

SSB 5875 - S AMD 158
By Senator Carlyle

NOT ADOPTED 03/23/2017

1 On page 1, after line 5, insert the following:

2 "Part I
3 Findings and Intent

4 NEW SECTION. **Sec. 101.** (1) The legislature finds that states
5 fail to collect more than twenty-three billion dollars annually in
6 sales taxes from remote sales over the internet and through
7 catalogues. The legislature further finds that Washington and its
8 local governments will lose out on an estimated three hundred fifty-
9 three million dollars in sales and use taxes in fiscal year 2018 from
10 remote sales, reducing funds that would otherwise be available for
11 the public education system, health care services, infrastructure,
12 and other vital public services.

13 (2) The legislature recognizes that states may not impose sales
14 or use tax collection obligations on an out-of-state business unless
15 the business has a substantial nexus with the taxing state. The
16 legislature also recognizes that under the United States supreme
17 court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*,
18 386 U.S. 753 (1967), substantial nexus under the commerce clause
19 requires a physical presence by the seller in the taxing state.
20 Relying on the doctrine of stare decisis, the United States supreme
21 court reaffirmed the physical presence nexus standard twenty-five
22 years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

23 (3) The legislature further finds that the basis of the physical
24 presence nexus standard was primarily justified by the complexity and
25 burden on mail order sellers and other out-of-state sellers in
26 complying with the sales tax laws in numerous jurisdictions at the
27 state and local level all across the country. The legislature further
28 finds that the supreme court's concerns underlying the *Bellas Hess*
29 decision have been effectively addressed by advances in technology
30 and simplified tax laws. For example, Washington and most other
31 states with sales taxes allow or require electronic reporting and

1 payment of the tax. Also, several states, including Washington, offer
2 free online sales tax rate lookup tools. A number of private
3 companies offer automated sales tax compliance solutions. In
4 addition, sales tax laws have been simplified in many states,
5 including Washington, through participation in the streamlined sales
6 and use tax project and compliance with the streamlined sales and use
7 tax agreement.

8 (4) The legislature further finds that *Bellas Hess* was decided
9 one year before the first plans were developed for the computer
10 network that became the basis of the internet. The legislature
11 further finds that since *Quill* was decided e-commerce has grown
12 substantially, generating retail sales of over three hundred forty-
13 one billion dollars in 2015, which have been growing at a rate of
14 about fifteen percent for the last five years. The legislature
15 further finds that like their brick and mortar competitors, online
16 businesses receive benefits and opportunities provided by their
17 market states, such as transportation networks, infrastructure, laws
18 providing protection of business interests, access to the courts to
19 protect valuable rights, and a regulated marketplace. However, the
20 legislature finds that under the current physical presence nexus
21 standard, online only sellers have an unfair competitive advantage
22 over in state brick and mortar stores to the detriment of main street
23 retailers. Online only businesses have no geographical limitations to
24 their marketplace; no costs of maintaining local physical retail
25 stores, such as infrastructure costs, employee costs, and property
26 taxes; and may not have to collect sales tax on sales to customers in
27 states in which they do not have a physical presence, all of which
28 lead to their ability to price their goods at a lower cost to
29 consumers. The legislature further finds that even if the physical
30 presence nexus standard was once a wise rule of law, it is no longer
31 justifiable.

32 (5) The legislature further finds that the supreme court in its
33 *Quill* decision implicitly invited the United States congress to
34 resolve whether and to what extent states may impose a sales tax
35 collection obligation on remote sellers. The legislature further
36 finds that there is overwhelming support among the public, states,
37 and municipalities, and many national and local associations
38 representing brick and mortar businesses for federal legislation
39 requiring remote sellers to collect and remit retail sales tax. The

1 legislature further finds that despite such broad-based support,
2 congress has failed to enact such legislation.

3 (6) The legislature agrees with Justice Kennedy's concurring
4 opinion in the *Direct Marketing Association v. Brohl* decision (135 S.
5 Ct. 1124) that the court's *Quill* holding is "inflicting extreme harm
6 and unfairness on the States," and that "[t]here is a powerful case
7 to be made that a retailer doing extensive business within a State
8 has a sufficiently 'substantial nexus' to justify imposing some minor
9 tax-collection duty, even if that business is done through mail or
10 the Internet." Justice Kennedy stated that "it is unwise to delay any
11 longer a reconsideration of the Court's holding in *Quill*," and he
12 closed his opinion by inviting a direct challenge to *Quill* and *Bellas*
13 *Hess*, saying that "[t]he legal system should find an appropriate case
14 for this Court to reexamine *Quill* and *Bellas Hess*."

15 (7) The legislature finds that because Washington is unique in
16 that it relies so heavily on sales tax to fund education and other
17 vital state services, and because Washington has frequently been at
18 the forefront of advancing technology and tax policy, it is incumbent
19 upon this state to lead the way to a more fair and equitable modern
20 marketplace where online businesses and brick and mortar businesses
21 can compete based on quality of products and other nontax factors,
22 which benefits all consumers. The legislature recognizes that the
23 fast pace of technological change seen with the rapid growth of
24 electronic commerce puts pressure on states to update their tax codes
25 just as this state did (a) in 2007 in adopting Senate Bill No. 5089,
26 which enacted significant simplifications in sales and use
27 administration and brought Washington into full compliance with the
28 streamlined sales and use tax agreement, (b) in 2009 in adopting
29 Engrossed Substitute House Bill No. 2075 addressing the excise
30 taxation of digital products, and (c) in 2010 in adopting economic
31 nexus and market-based apportionment for business and occupation tax
32 purposes in Second Engrossed Substitute Senate Bill No. 6143. The
33 legislature finds that making such changes is not radical or to be
34 unexpected, but is a rational means to avoid an ever shrinking tax
35 base resulting from an outdated tax code that has not kept up with
36 significant changes in technology and the economy.

37 (8) The legislature finds that several states, including Alabama,
38 South Dakota, and Tennessee have taken measures to adopt an "economic
39 nexus" standard with respect to the collection of sales tax. The

1 legislature further finds that other states are considering adopting
2 similar rules or legislation.

3 (9) The legislature also finds that Colorado adopted a law
4 requiring out-of-state retailers that do not collect Colorado's sales
5 tax to report tax-related information to their Colorado customers and
6 the Colorado department of revenue. The legislature further finds
7 that in 2016 the United States court of appeals for the tenth circuit
8 upheld that law.

9 (10) Therefore, the legislature intends by this act to address
10 the significant harm and unfairness brought about by the physical
11 presence nexus rule by testing the boundaries of the rule. This act
12 also sets up a legal challenge to the physical presence nexus rule
13 that could potentially lead to the United States supreme court
14 reevaluating *Bellas Hess* and *Quill* or congress enacting legislation
15 authorizing and establishing the requirements for states to impose a
16 sales tax collection duty on remote sellers. To achieve these
17 objectives, part II of this act establishes clear statutory
18 guidelines for determining when sellers are required to collect
19 Washington's sales tax. These guidelines clarify the extent of the
20 traditional physical presence standard and also adopt an "economic
21 nexus" standard under which a remote seller would establish a
22 substantial nexus with this state solely by making a meaningful
23 amount of sales into this state. Part II of this act also extends the
24 economic nexus standard for the business and occupation tax imposed
25 on retail sales taxed under RCW 82.04.250(1) and 82.04.257(1). Part
26 III of this act adopts a sales and use tax notice and reporting law
27 based on the multistate tax commission's draft model sales and use
28 tax notice reporting statute, which is similar to Colorado's sales
29 and use tax notice reporting law.

30 (11) The legislature recognizes that the enactment of part II of
31 this act places remote sellers in a complicated position, precisely
32 because existing constitutional doctrine calls certain provisions of
33 part II of this act into question. Accordingly, the legislature
34 intends to clarify that the obligations created by this law on
35 sellers with a substantial nexus with this state under section
36 206(1)(b) of this act would be appropriately stayed by the courts
37 until the constitutionality of section 206(1)(b) of this act has been
38 clearly established by a binding judgment, including, for example, a
39 decision from the supreme court of the United States abrogating its

1 existing doctrine, or a final judgment applicable to a particular
2 taxpayer.

3 (12) The legislature finds that the declaratory judgment action
4 authorized in section 211 of this act is warranted by existing law,
5 by good faith arguments for the extension, modification, or reversal
6 of existing law, or the establishment of new law.

7 **Part II**

8 **Nexus for Excise Tax Purposes**

9 **Sec. 201.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each
10 amended to read as follows:

11 "Engaging within this state" and "engaging within the state,"
12 when used in connection with any apportionable activity as defined in
13 RCW 82.04.460 or (~~wholesale sales~~) selling activity taxable under
14 RCW 82.04.250(1), 82.04.257(1), or 82.04.270, means that a person
15 generates gross income of the business from sources within this
16 state, such as customers or intangible property located in this
17 state, regardless of whether the person is physically present in this
18 state.

19 **Sec. 202.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to
20 read as follows:

21 (1) A person engaging in business is deemed to have substantial
22 nexus with this state if, in the current or immediately preceding
23 calendar year, the person is:

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

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

27 (c) A nonresident individual or a business entity that is
28 organized or commercially domiciled outside this state, and (~~in the~~
29 ~~immediately preceding tax year~~) the person had:

30 (i) More than (~~fifty~~) fifty-three thousand dollars of property
31 in this state;

32 (ii) More than (~~fifty~~) fifty-three thousand dollars of payroll
33 in this state;

34 (iii) More than two hundred (~~fifty~~) sixty-seven thousand
35 dollars of receipts from this state; or

36 (iv) At least twenty-five percent of the person's total property,
37 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 current or immediately preceding
5 ~~((tax))~~ calendar year.

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

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

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

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

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

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 82.04.250(1), 82.04.257(1), or
9 82.04.270 (~~((with respect to wholesale sales))~~), the gross proceeds of
10 sales taxable under those statutory provisions and sourced to this
11 state in accordance 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)(i) Except as provided in (a)(iii) of this subsection (6),
32 subsections (1) through (5) of this section only apply with respect
33 to the taxes on persons engaged in apportionable activities as
34 defined in RCW 82.04.460 or making wholesale sales taxable under RCW
35 82.04.257(1) or 82.04.270.

36 (ii) Subject to the limitation in RCW 82.32.531, for purposes of
37 the taxes imposed under this chapter on ((any)) the business of
38 making sales at retail or any other activity not included in the
39 definition of apportionable activities in RCW 82.04.460, other than
40 the business of making wholesale sales taxed under RCW 82.04.257(1)

1 or 82.04.270, (~~except as provided in RCW 82.32.531,~~) a person is
2 deemed to have a substantial nexus with this state if the person has
3 a physical presence in this state during the tax year, which need
4 only be demonstrably more than a slightest presence.

5 (iii) For purposes of the taxes imposed under this chapter on the
6 business of making sales at retail taxable under RCW 82.04.250(1) or
7 82.04.257(1), a person is also deemed to have a substantial nexus
8 with this state if the person's receipts from this state, pursuant to
9 subsection (4)(c) of this section, meet either criterion in
10 subsection (1)(c)(iii) or (iv) of this section, as adjusted under
11 subsection (5) of this section.

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

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

20 (ii) A remote seller as defined in RCW 82.08.052 is presumed to
21 be engaged in activities in this state that are significantly
22 associated with the remote seller's ability to establish or maintain
23 a market for its products in this state if the remote seller is
24 presumed to have a substantial nexus with this state under RCW
25 82.08.052. The presumption in this subsection (6)(c)(ii) may be
26 rebutted as provided in RCW 82.08.052. To the extent that the
27 presumption in RCW 82.08.052 is no longer operative pursuant to RCW
28 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer
29 operative. (~~Nothing in this section may be construed to affect in~~
30 ~~any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow~~
31 ~~the scope of the terms "agent" or "other representative" in this~~
32 ~~subsection (6)(c).)~~)

33 **Sec. 203.** RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each
34 amended to read as follows:

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

1 (2)(a) A person who has a substantial nexus with this state in
2 (~~any tax year under the provisions of RCW 82.04.067 will be deemed~~
3 ~~to have a substantial nexus with this state for the following tax~~
4 ~~year~~) the current calendar year under the provisions of RCW
5 82.04.067, based solely on the person's property, payroll, or
6 receipts in this state during the current calendar year, is subject
7 to the tax imposed under this chapter for the current calendar year
8 only on business activity occurring on and after the date that the
9 person established a substantial nexus with this state in the current
10 calendar year.

11 (b) This subsection (2) does not apply to any person who also had
12 a substantial nexus with this state (i) during the immediately
13 preceding calendar year under RCW 82.04.067, or (ii) during the
14 current calendar year under RCW 82.04.067 (1) (a) or (b) or (6)
15 (a)(ii) or (c).

16 NEW SECTION. Sec. 204. RCW 82.04.424 (Exemptions—Certain in-
17 state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are
18 each repealed.

19 NEW SECTION. Sec. 205. A new section is added to chapter 82.08
20 RCW to be codified between RCW 82.08.050 and 82.08.052 to read as
21 follows:

22 A seller with a substantial nexus with this state must comply
23 with the provisions of this chapter.

24 NEW SECTION. Sec. 206. A new section is added to chapter 82.08
25 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as
26 follows:

27 (1) A seller has a substantial nexus with this state during a
28 calendar year for the purposes of collecting the taxes imposed under
29 this chapter if, during the current or immediately preceding calendar
30 year:

31 (a) The seller had its property or employees in this state for
32 the seller's business purposes; or

33 (b) The seller's receipts from retail sales in this state,
34 pursuant to RCW 82.04.067(4), meet either criterion in RCW
35 82.04.067(1)(c) (iii) or (iv), as adjusted under RCW 82.04.067(5).

36 (2) A seller also has a substantial nexus with this state during
37 a calendar year for the purposes of collecting the taxes imposed

1 under this chapter if the seller's total gross proceeds of sales at
2 retail sourced to this state under RCW 82.32.730 exceed ten thousand
3 dollars during the current or immediately preceding calendar year and
4 at any time during such current or immediately preceding calendar
5 year:

6 (a)(i) The seller offers its products for sale through one or
7 more marketplaces operated by any marketplace facilitator that has a
8 substantial nexus with this state; or

9 (ii) The seller or another person, as the case may be, including
10 an affiliated person, other than a common carrier acting solely as a
11 common carrier, engages in or performs any of the following
12 activities in this state, but not including the activities described
13 in RCW 82.08.052:

14 (A) Sells a similar line of products as the seller and does so
15 under the same business name as the seller or a similar business name
16 as the seller;

17 (B) Uses its employees, agents, representatives, or independent
18 contractors in this state to promote or facilitate sales by the
19 seller to purchasers in this state;

20 (C) Maintains, occupies, or uses an office, distribution
21 facility, warehouse, storage place, or similar place of business in
22 this state to facilitate the delivery or sale of tangible personal
23 property sold by the seller to the seller's purchasers in this state;

24 (D) Uses, with the seller's consent or knowledge, trademarks,
25 service marks, or trade names in this state that are the same or
26 substantially similar to those used by the seller;

27 (E) Delivers, installs, assembles, or performs maintenance or
28 repair services for the seller's purchasers in this state;

29 (F) Facilitates the sale of tangible personal property to
30 purchasers in this state by allowing the seller's purchasers in this
31 state to pick up or return tangible personal property sold by the
32 seller at an office, distribution facility, warehouse, storage place,
33 or any other place of business maintained by that person in this
34 state;

35 (G) Shares management, business systems, business practices, or
36 employees with the seller or, in the case of an affiliated person,
37 engages in intercompany transactions related to the activities
38 occurring with the seller to establish or maintain the seller's
39 market in this state; or

1 (H) Conducts any other activities in this state that are
2 significantly associated with the seller's ability to establish and
3 maintain a market in this state for the seller's sales of products to
4 purchasers in this state; or

5 (b)(i) The seller is under contract with a payment processor or
6 merchant bank, or accepts credit cards issued either by a financial
7 institution under a license from a credit card association or by an
8 entity that also authorizes purchases and settles with consumers and
9 merchants, if the payment processor, merchant bank, credit card
10 association, or credit card issuer has a substantial nexus with this
11 state for purposes of collecting the taxes imposed under this
12 chapter.

13 (ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose
14 the identity of payment processors, credit card associations, credit
15 card issuers described in (b)(i) of this subsection (2), and merchant
16 banks that have a substantial nexus with this state for purposes of
17 collecting the taxes imposed under this chapter.

18 (3)(a) For purposes of subsection (2)(a)(i) of this section, a
19 marketplace facilitator is deemed to have a substantial nexus with
20 this state during a calendar year if:

21 (i) The marketplace facilitator or any affiliated person
22 maintained a physical presence in this state during any portion of
23 the current or immediately preceding calendar year to engage in any
24 of the activities described in subsection (5)(a)(i) or (ii) of this
25 section; or

26 (ii) The marketplace facilitator generated more than ten thousand
27 dollars of gross proceeds of sales in the current or immediately
28 preceding calendar year from retail sales made through its physical
29 or electronic marketplace by sellers that are physically located in
30 this state. For purposes of this subsection (3)(a)(ii), a seller is
31 presumed to be physically located in this state if the address for
32 the seller maintained in the business records of the marketplace
33 facilitator is in this state.

34 (b) Pursuant to RCW 82.32.330(3)(u), the department may disclose
35 the identity of marketplace facilitators that have a substantial
36 nexus with this state for purposes of collecting the taxes imposed
37 under this chapter.

38 (4) For purposes of this section, persons are "affiliated
39 persons" with respect to each other where one of the persons has an
40 ownership interest of more than five percent, whether direct or

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

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

7 (a) "Marketplace facilitator" means a person that contracts with
8 sellers to facilitate, for consideration, the sale of the seller's
9 products through a physical or electronic marketplace operated by the
10 person, and engages, either directly or indirectly, through one or
11 more affiliated persons, in:

12 (i) Any of the following:

13 (A) Transmitting or otherwise communicating the offer or
14 acceptance between the buyer and seller;

15 (B) Owning or operating the infrastructure, electronic or
16 physical, or technology that brings buyers and sellers together;

17 (C) Providing a virtual currency that buyers are allowed or
18 required to use to purchase products from the seller; or

19 (D) Software development or research and development activities
20 related to any of the activities described in (a)(i)(A) through (C)
21 or (ii)(A) through (H) of this subsection (5), if such activities are
22 directly related to a physical or electronic marketplace operated by
23 the person or an affiliated person; and

24 (ii) Any of the following activities with respect to the seller's
25 products:

26 (A) Payment processing services;

27 (B) Fulfillment or storage services;

28 (C) Listing products for sale;

29 (D) Setting prices;

30 (E) Branding sales as those of the marketplace facilitator;

31 (F) Order taking;

32 (G) Advertising or promotion; or

33 (H) Providing customer service or accepting or assisting with
34 returns or exchanges.

35 (b) "Merchant bank" means a financial institution or any other
36 member of a credit card network that allows the seller to accept
37 credit card payments and is responsible for depositing transaction
38 proceeds into the seller's designated account.

1 (c) "Payment processor" means a person that contracts directly
2 with a seller to provide settlement for the seller's credit card,
3 debit card, or other payment transactions.

4 (d) "Product" means any property or service that is sold in a
5 sale at retail as defined in RCW 82.04.050.

6 (6) This section is subject to RCW 82.32.762.

7 NEW SECTION. **Sec. 207.** A new section is added to chapter 82.08
8 RCW to be codified between section 206 of this act and RCW 82.08.054
9 to read as follows:

10 (1) For purposes of this chapter, a marketplace facilitator is
11 deemed to be an agent of any marketplace seller making retail sales
12 through the marketplace facilitator's physical or electronic
13 marketplace. A marketplace facilitator with a substantial nexus with
14 this state must collect and remit to the department the taxes imposed
15 under this chapter on all taxable retail sales made through the
16 marketplace facilitator's marketplace and sourced to this state under
17 RCW 82.32.730, whether as principal or as the agent of a marketplace
18 seller.

19 (2) A marketplace facilitator is relieved of liability under this
20 chapter for failure to collect the correct amount of tax to the
21 extent that the marketplace facilitator can show to the department's
22 satisfaction that the error was due to incorrect information given to
23 the marketplace facilitator by the marketplace seller, unless the
24 marketplace facilitator and marketplace seller are affiliated
25 persons. Where the marketplace facilitator is relieved of liability
26 under this subsection (2), the marketplace seller is solely liable
27 for the amount of uncollected tax due.

28 (3)(a) A marketplace facilitator is relieved of liability under
29 this chapter for the failure to collect tax on taxable retail sales
30 to the extent that the marketplace facilitator can show to the
31 department's satisfaction that:

32 (i) The taxable retail sale was made through the marketplace
33 facilitator's marketplace;

34 (ii) The taxable retail sale was made solely as the agent of a
35 marketplace seller, and the marketplace facilitator and marketplace
36 seller are not affiliated persons; and

37 (iii) The failure to collect sales tax was not due to an error in
38 sourcing the sale under RCW 82.32.730.

1 (b) Where the marketplace facilitator is relieved of liability
2 under this subsection (3), the marketplace seller is also relieved of
3 liability for the amount of uncollected tax due, subject to the
4 limitations in subsection (4) of this section.

5 (4) A marketplace seller with a substantial nexus with this state
6 is relieved of its obligation to collect the taxes imposed under this
7 chapter on all taxable retail sales through a marketplace operated by
8 a marketplace facilitator if the marketplace seller has obtained
9 documentation from the marketplace facilitator indicating that the
10 marketplace facilitator is registered with the department and will
11 collect all applicable taxes due under this chapter on all taxable
12 retail sales made on behalf of the marketplace seller through the
13 marketplace operated by the marketplace facilitator. The
14 documentation required by this subsection (4) must be provided in a
15 form and manner prescribed by or acceptable to the department. This
16 subsection (4) does not relieve a marketplace seller from liability
17 for uncollected taxes due under this chapter resulting from a
18 marketplace facilitator's failure to collect the proper amount of tax
19 due when the error was due to incorrect information given to the
20 marketplace facilitator by the marketplace seller.

21 (5) Nothing in this section affects the obligation of any
22 purchaser to remit sales or use tax as to any applicable taxable
23 transaction in which the seller or the seller's agent does not
24 collect and remit sales tax.

25 (6) For purposes of this section, the following definitions
26 apply:

27 (a) "Affiliated person" has the same meaning as in section 206 of
28 this act.

29 (b) "Marketplace facilitator" has the same meaning as in section
30 206 of this act.

31 (c) "Marketplace seller" means a seller that makes retail sales
32 through any physical or electronic marketplace operated by a
33 marketplace facilitator, regardless of whether the seller is required
34 to be registered with the department as provided in RCW 82.32.030.

35 (7) This section is subject to RCW 82.32.762.

36 **Sec. 208.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to
37 read as follows:

38 (1)(a) The tax imposed in this chapter must be paid by the buyer
39 to the seller. Each seller must collect from the buyer the full

1 amount of the tax payable in respect to each taxable sale in
2 accordance with the schedule of collections adopted by the department
3 under the provisions of RCW 82.08.060.

4 (b) Sellers, including marketplace facilitators as defined in
5 section 206 of this act, establishing a substantial nexus with this
6 state during the current calendar year based solely on the provisions
7 of section 206 (1)(b), (2), or (3)(a)(ii) of this act, and who did
8 not have a substantial nexus with this state during the immediately
9 preceding calendar year for purposes of collecting the taxes imposed
10 under this chapter, must begin collecting state and local sales taxes
11 on taxable retail sales sourced to this state beginning on the first
12 day of the calendar month that is at least thirty days from the date
13 that the person established a substantial nexus with this state.

14 (2) The tax required by this chapter, to be collected by the
15 seller, is deemed to be held in trust by the seller until paid to the
16 department. Any seller who appropriates or converts the tax collected
17 to the seller's own use or to any use other than the payment of the
18 tax to the extent that the money required to be collected is not
19 available for payment on the due date as prescribed in this chapter
20 is guilty of a gross misdemeanor.

21 (3) Except as otherwise provided in this section, if any seller
22 fails to collect the tax imposed in this chapter or, having collected
23 the tax, fails to pay it to the department in the manner prescribed
24 by this chapter, whether such failure is the result of the seller's
25 own acts or the result of acts or conditions beyond the seller's
26 control, the seller is, nevertheless, personally liable to the state
27 for the amount of the tax.

28 (4) Sellers are not relieved from personal liability for the
29 amount of the tax unless they maintain proper records of exempt or
30 nontaxable transactions and provide them to the department when
31 requested.

32 (5) Sellers are not relieved from personal liability for the
33 amount of tax if they fraudulently fail to collect the tax or if they
34 solicit purchasers to participate in an unlawful claim of exemption.

35 (6) Sellers are not relieved from personal liability for the
36 amount of tax if they accept an exemption certificate from a
37 purchaser claiming an entity-based exemption if:

38 (a) The subject of the transaction sought to be covered by the
39 exemption certificate is actually received by the purchaser at a
40 location operated by the seller in Washington; and

1 (b) Washington provides an exemption certificate that clearly and
2 affirmatively indicates that the claimed exemption is not available
3 in Washington. Graying out exemption reason types on a uniform form
4 and posting it on the department's web site is a clear and
5 affirmative indication that the grayed out exemptions are not
6 available.

7 (7)(a) Sellers are relieved from personal liability for the
8 amount of tax if they obtain a fully completed exemption certificate
9 or capture the relevant data elements required under the streamlined
10 sales and use tax agreement within ninety days, or a longer period as
11 may be provided by rule by the department, subsequent to the date of
12 sale.

13 (b) If the seller has not obtained an exemption certificate or
14 all relevant data elements required under the streamlined sales and
15 use tax agreement within the period allowed subsequent to the date of
16 sale, the seller may, within one hundred twenty days, or a longer
17 period as may be provided by rule by the department, subsequent to a
18 request for substantiation by the department, either prove that the
19 transaction was not subject to tax by other means or obtain a fully
20 completed exemption certificate from the purchaser, taken in good
21 faith.

22 (c) Sellers are relieved from personal liability for the amount
23 of tax if they obtain a blanket exemption certificate for a purchaser
24 with which the seller has a recurring business relationship. The
25 department may not request from a seller renewal of blanket exemption
26 certificates or updates of exemption certificate information or data
27 elements if there is a recurring business relationship between the
28 buyer and seller. For purposes of this subsection (7)(c), a
29 "recurring business relationship" means at least one sale transaction
30 within a period of twelve consecutive months.

31 (d) Sellers are relieved from personal liability for the amount
32 of tax if they obtain a copy of a direct pay permit issued under RCW
33 82.32.087.

34 (8) The amount of tax, until paid by the buyer to the seller or
35 to the department, constitutes a debt from the buyer to the seller.
36 Any seller who fails or refuses to collect the tax as required with
37 intent to violate the provisions of this chapter or to gain some
38 advantage or benefit, either direct or indirect, and any buyer who
39 refuses to pay any tax due under this chapter is guilty of a
40 misdemeanor.

1 (9) Except as otherwise provided in this subsection, the tax
2 required by this chapter to be collected by the seller must be stated
3 separately from the selling price in any sales invoice or other
4 instrument of sale. On all retail sales through vending machines, the
5 tax need not be stated separately from the selling price or collected
6 separately from the buyer. Except as otherwise provided in this
7 subsection, for purposes of determining the tax due from the buyer to
8 the seller and from the seller to the department it must be
9 conclusively presumed that the selling price quoted in any price
10 list, sales document, contract or other agreement between the parties
11 does not include the tax imposed by this chapter. But if the seller
12 advertises the price as including the tax or that the seller is
13 paying the tax, the advertised price may not be considered the
14 selling price.

15 (10) Where a buyer has failed to pay to the seller the tax
16 imposed by this chapter and the seller has not paid the amount of the
17 tax to the department, the department may, in its discretion, proceed
18 directly against the buyer for collection of the tax. If the
19 department proceeds directly against the buyer for collection of the
20 tax as authorized in this subsection, the department may add a
21 penalty of ten percent of the unpaid tax to the amount of the tax due
22 for failure of the buyer to pay the tax to the seller, regardless of
23 when the tax may be collected by the department. In addition to the
24 penalty authorized in this subsection, all of the provisions of
25 chapter 82.32 RCW, including those relative to interest and
26 penalties, apply. For the sole purpose of applying the various
27 provisions of chapter 82.32 RCW, the twenty-fifth day of the month
28 following the tax period in which the purchase was made will be
29 considered as the due date of the tax.

30 ~~(11) ((Notwithstanding subsections (1) through (10) of this~~
31 ~~section, any person making sales is not obligated to collect the tax~~
32 ~~imposed by this chapter if:~~

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

35 ~~(i) The storage, dissemination, or display of advertising;~~

36 ~~(ii) The taking of orders; or~~

37 ~~(iii) The processing of payments; and~~

38 ~~(b) The activities are conducted electronically via a web site on~~
39 ~~a server or other computer equipment located in Washington that is~~
40 ~~not owned or operated by the person making sales into this state nor~~

1 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
2 ~~the same meaning as provided in RCW 82.04.424.~~

3 ~~(12) Subsection (11) of this section expires when: (a) The United~~
4 ~~States congress grants individual states the authority to impose~~
5 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
6 ~~determined by a court of competent jurisdiction, in a judgment not~~
7 ~~subject to review, that a state can impose sales and use tax~~
8 ~~collection duties on remote sellers.~~

9 ~~(13) For purposes of this section:))~~ The definitions in this
10 subsection apply throughout this section unless the context clearly
11 requires otherwise.

12 (a) "Exemption certificate" means documentation furnished by a
13 buyer to a seller to claim an exemption from sales tax. An exemption
14 certificate includes a reseller permit or other documentation
15 authorized in RCW 82.04.470 furnished by a buyer to a seller to
16 substantiate a wholesale sale; and

17 (b) "Seller" includes a certified service provider, as defined in
18 RCW 82.32.020, acting as agent for the seller.

19 **Sec. 209.** RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each
20 amended to read as follows:

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

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

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

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

13 (b) "Washington customer" means a purchaser of goods or services
14 that are received in this state by the purchaser or the purchaser's
15 donee. "Washington customer" also means a purchaser that provides a
16 seller with an address in this state during the consummation of the
17 sale, if the location where the goods or services are received by the
18 purchaser or the purchaser's donee is not known.

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

21 ~~(4))~~) This section is subject to RCW 82.32.762.

22 **Sec. 210.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to
23 read as follows:

24 (1) Every person who ~~((maintains in this state a place of~~
25 ~~business or a stock of goods, or engages in business activities~~
26 ~~within this state,))~~ has a substantial nexus with this state based on
27 RCW 82.08.052 or section 206 of this act must obtain from the
28 department a certificate of registration, and must, at the time of
29 making sales of tangible personal property, digital goods, digital
30 codes, digital automated services, extended warranties, or sales of
31 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
32 or (6)~~((b))~~ (c), or making transfers of either possession or title,
33 or both, of tangible personal property for use in this state, collect
34 from the purchasers or transferees the tax imposed under this
35 chapter. The tax to be collected under this section must be in an
36 amount equal to the purchase price multiplied by the rate in effect
37 for the retail sales tax under RCW 82.08.020. ~~((For the purposes of~~
38 ~~this chapter, the phrase "maintains in this state a place of~~
39 ~~business" includes the solicitation of sales and/or taking of orders~~

1 ~~by sales agents or traveling representatives. For the purposes of~~
2 ~~this chapter, "engages in business activity within this state"~~
3 ~~includes every activity which is sufficient under the Constitution of~~
4 ~~the United States for this state to require collection of tax under~~
5 ~~this chapter. The department must in rules specify activities which~~
6 ~~constitute engaging in business activity within this state, and must~~
7 ~~keep the rules current with future court interpretations of the~~
8 ~~Constitution of the United States.))~~

9 (2) Every person who engages in this state in the business of
10 acting as an independent selling agent for persons who do not hold a
11 valid certificate of registration, and who receives compensation by
12 reason of sales of tangible personal property, digital goods, digital
13 codes, digital automated services, extended warranties, or sales of
14 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
15 or (6)((~~b~~)) (c), of his or her principals for use in this state,
16 must, at the time such sales are made, collect from the purchasers
17 the tax imposed on the purchase price under this chapter, and for
18 that purpose is deemed a retailer as defined in this chapter.

19 (3) The tax required to be collected by this chapter is deemed to
20 be held in trust by the retailer until paid to the department, and
21 any retailer who appropriates or converts the tax collected to the
22 retailer's own use or to any use other than the payment of the tax
23 provided herein to the extent that the money required to be collected
24 is not available for payment on the due date as prescribed is guilty
25 of a misdemeanor. In case any seller fails to collect the tax herein
26 imposed or having collected the tax, fails to pay the same to the
27 department in the manner prescribed, whether such failure is the
28 result of the seller's own acts or the result of acts or conditions
29 beyond the seller's control, the seller is nevertheless personally
30 liable to the state for the amount of such tax, unless the seller has
31 taken from the buyer a copy of a direct pay permit issued under RCW
32 82.32.087.

33 (4) Any retailer who refunds, remits, or rebates to a purchaser,
34 or transferee, either directly or indirectly, and by whatever means,
35 all or any part of the tax levied by this chapter is guilty of a
36 misdemeanor.

37 ~~(5) ((Notwithstanding subsections (1) through (4) of this~~
38 ~~section, any person making sales is not obligated to collect the tax~~
39 ~~imposed by this chapter if:~~

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

3 ~~(i) The storage, dissemination, or display of advertising;~~

4 ~~(ii) The taking of orders; or~~

5 ~~(iii) The processing of payments; and~~

6 ~~(b) The activities are conducted electronically via a web site on~~
7 ~~a server or other computer equipment located in Washington that is~~
8 ~~not owned or operated by the person making sales into this state nor~~
9 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
10 ~~the same meaning as provided in RCW 82.04.424.~~

11 ~~(6) Subsection (5) of this section expires when: (a) The United~~
12 ~~States congress grants individual states the authority to impose~~
13 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
14 ~~determined by a court of competent jurisdiction, in a judgment not~~
15 ~~subject to review, that a state can impose sales and use tax~~
16 ~~collection duties on remote sellers.~~

17 ~~(7))~~ Notwithstanding subsections (1) through (4) of this
18 section, any person making sales is not obligated to collect the tax
19 imposed by this chapter if the person would have been obligated to
20 collect retail sales tax on the sale absent a specific exemption
21 provided in chapter 82.08 RCW, and there is no corresponding use tax
22 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may
23 be construed as relieving purchasers from liability for reporting and
24 remitting the tax due under this chapter directly to the department.

25 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this
26 section, any person making sales is not obligated to collect the tax
27 imposed by this chapter if the state is prohibited under the
28 Constitution or laws of the United States from requiring the person
29 to collect the tax imposed by this chapter.

30 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this
31 section, any licensed dealer facilitating a firearm sale or transfer
32 between two unlicensed persons by conducting background checks under
33 chapter 9.41 RCW is not obligated to collect the tax imposed by this
34 chapter.

35 NEW SECTION. **Sec. 211.** A new section is added to chapter 82.32
36 RCW to read as follows:

37 (1) Notwithstanding any other provision of law, and whether or
38 not the department initiates an audit or other tax collection
39 procedure, the department may bring a declaratory judgment action

1 under chapter 7.24 RCW, regardless of any other remedy available to
2 the department, against any person the department believes has a
3 substantial nexus with this state under section 206(1)(b) of this act
4 to establish that the obligation to remit sales tax is applicable and
5 valid under state and federal law.

6 (2) The filing of the declaratory judgment action by the
7 department as authorized in this section prohibits the department,
8 during the pendency of the action and any subsequent appeal, from
9 enforcing the tax collection obligations of chapter 82.08 RCW against
10 any remote seller who does not affirmatively consent or otherwise
11 remit sales tax to the department on a voluntary basis. The
12 prohibition in this subsection does not apply if there is a previous
13 judgment from a court establishing the validity of the tax collection
14 obligations of chapter 82.08 RCW with respect to the particular
15 taxpayer.

16 (3) Notwithstanding any other provisions of state law, attorneys'
17 fees may not be awarded to any party in any action brought pursuant
18 to this section or any appeal from any action brought pursuant to
19 this section.

20 (4) For purposes of this section, "remote seller" means any
21 seller that makes retail sales in this state but does not have a
22 physical presence in this state.

23 NEW SECTION. **Sec. 212.** A new section is added to chapter 82.32
24 RCW to read as follows:

25 (1) A taxpayer that, for the purposes of the tax collection
26 obligations in chapter 82.08 RCW, has a substantial nexus with this
27 state solely under the provisions of section 206(1)(b) of this act
28 and is complying with the requirements of chapter 82.08 RCW,
29 voluntarily or otherwise, may only seek a recovery of sales taxes,
30 penalties, or interest from the department by following the recovery
31 procedures established under RCW 82.32.060. However, no claim may be
32 granted on the basis that the taxpayer lacked a physical presence in
33 the state and complied with the tax collection provisions of chapter
34 82.08 RCW voluntarily while covered by the prohibition on enforcement
35 provided in section 211 of this act.

36 (2) Neither the state nor any seller who remits sales tax
37 voluntarily or otherwise under this act is liable to a purchaser who
38 claims that the sales tax has been over collected because a provision
39 of this act is later deemed unlawful.

1 (3) Nothing in this act affects the obligation of any purchaser
2 from this state to remit sales or use tax as to any applicable
3 taxable transaction in which the seller does not collect and remit
4 sales tax.

5 **Sec. 213.** RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each
6 amended to read as follows:

7 (1) If the department determines that a change, taking effect
8 after (~~September 1, 2015~~) the effective date of this section, in
9 the streamlined sales and use tax agreement or federal law creates a
10 conflict with any provision of RCW 82.08.052, section 206 of this
11 act, or section 207 of this act, such conflicting provision or
12 provisions of RCW 82.08.052, section 206 of this act, or section 207
13 of this act, including any related provisions that would not function
14 as originally intended, have no further force and effect as of the
15 date the change in the streamlined sales and use tax agreement or
16 federal law becomes effective.

17 (2) For purposes of this section:

18 (a) A change in federal law conflicts with RCW 82.08.052, section
19 206 of this act, or section 207 of this act if the change clearly
20 allows states to impose greater sales and use tax collection
21 obligations on remote sellers than provided for, or clearly prevents
22 states from imposing sales and use tax collection obligations on
23 remote sellers to the extent provided for, under RCW 82.08.052,
24 section 206 of this act, or section 207 of this act.

25 (b) A change in the streamlined sales and use tax agreement
26 conflicts with RCW 82.08.052, section 206 of this act, or section 207
27 of this act if one or more provisions of RCW 82.08.052, section 206
28 of this act, or section 207 of this act causes this state to be found
29 out of compliance with the streamlined sales and use tax agreement by
30 its governing board.

31 (3) If the department makes a determination under this section
32 that a change in federal law or the streamlined sales and use tax
33 agreement conflicts with one or more provisions of RCW 82.08.052,
34 section 206 of this act, or section 207 of this act, the department:

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

1 (b) Must include information on its web site informing taxpayers
2 and the public (i) of the provision or provisions of RCW 82.08.052,
3 section 206 of this act, or section 207 of this act that will have no
4 further force and effect, (ii) when such change will become
5 effective, and (iii) about how to participate in any rule making
6 conducted by the department in accordance with (a) of this subsection
7 (3).

8 (4) For purposes of this section, "remote seller" has the same
9 meaning as in RCW 82.08.052.

10 Part III

11 Sales and Use Tax Notice and Reporting Requirements

12 NEW SECTION. **Sec. 301.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires
14 otherwise.

15 (1) "Consumer" has the same meaning as in chapters 82.04, 82.08,
16 and 82.12 RCW.

17 (2) "Department" has the same meaning as in RCW 82.02.010.

18 (3) "Product" has the same meaning as in RCW 82.32.023.

19 (4) "Purchaser" means any consumer who purchases or leases a
20 product sourced to this state under RCW 82.32.730.

21 (5) "Retail sale" has the same meaning as in RCW 82.04.050.

22 (6) "Sale" has the same meaning as in RCW 82.04.040.

23 (7) "Seller" has the same meaning as in RCW 82.08.010, and
24 includes a marketplace facilitator as defined in section 206 of this
25 act.

26 NEW SECTION. **Sec. 302.** (1) Except as otherwise provided in
27 subsection (5) of this section, a seller who does not collect the tax
28 imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
29 must comply with the notice and reporting requirements of this
30 section. For taxable retail sales made through a marketplace
31 facilitator or other agent, the marketplace facilitator or other
32 agent must comply with the notice and reporting requirements of this
33 section, and the principal is not subject to the notice and reporting
34 requirements of this section with respect to those sales.

35 (2) A seller subject to the notice and reporting requirements of
36 this section must provide a notice to each consumer at the time of
37 each taxable retail sale.

1 (a) The notice under this subsection (2) must include the
2 following information:

3 (i) A statement that neither sales nor use tax is being collected
4 or remitted upon the sale;

5 (ii) A statement that the consumer may be required to remit sales
6 or use tax directly to the department; and

7 (iii) Instructions for obtaining additional information from the
8 department regarding whether and how to remit the sales or use tax to
9 the department.

10 (b) The notice under this subsection (2) must be prominently
11 displayed on all invoices and order forms, including, where
12 applicable, electronic and catalogue invoices and order forms, and
13 upon each sales receipt or similar document provided to the
14 purchaser, whether in paper or electronic form. No indication may be
15 made that sales or use tax is not imposed upon the transaction,
16 unless:

17 (i) Such indication is followed immediately with the notice
18 required by this subsection (2); or

19 (ii) The transaction with respect to which the indication is
20 given is exempt from sales and use tax pursuant to law.

21 (3) A seller subject to the notice and reporting requirements of
22 this section must, no later than January 31st of each year, provide a
23 report to each consumer for whom the seller was required to provide a
24 notice under subsection (2) of this section.

25 (a) The report under this subsection (3) must include:

26 (i) A statement that the seller did not collect sales or use tax
27 on the consumer's transactions with the seller and that the consumer
28 may be required to remit such tax directly to the department;

29 (ii) A list, by date, generally indicating the type of product
30 purchased or leased during the immediately preceding calendar year by
31 the consumer from the seller sourced to this state under RCW
32 82.32.730 and the price of each product;

33 (iii) Instructions for obtaining additional information from the
34 department regarding whether and how to remit the sales or use tax to
35 the department;

36 (iv) A statement that the seller is required to submit a report
37 to the department pursuant to subsection (4) of this section stating
38 the total dollar amount of the consumer's purchases from the seller;
39 and

40 (v) Any information as the department may reasonably require.

1 (b) The report required under this subsection (3) must be sent to
2 the consumer's billing address, or if unknown, the consumer's
3 shipping address, in an envelope marked prominently with words
4 indicating important tax information is enclosed. If no billing or
5 shipping address is known, the report must be sent electronically to
6 the consumer's last known email address with a subject heading
7 indicating important tax information is enclosed.

8 (4) A seller subject to the notice and reporting requirements of
9 this section must, no later than January 31st of each year, file a
10 report with the department.

11 (a) The report under this subsection (4) must include, with
12 respect to each consumer to whom the seller is required to provide a
13 report under subsection (3) of this section by January 31st of the
14 current calendar year:

15 (i) The consumer's name;

16 (ii) The billing address and, if different, the last known
17 mailing address;

18 (iii) The shipping address for each product sold or leased to
19 such consumer for delivery to a location in this state during the
20 immediately preceding calendar year; and

21 (iv) The total dollar amount of all such purchases by such
22 consumer.

23 (b) The report under this subsection (4) must be filed
24 electronically in a form and manner required by the department.

25 (5) The following exemptions to the notice and reporting
26 requirements of this section apply:

27 (a) A seller who made less than two hundred thousand dollars in
28 total worldwide gross retail sales during the immediately preceding
29 calendar year is not required to file reports under subsections (3)
30 and (4) of this section in the current calendar year.

31 (b) A seller who made less than one hundred thousand dollars in
32 total worldwide gross retail sales during the immediately preceding
33 calendar year is not required to provide notice under subsection (2)
34 of this section with respect to retail sales made in the current
35 calendar year.

36 (c) A seller who made less than one hundred thousand dollars in
37 total gross retail sales sourced to this state under RCW 82.32.730
38 during the immediately preceding calendar year is not required to
39 file reports under subsections (3) and (4) of this section in the
40 current calendar year.

1 (d) A seller who made less than fifty thousand dollars in total
2 gross retail sales sourced to this state under RCW 82.32.730 during
3 the immediately preceding calendar year is not required to provide
4 notice under subsection (2) of this section with respect to retail
5 sales made in the current calendar year.

6 (e) A seller who is registered with the department to collect and
7 remit sales and use tax, and who makes a reasonable effort to comply
8 with the requirements of RCW 82.08.050 and 82.12.040, is not required
9 to provide notice or file reports under this section.

10 NEW SECTION. **Sec. 303.** (1) The following penalties apply to any
11 seller who fails to provide notices and reports as required by
12 section 302 of this act:

13 (a) The department must assess a penalty against any seller who
14 fails to provide notice as required by section 302(2) of this act, in
15 addition to any other applicable penalties, in the amount of five
16 dollars for each such failure.

17 (b) The department must assess a penalty against any seller who
18 fails to provide a report as required by section 302(3) of this act,
19 in addition to any other applicable penalty, in the amount of ten
20 dollars for each such failure.

21 (c) The department must assess a penalty against any seller who
22 fails to file a report as required by section 302(4) of this act, in
23 addition to any other applicable penalty, equal to ten dollars times
24 the number of such consumers that should have been included on such
25 report.

26 (2) When assessing a penalty under this section, the department
27 may use any reasonable sampling or estimation technique where
28 necessary or appropriate to determine the number of failures in any
29 calendar year.

30 (3) Interest accrues on the amount of the total penalty that has
31 been assessed under this section until the total penalty amount is
32 paid in full. Interest imposed under this section must be computed
33 and assessed as provided in RCW 82.32.050 as if the penalty imposed
34 under this subsection were a tax liability.

35 (4) The department must notify a seller by mail, or
36 electronically as provided in RCW 82.32.135, of the amount of any
37 penalty and interest due under this section. Amounts due under this
38 section must be paid in full within thirty days from the date of the

1 notice, or within such further time as the department may provide in
2 its sole discretion.

3 (5)(a)(i) A seller is entitled to a conditional waiver of
4 penalties and interest imposed under this section if the seller
5 enters into a written agreement with the department committing to
6 fully comply with all notice and reporting requirements of this
7 chapter beginning by a date acceptable to the department.

8 (ii) The department may grant a waiver of penalties and interest
9 under this subsection (5)(a) for penalties and interest assessed for
10 a seller's failure to comply with the notice and reporting
11 requirements for one or more violations.

12 (iii) The department may not grant more than one request by a
13 seller for a waiver of penalties and interest under this subsection
14 (5)(a).

15 (iv) The department must reassess penalties and interest
16 conditionally waived under this subsection (5)(a) if the department
17 finds that, after the date that the seller agreed to fully comply
18 with the notice and reporting requirements of this chapter, the
19 seller failed to:

20 (A) Provide notice under section 302(2) of this act to at least
21 ninety-five percent of the consumers entitled to such notice in any
22 given calendar year or portion of the initial calendar year in which
23 the agreement required under this subsection was in effect if the
24 agreement was in effect for less than the entire calendar year;

25 (B) Timely provide the reports required under section 302(3) of
26 this act to all consumers who received notice from the seller under
27 section 302(2) of this act during any calendar year, unless the
28 department finds that any such failure was due to circumstances
29 beyond the seller's control; or

30 (C) Timely provide the reports required under section 302(4) of
31 this act during any calendar year, unless the department finds that
32 any such failure was due to circumstances beyond the seller's
33 control.

34 (v) The department may not reassess penalties and interest
35 conditionally waived under this subsection (5)(a) more than four
36 calendar years following the calendar year in which the department
37 granted the conditional waiver under this subsection (5)(a).

38 (vi) The provisions of subsection (4) of this section apply to
39 penalties and interest reassessed under this subsection (5)(a). The
40 department may add additional interest on penalties reassessed under

1 this subsection (5)(a) only if the total amount of penalties
2 reassessed under this subsection (5)(a) is not paid in full by the
3 date due. Additional interest authorized under this subsection
4 (5)(a)(vi) applies beginning on the day immediately following the day
5 that the reassessed penalties were due and accrues until the total
6 amount of reassessed penalties are paid in full.

7 (b) The department must waive penalties and interest imposed
8 under this section if the department determines that the failure of
9 the seller to fully comply with the notice or reporting requirements
10 was due to circumstances beyond the seller's control.

11 (c) A request for a waiver of penalties and interest under this
12 subsection must be received by the department in writing and before
13 the penalties and interest for which a waiver is requested are due
14 pursuant to subsection (4) of this section. The department must deny
15 any request for a waiver of penalties and interest that does not
16 fully comply with the provisions of this subsection (5)(c).

17 NEW SECTION. **Sec. 304.** Chapter 82.32 RCW applies to the
18 administration of this chapter.

19 NEW SECTION. **Sec. 305.** (1) Except as otherwise provided in this
20 section, taxes imposed under chapter 82.08 or 82.12 RCW on a taxable
21 retail sale and payable by a consumer directly to the department are
22 due, on returns prescribed by the department, by March 1st of the
23 calendar year immediately following the calendar year in which the
24 taxable retail sale occurred.

25 (2) This section does not apply to the reporting and payment of
26 taxes imposed under chapters 82.08 and 82.12 RCW:

27 (a) On the retail sale or use of motor vehicles, vessels, or
28 aircraft; or

29 (b) By consumers who are engaged in business, unless the
30 department has relieved the consumer of the requirement to file
31 returns pursuant to RCW 82.32.045(4).

32 NEW SECTION. **Sec. 306.** Nothing in this chapter relieves sellers
33 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
34 responsibilities imposed under those chapters. Nor does anything in
35 this chapter prevent the department from administering and enforcing
36 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
37 any seller or consumer who is subject to such taxes.

1 Renumber the remaining sections and parts consecutively and
2 correct any internal references accordingly.

3 On page 5, line 17, after "~~((eighty))~~" strike "fifty-five" and
4 insert "thirty-nine"

5 On page 10, after line 24, insert the following:

6 **"Part V**
7 **Miscellaneous**

8 NEW SECTION. **Sec. 501.** (1) If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of this act or the application of the provision to other
11 persons or circumstances is not affected.

12 (2) If the department of revenue is prevented from enforcing
13 chapters 82.04, 82.08, and 82.12 RCW against persons without a
14 physical presence in this state because any provision of this act or
15 its application to any person or circumstance is held invalid, the
16 department of revenue must impose such provisions to the fullest
17 extent allowed under the Constitution and laws of the United States.

18 NEW SECTION. **Sec. 502.** The tax collection, reporting, and
19 payment obligations imposed by this act apply prospectively only.

20 NEW SECTION. **Sec. 503.** For purposes of determining whether a
21 person engaged in the business of making sales at retail has a
22 substantial nexus with this state under the provisions of RCW
23 82.04.067(6)(a)(iii) or section 206 (1)(b), (2), or (3)(a)(ii) of
24 this act for taxable periods beginning on the effective date of this
25 section through December 31, 2017, the person's gross proceeds of
26 sales are based on the entire 2017 calendar year.

27 NEW SECTION. **Sec. 504.** Sections 301 through 306 of this act
28 constitute a new chapter in Title 82 RCW."

SSB 5875 - S AMD 158
By Senator Carlyle

NOT ADOPTED 03/23/2017

1 On page 1, line 2 of the title, after "RCW" insert "82.04.066,
2 82.04.067, 82.04.220, 82.08.050, 82.08.052, 82.12.040, 82.32.762,
3 82.32.045," and on line 3 of the title, after "28A.320.---;" strike
4 "and" and on line 4 of the title, after "(uncodified)" insert "
5 adding new sections to chapter 82.08 RCW; adding new sections to
6 chapter 82.32 RCW; adding a new chapter to Title 82 RCW; creating new
7 sections; repealing RCW 82.04.424; and prescribing penalties"

EFFECT: The local effort property tax levy is reduced by 16 cents from \$1.55 to \$1.39. The funding is made up from additional retail sales nexus standards that will require retail sales tax collection by remote sellers making sales into Washington.

FISCAL IMPACT: No fiscal impact. The two provisions offset.

--- END ---