (iii) More than two hundred fifty thousand dollars of receipts  
36 from this state; or

37 (iv) At least twenty-five percent of the person's total property,  
38 total payroll, or total receipts in this state.

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

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

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

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

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

24 (A) Loans secured by real property, personal property, or both  
25 real and personal property((~~r~~)) are deemed owned and used in the  
26 state if the real property or personal property securing the loan is  
27 located within this state. If the property securing the loan is  
28 located both within this state and one or more other states, the loan  
29 is deemed owned and used in this state if more than fifty percent of  
30 the fair market value of the real or personal property is located  
31 within this state. If more than fifty percent of the fair market  
32 value of the real or personal property is not located within any one  
33 state, then the loan is deemed owned and used in this state if the  
34 borrower is located in this state. The determination of whether the  
35 real or personal property securing a loan is located within this  
36 state must be made, as of the time the original agreement was made,  
37 and any and all subsequent substitutions of collateral must be  
38 disregarded.

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

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

6 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this  
7 subsection (2), the definitions in the multistate tax commission's  
8 recommended formula for the apportionment and allocation of net  
9 income of financial institutions as existing on June 1, 2010, or such  
10 subsequent date as may be provided by the department by rule,  
11 consistent with the purposes of this section, apply to this section.

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

14 (e) Notwithstanding anything else to the contrary in this  
15 subsection, property counting toward the thresholds in subsection  
16 (1)(c)(i) and (iv) of this section does not include a person's  
17 ownership of, or rights in, computer software as defined in RCW  
18 82.04.215, including computer software used in providing a digital  
19 automated service; master copies of software; and digital goods and  
20 digital codes residing on servers located in this state.

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

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

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

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

1 (4) Receipts counting toward the thresholds in subsection  
2 (1)(c)(iii) and (iv) of this section are:

3 (a) Those amounts included in the numerator of the receipts  
4 factor under RCW 82.04.462 (~~and~~);

5 (b) For financial institutions, those amounts included in the  
6 numerator of the receipts factor under the rule adopted by the  
7 department as authorized in RCW 82.04.460(2); and

8 (c) For persons taxable under RCW 82.04.257(1) or 82.04.270 with  
9 respect to wholesale sales, the gross proceeds of sales taxable under  
10 those statutory provisions and sourced to this state in accordance  
11 with RCW 82.32.730.

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

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

31 (6)(a) Subsections (1) through (5) of this section only apply  
32 with respect to the taxes (~~imposed under this chapter~~) on persons  
33 engaged in apportionable activities as defined in RCW 82.04.460 or  
34 making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.  
35 For purposes of the taxes imposed under this chapter on any activity  
36 not included in the definition of apportionable activities in RCW  
37 82.04.460, other than the business of making wholesale sales taxed  
38 under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a  
39 substantial nexus with this state if the person has a physical

1 presence in this state during the tax year, which need only be  
2 demonstrably more than a slightest presence.

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

6 (c)(i) A person is also physically present in this state for the  
7 purposes of this subsection if the person, either directly or through  
8 an agent or other representative, engages in activities in this state  
9 that are significantly associated with the person's ability to  
10 establish or maintain a market for its products in this state.

11 (ii) A remote seller as defined in section 202 of this act is  
12 presumed to be engaged in activities in this state that are  
13 significantly associated with the remote seller's ability to  
14 establish or maintain a market for its products in this state if the  
15 remote seller is presumed to have a substantial nexus with this state  
16 under section 202 of this act. The presumption in this subsection  
17 (6)(c)(ii) may be rebutted as provided in section 202 of this act. To  
18 the extent that the presumption in section 202 of this act is no  
19 longer operative pursuant to section 205 of this act, the presumption  
20 in this subsection (6)(c)(ii) is no longer operative. Nothing in this  
21 section may be construed to affect in any way RCW 82.04.424,  
22 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms  
23 "agent" or "other representative" in this subsection (6)(c).

24 NEW SECTION. Sec. 205. A new section is added to chapter 82.32  
25 RCW to read as follows:

26 (1) If the department determines that a change, taking effect  
27 after the effective date of this section, in the streamlined sales  
28 and use tax agreement or federal law creates a conflict with any  
29 provision of section 202 of this act, such conflicting provision or  
30 provisions of section 202 of this act, including any related  
31 provisions that would not function as originally intended, have no  
32 further force and effect as of the date the change in the streamlined  
33 sales and use tax agreement or federal law becomes effective.

34 (2) For purposes of this section:

35 (a) A change in federal law conflicts with section 202 of this  
36 act if the change clearly allows states to impose greater sales and  
37 use tax collection obligations on remote sellers than provided for,  
38 or clearly prevents states from imposing sales and use tax collection

1 obligations on remote sellers to the extent provided for, under  
2 section 202 of this act.

3 (b) A change in the streamlined sales and use tax agreement  
4 conflicts with section 202 of this act if one or more provisions of  
5 section 202 of this act causes this state to be found out of  
6 compliance with the streamlined sales and use tax agreement by its  
7 governing board.

8 (3) If the department makes a determination under this section  
9 that a change in federal law or the streamlined sales and use tax  
10 agreement conflicts with one or more provisions of section 202 of  
11 this act, the department:

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

16 (b) Must include information on its web site informing taxpayers  
17 and the public (i) of the provision or provisions of section 202 of  
18 this act that will have no further force and effect, (ii) when such  
19 change will become effective, and (iii) about how to participate in  
20 any rule making conducted by the department in accordance with (a) of  
21 this subsection (3).

22 (4) For purposes of this section, "remote seller" has the same  
23 meaning as in section 202 of this act.

24 **Sec. 206.** RCW 82.04.424 and 2003 c 76 s 2 are each amended to  
25 read as follows:

26 (1) This chapter does not apply to a person making retail sales  
27 in Washington if:

28 (a) The person's activities in this state, whether conducted  
29 directly or through another person, are limited to:

- 30 (i) The storage, dissemination, or display of advertising;  
31 (ii) The taking of orders; or  
32 (iii) The processing of payments; and

33 (b) The activities are conducted electronically via a web site on  
34 a server or other computer equipment located in Washington that is  
35 not owned or operated by the person making sales into this state nor  
36 owned or operated by an affiliated person. For purposes of this  
37 section, persons are "affiliated persons" with respect to each other  
38 where one of the persons has an ownership interest of more than five  
39 percent, whether direct or indirect, in the other, or where an



1 ownership interest of more than five percent, whether direct or  
2 indirect, is held in each of the persons by another person or by a  
3 group of other persons which are affiliated with respect to each  
4 other.

5 (2)(a) This section expires when: ((+a+)) (i) The United States  
6 congress grants individual states the authority to impose sales and  
7 use tax collection duties on remote sellers; or ((+b+)) (ii) it is  
8 determined by a court of competent jurisdiction, in a judgment not  
9 subject to review, that a state can impose sales and use tax  
10 collection duties on remote sellers.

11 (b) The department of revenue must provide notice of the  
12 expiration date of this section to affected parties, the chief clerk  
13 of the house of representatives, the secretary of the senate, the  
14 office of the code reviser, and others as deemed appropriate by the  
15 department.

### 16 Part III

#### 17 Manufacturing Machinery and Equipment Exemption for Software 18 Manufacturers

19 **Sec. 301.** RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s  
20 13 are each reenacted and amended to read as follows:

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

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

34 (c)(i) The exemption under this section is in the form of a  
35 remittance for a gas distribution business, as defined in RCW  
36 82.16.010, claiming the exemption for machinery and equipment used  
37 for the production of compressed natural gas or liquefied natural gas  
38 for use as a transportation fuel.

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

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

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

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

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

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

34 (i) Hand-powered tools;

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

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

38 (iv) Building fixtures that are not integral to the manufacturing  
39 operation, testing operation, or research and development operation  
40 that are permanently affixed to and become a physical part of a

1 building, such as utility systems for heating, ventilation, air  
2 conditioning, communications, plumbing, or electrical.

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

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

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

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

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

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

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

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

22 (viii) Is integral to research and development as defined in RCW  
23 82.63.010.

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

27 (i) Prints newspapers or other materials; or

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

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

39 (f) "Manufacturing operation" means the manufacturing of  
40 articles, substances, or commodities for sale as tangible personal

1 property. A manufacturing operation begins at the point where the raw  
2 materials enter the manufacturing site and ends at the point where  
3 the processed material leaves the manufacturing site. With respect to  
4 the production of class A or exceptional quality biosolids by a  
5 wastewater treatment facility, the manufacturing operation begins at  
6 the point where class B biosolids undergo additional processing to  
7 achieve class A or exceptional quality standards. Notwithstanding  
8 anything to the contrary in this section, the term also includes that  
9 portion of a cogeneration project that is used to generate power for  
10 consumption within the manufacturing site of which the cogeneration  
11 project is an integral part. The term does not include the  
12 preparation of food products on the premises of a person selling food  
13 products at retail.

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

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

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

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

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

1       (4) The exemptions in this section do not apply to an ineligible  
2 person. For purposes of this subsection, the following definitions  
3 apply:

4       (a) "Affiliated group" means a group of two or more entities that  
5 are either:

6       (i) Affiliated as defined in RCW 82.32.655; or

7       (ii) Permitted to file a consolidated return for federal income  
8 tax purposes.

9       (b) "Ineligible person" means all members of an affiliated group  
10 if all of the following apply:

11       (i) At least one member of the affiliated group was registered  
12 with the department to do business in Washington state on or before  
13 July 1, 1981;

14       (ii) As of the effective date of this section, the combined  
15 employment in this state of the affiliated group exceeds forty  
16 thousand full-time and part-time employees, based on data reported to  
17 the employment security department by the affiliated group; and

18       (iii) The business activities of the affiliated group primarily  
19 include development, sales, and licensing of computer software and  
20 services.

21       **Sec. 302.** RCW 82.12.02565 and 2014 c 216 s 402 and 2014 c 140 s  
22 14 are each reenacted and amended to read as follows:

23       (1) The provisions of this chapter do not apply in respect to the  
24 use by a manufacturer or processor for hire of machinery and  
25 equipment used directly in a manufacturing operation or research and  
26 development operation, to the use by a person engaged in testing for  
27 a manufacturer or processor for hire of machinery and equipment used  
28 directly in a testing operation, or to the use of labor and services  
29 rendered in respect to installing, repairing, cleaning, altering, or  
30 improving the machinery and equipment.

31       (2) The definitions, conditions, and requirements in RCW  
32 82.08.02565 apply to this section.

33       (3) This section does not apply to the use of (a) machinery and  
34 equipment used directly in the manufacturing, research and  
35 development, or testing of marijuana, useable marijuana, or  
36 marijuana-infused products, or (b) labor and services rendered in  
37 respect to installing, repairing, cleaning, altering, or improving  
38 such machinery and equipment.

1       (4) The exemptions in this section do not apply to an ineligible  
2 person as defined in RCW 82.08.02565.

3       **Sec. 303.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted  
4 and amended to read as follows:

5       (~~Unless the context clearly requires otherwise,~~) The  
6 definitions in this section apply throughout this chapter unless the  
7 context clearly requires otherwise.

8       (1) "Advanced computing" means technologies used in the designing  
9 and developing of computing hardware and software, including  
10 innovations in designing the full spectrum of hardware from hand-held  
11 calculators to super computers, and peripheral equipment.

12       (2) "Advanced materials" means materials with engineered  
13 properties created through the development of specialized processing  
14 and synthesis technology, including ceramics, high value-added  
15 metals, electronic materials, composites, polymers, and biomaterials.

16       (3) "Applicant" means a person applying for a tax deferral under  
17 this chapter.

18       (4) "Biotechnology" means the application of technologies, such  
19 as recombinant DNA techniques, biochemistry, molecular and cellular  
20 biology, genetics and genetic engineering, cell fusion techniques,  
21 and new bioprocesses, using living organisms, or parts of organisms,  
22 to produce or modify products, to improve plants or animals, to  
23 develop microorganisms for specific uses, to identify targets for  
24 small molecule pharmaceutical development, or to transform biological  
25 systems into useful processes and products or to develop  
26 microorganisms for specific uses.

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

28       (6) "Electronic device technology" means technologies involving  
29 microelectronics; semiconductors; electronic equipment and  
30 instrumentation; radio frequency, microwave, and millimeter  
31 electronics; optical and optic-electrical devices; and data and  
32 digital communications and imaging devices.

33       (7) "Eligible investment project" means an investment project  
34 which either initiates a new operation, or expands or diversifies a  
35 current operation by expanding, renovating, or equipping an existing  
36 facility. The lessor or owner of the qualified building is not  
37 eligible for a deferral unless:

38       (a) The underlying ownership of the buildings, machinery, and  
39 equipment vests exclusively in the same person; or

1 (b)(i) The lessor by written contract agrees to pass the economic  
2 benefit of the deferral to the lessee;

3 (ii) The lessee that receives the economic benefit of the  
4 deferral agrees in writing with the department to complete the annual  
5 survey required under RCW 82.63.020(2); and

6 (iii) The economic benefit of the deferral passed to the lessee  
7 is no less than the amount of tax deferred by the lessor and is  
8 evidenced by written documentation of any type of payment, credit, or  
9 other financial arrangement between the lessor or owner of the  
10 qualified building and the lessee.

11 (8) "Environmental technology" means assessment and prevention of  
12 threats or damage to human health or the environment, environmental  
13 cleanup, and the development of alternative energy sources.

14 (9)(a) "Initiation of construction" means the date that a  
15 building permit is issued under the building code adopted under RCW  
16 19.27.031 for:

17 (i) Construction of the qualified building, if the underlying  
18 ownership of the building vests exclusively with the person receiving  
19 the economic benefit of the deferral;

20 (ii) Construction of the qualified building, if the economic  
21 benefits of the deferral are passed to a lessee as provided in  
22 subsection (7) of this section; or

23 (iii) Tenant improvements for a qualified building, if the  
24 economic benefits of the deferral are passed to a lessee as provided  
25 in subsection (7) of this section.

26 (b) "Initiation of construction" does not include soil testing,  
27 site clearing and grading, site preparation, or any other related  
28 activities that are initiated before the issuance of a building  
29 permit for the construction of the foundation of the building.

30 (c) If the investment project is a phased project, "initiation of  
31 construction" shall apply separately to each phase.

32 (10) "Investment project" means an investment in qualified  
33 buildings or qualified machinery and equipment, including labor and  
34 services rendered in the planning, installation, and construction or  
35 improvement of the project.

36 (11) "Multiple qualified buildings" means qualified buildings  
37 leased to the same person when such structures: (a) Are located  
38 within a five-mile radius; and (b) the initiation of construction of  
39 each building begins within a sixty-month period.

1 (12) "Person" has the meaning given in RCW 82.04.030 and includes  
2 state universities as defined in RCW 28B.10.016.

3 (13) "Pilot scale manufacturing" means design, construction, and  
4 testing of preproduction prototypes and models in the fields of  
5 biotechnology, advanced computing, electronic device technology,  
6 advanced materials, and environmental technology other than for  
7 commercial sale. As used in this subsection, "commercial sale"  
8 excludes sales of prototypes or sales for market testing if the total  
9 gross receipts from such sales of the product, service, or process do  
10 not exceed one million dollars.

11 (14) "Qualified buildings" means construction of new structures,  
12 and expansion or renovation of existing structures for the purpose of  
13 increasing floor space or production capacity used for pilot scale  
14 manufacturing or qualified research and development, including plant  
15 offices and other facilities that are an essential or an integral  
16 part of a structure used for pilot scale manufacturing or qualified  
17 research and development. If a building or buildings are used partly  
18 for pilot scale manufacturing or qualified research and development,  
19 and partly for other purposes, the applicable tax deferral shall be  
20 determined by apportionment of the costs of construction under rules  
21 adopted by the department. Such rules may include provisions for  
22 determining the amount of the deferral based on apportionment of  
23 costs of construction of an investment project consisting of a  
24 building or multiple buildings, where qualified research and  
25 development or pilot scale manufacturing activities are shifted  
26 within a building or from one building to another building.

27 (15)(a) "Qualified machinery and equipment" means fixtures,  
28 equipment, and support facilities that are an integral and necessary  
29 part of a pilot scale manufacturing or qualified research and  
30 development operation. "Qualified machinery and equipment" includes:  
31 Computers; software; data processing equipment; laboratory equipment,  
32 instrumentation, and other devices used in a process of  
33 experimentation to develop a new or improved pilot model, plant  
34 process, product, formula, invention, or similar property;  
35 manufacturing components such as belts, pulleys, shafts, and moving  
36 parts; molds, tools, and dies; vats, tanks, and fermenters; operating  
37 structures; and all other equipment used to control, monitor, or  
38 operate the machinery. For purposes of this chapter, qualified  
39 machinery and equipment must be either new to the taxing jurisdiction  
40 of the state or new to the certificate holder, except that used



1 machinery and equipment may be treated as qualified machinery and  
2 equipment if the certificate holder either brings the machinery and  
3 equipment into Washington or makes a retail purchase of the machinery  
4 and equipment in Washington or elsewhere.

5 (b) "Qualified machinery and equipment" does not include any  
6 fixtures, equipment, or support facilities, if the sale to or use by  
7 the recipient is not eligible for an exemption under RCW 82.08.02565  
8 or 82.12.02565 solely because the recipient is an ineligible person  
9 as defined in RCW 82.08.02565.

10 (16) "Qualified research and development" means research and  
11 development performed within this state in the fields of advanced  
12 computing, advanced materials, biotechnology, electronic device  
13 technology, and environmental technology.

14 (17) "Recipient" means a person receiving a tax deferral under  
15 this chapter.

16 (18) "Research and development" means activities performed to  
17 discover technological information, and technical and nonroutine  
18 activities concerned with translating technological information into  
19 new or improved products, processes, techniques, formulas,  
20 inventions, or software. The term includes exploration of a new use  
21 for an existing drug, device, or biological product if the new use  
22 requires separate licensing by the federal food and drug  
23 administration under chapter 21, C.F.R., as amended. The term does  
24 not include adaptation or duplication of existing products where the  
25 products are not substantially improved by application of the  
26 technology, nor does the term include surveys and studies, social  
27 science and humanities research, market research or testing, quality  
28 control, sale promotion and service, computer software developed for  
29 internal use, and research in areas such as improved style, taste,  
30 and seasonal design.

31 NEW SECTION. Sec. 304. Section 303 of this act does not apply  
32 with respect to deferral certificates issued under chapter 82.63 RCW  
33 before January 1, 2015.

34 NEW SECTION. Sec. 305. If RCW 82.08.02565, 82.12.02565, or  
35 82.63.010 are amended by any other act enacted during the regular or  
36 any special session of the 2015 legislature, each amendment without  
37 reference to the other amendment or amendments of the same statute,  
38 the legislature intends for the amendments in this act to be deemed

1 to not conflict in purpose with the amendments in any other such act  
2 for the purposes of RCW 1.12.025 and that the amendments in this act  
3 be given effect.

4 NEW SECTION. **Sec. 306.** Sections 301 and 302 of this act do not  
5 apply with respect to machinery and equipment, as defined in RCW  
6 82.08.02565, first used by the taxpayer in this state before the  
7 effective date of sections 301 and 302 of this act.

8 **Part IV**  
9 **Late Payment Penalties**

10 **Sec. 401.** RCW 82.32.090 and 2011 c 24 s 3 are each amended to  
11 read as follows:

12 (1) If payment of any tax due on a return to be filed by a  
13 taxpayer is not received by the department of revenue by the due  
14 date, there is assessed a penalty of (~~five~~) nine percent of the  
15 amount of the tax; and if the tax is not received on or before the  
16 last day of the month following the due date, there is assessed a  
17 total penalty of (~~fifteen~~) nineteen percent of the amount of the  
18 tax under this subsection; and if the tax is not received on or  
19 before the last day of the second month following the due date, there  
20 is assessed a total penalty of (~~twenty-five~~) twenty-nine percent of  
21 the amount of the tax under this subsection. No penalty so added may  
22 be less than five dollars.

23 (2) If the department of revenue determines that any tax has been  
24 substantially underpaid, there is assessed a penalty of five percent  
25 of the amount of the tax determined by the department to be due. If  
26 payment of any tax determined by the department to be due is not  
27 received by the department by the due date specified in the notice,  
28 or any extension thereof, there is assessed a total penalty of  
29 fifteen percent of the amount of the tax under this subsection; and  
30 if payment of any tax determined by the department to be due is not  
31 received on or before the thirtieth day following the due date  
32 specified in the notice of tax due, or any extension thereof, there  
33 is assessed a total penalty of twenty-five percent of the amount of  
34 the tax under this subsection. No penalty so added may be less than  
35 five dollars. As used in this section, "substantially underpaid"  
36 means that the taxpayer has paid less than eighty percent of the  
37 amount of tax determined by the department to be due for all of the

1 types of taxes included in, and for the entire period of time covered  
2 by, the department's examination, and the amount of underpayment is  
3 at least one thousand dollars.

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

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

20 (5) If the department finds that a taxpayer has disregarded  
21 specific written instructions as to reporting or tax liabilities, or  
22 willfully disregarded the requirement to file returns or remit  
23 payment electronically, as provided by RCW 82.32.080, the department  
24 must add a penalty of ten percent of the amount of the tax that  
25 should have been reported and/or paid electronically or the  
26 additional tax found due if there is a deficiency because of the  
27 failure to follow the instructions. A taxpayer disregards specific  
28 written instructions when the department has informed the taxpayer in  
29 writing of the taxpayer's tax obligations and the taxpayer fails to  
30 act in accordance with those instructions unless, in the case of a  
31 deficiency, the department has not issued final instructions because  
32 the matter is under appeal pursuant to this chapter or departmental  
33 regulations. The department may not assess the penalty under this  
34 section upon any taxpayer who has made a good faith effort to comply  
35 with the specific written instructions provided by the department to  
36 that taxpayer. A taxpayer will be considered to have made a good  
37 faith effort to comply with specific written instructions to file  
38 returns and/or remit taxes electronically only if the taxpayer can  
39 show good cause, as defined in RCW 82.32.080, for the failure to  
40 comply with such instructions. A taxpayer will be considered to have

1 willfully disregarded the requirement to file returns or remit  
2 payment electronically if the department has mailed or otherwise  
3 delivered the specific written instructions to the taxpayer on at  
4 least two occasions. Specific written instructions may be given as a  
5 part of a tax assessment, audit, determination, closing agreement, or  
6 other written communication, provided that such specific written  
7 instructions apply only to the taxpayer addressed or referenced on  
8 such communication. Any specific written instructions by the  
9 department must be clearly identified as such and must inform the  
10 taxpayer that failure to follow the instructions may subject the  
11 taxpayer to the penalties imposed by this subsection. If the  
12 department determines that it is necessary to provide specific  
13 written instructions to a taxpayer that does not comply with the  
14 requirement to file returns or remit payment electronically as  
15 provided in RCW 82.32.080, the specific written instructions must  
16 provide the taxpayer with a minimum of forty-five days to come into  
17 compliance with its electronic filing and/or payment obligations  
18 before the department may impose the penalty authorized in this  
19 subsection.

20 (6) If the department finds that all or any part of a deficiency  
21 resulted from engaging in a disregarded transaction, as described in  
22 RCW 82.32.655(3), the department must assess a penalty of thirty-five  
23 percent of the additional tax found to be due as a result of engaging  
24 in a transaction disregarded by the department under RCW  
25 82.32.655(2). The penalty provided in this subsection may be assessed  
26 together with any other applicable penalties provided in this section  
27 on the same tax found to be due, except for the evasion penalty  
28 provided in subsection (7) of this section. The department may not  
29 assess the penalty under this subsection if, before the department  
30 discovers the taxpayer's use of a transaction described under RCW  
31 82.32.655(3), the taxpayer discloses its participation in the  
32 transaction to the department.

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

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

1 (9) The department may not impose the evasion penalty in  
2 combination with the penalty for disregarding specific written  
3 instructions or the penalty provided in subsection (6) of this  
4 section on the same tax found to be due.

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

10 **Part V**

11 **Miscellaneous Provisions**

12 NEW SECTION. **Sec. 501.** (1) Except as provided otherwise in this  
13 section, this act is necessary for the immediate preservation of the  
14 public peace, health, or safety, or support of the state government  
15 and its existing public institutions, and takes effect August 1,  
16 2015.

17 (2) Part II of this act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of  
19 the state government and its existing public institutions, and takes  
20 effect September 1, 2015."

**SSB 6138 - S AMD 505**

By Senators Hill, Hargrove

**ADOPTED 6/30/2015**

21 On page 1, line 1 of the title, after "Relating to" strike the  
22 remainder of the title and insert "increasing state revenue through  
23 improved compliance methods and eliminating tax preferences for  
24 royalties and certain manufacturing equipment; amending RCW  
25 82.04.2907, 82.04.066, 82.04.067, 82.04.424, and 82.32.090;  
26 reenacting and amending RCW 82.08.02565, 82.12.02565, and 82.63.010;  
27 adding a new section to chapter 82.08 RCW; adding a new section to  
28 chapter 82.32 RCW; creating new sections; providing effective dates;  
29 and declaring an emergency."

EFFECT: Penalties for late payment of excise taxes are increased an additional four percent.

--- END ---