CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5581**

66th Legislature

2019 Regular Session

|  |  |
| --- | --- |
| Passed by the Senate March 11, 2019  Yeas 37 Nays 11  **President of the Senate**  Passed by the House March 8, 2019  Yeas 58 Nays 36  **Speaker of the House of Representatives** | CERTIFICATE  I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5581** as passed by Senate and the House of Representatives on the dates hereon set forth.  Secretary |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5581**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Rolfes, Braun, Carlyle, Keiser, and Saldaña; by request of Department of Revenue)

AN ACT Relating to improving the effectiveness and adequacy of state tax laws by clarifying and simplifying nexus provisions, by decreasing compliance and administrative burdens for taxpayers and the department of revenue, by facilitating the collection of new tax revenue resulting from the United States supreme court's decision in South Dakota v. Wayfair, Inc., by providing more consistent tax obligations for both domestic and foreign sellers, and by simplifying the expiration of sales tax sourcing mitigation payments to local governments on September 30, 2019; amending RCW 82.04.067, 82.04.067, 82.04.220, 82.08.010, 82.08.052, 82.08.0531, 82.32.045, 82.08.0293, 82.32.020, 82.32.715, 82.32.762, 34.05.328, 82.04.610, 82.14.500, 34.05.010, 82.04.066, 82.04.43391, and 82.12.040; adding new sections to chapter 82.02 RCW; repealing RCW 82.08.053, 82.13.010, 82.13.020, 82.13.030, 82.13.040, 82.13.050, 82.32.047, 82.32.733, and 82.32.763; creating new sections; providing effective dates; providing an expiration date; and declaring an emergency.

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

**Part I**

**Nexus**

**Sec.**  RCW 82.04.067 and 2017 3rd sp.s. c 28 s 302 are each amended to read as follows:

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

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

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

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and the person had:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270, the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

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

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

(6)(a)(i) Except as provided in (a)(iii) of this subsection (6), subsections (1) through (5) of this section only apply with respect to the taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.

(ii) Subject to the limitation in RCW 82.32.531, for purposes of the taxes imposed under this chapter on the business of making sales at retail or any other activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the current or immediately preceding calendar year, which need only be demonstrably more than a slightest presence.

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

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

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

((~~(ii) A remote seller as defined in RCW 82.08.052 is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under RCW 82.08.052. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in RCW 82.08.052. To the extent that the presumption in RCW 82.08.052 is no longer operative pursuant to RCW 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer operative.~~))

**Sec.**  RCW 82.04.067 and 2019 c . . . s 101 (section 101 of this act) are each amended to read as follows:

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

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

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

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and the person had:

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

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

~~(iii)~~)) More than ((~~two hundred sixty-seven~~)) one hundred thousand dollars of cumulative gross receipts from this state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270, the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.~~

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

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

~~(6)(a)(i) Except as provided in (a)(iii) of this subsection (6), subsections (1) through (5) of this section only apply with respect to the taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.~~

~~(ii) Subject to the limitation in RCW 82.32.531, for purposes of the taxes imposed under this chapter on the business of making sales at retail or any other activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the current or immediately preceding calendar year, which need only be demonstrably more than a slightest presence.~~

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

~~(b)~~)) (ii) Subject to the limitation in RCW 82.32.531, physical presence in this state, which need only be demonstrably more than a slightest presence.

(2)(a) Cumulative gross receipts counting toward the threshold in subsection (1)(c)(i) of this section include all of a person's gross income of the business attributed to this state. For purposes of this subsection, gross income of the business is attributed to this state as follows:

(i) For apportionable income, all amounts included in the numerator of the receipts factor under RCW 82.04.462 and, in the case of financial institutions, all amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(ii) For all other income, the gross income of the business allocated to this state in accordance with the sourcing provisions of RCW 82.32.730.

(b) For a marketplace facilitator, cumulative gross receipts counting toward the threshold in subsection (1)(c)(i) of this section include, in addition to the gross proceeds of its own sales, the cumulative gross proceeds from sales by all marketplace sellers through the marketplace facilitator's marketplace, including marketplace sellers that do not have a substantial nexus with this state under the provisions of this section.

(3)(a) For purposes of ((~~this~~)) subsection (1)(c)(ii) of this section, a person is physically present in this state if the person has property or employees in this state.

((~~(c)~~)) (b) A person is also physically present in this state for the purposes of ((~~this~~)) subsection (1)(c)(ii) of this section if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

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

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

(b) "Marketplace," "marketplace facilitator," and "marketplace seller" have the same meaning as provided in RCW 82.08.010.

(c) "Product" has the same meaning as provided in RCW 82.32.023.

**Sec.**  RCW 82.04.220 and 2017 3rd sp.s. c 28 s 303 are each amended to read as follows:

(1) There is levied and collected from every person that has a substantial nexus with this state, as provided in RCW 82.04.067, a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

(2)((~~(a)~~)) A person who ((~~has~~)) establishes a substantial nexus with this state in the current calendar year under the provisions of RCW 82.04.067((~~, based solely on the person's property, payroll, or receipts in this state during the current calendar year,~~)) is subject to the tax imposed under this chapter for the current calendar year only on business activity occurring on and after the date that the person established a substantial nexus with this state in the current calendar year. This subsection does not apply to a person who also had a substantial nexus with this state during the immediately preceding calendar year under RCW 82.04.067, and such person is taxable under this chapter for the current calendar year in its entirety.

((~~(b) This subsection (2) does not apply to any person who also had a substantial nexus with this state during:~~

~~(i) The immediately preceding calendar year under RCW 82.04.067; or~~

~~(ii) The current calendar year under RCW 82.04.067 (1)(a) or (b) or (6)(a)(ii) or (c).~~))

NEW SECTION. **Sec.**  A new section is added to chapter 82.02 RCW to read as follows:

A person that has a substantial nexus under RCW 82.04.067 is obligated to pay all applicable taxes and fees imposed on that person's business activity, including any taxes and fees enacted after December 31, 2018. For purposes of this section, "taxes and fees" means any monetary exaction, regardless of its label, that is imposed directly on a person engaging in business and that the department is responsible for collecting.

**Sec.**  RCW 82.08.010 and 2014 c 140 s 11 are each amended to read as follows:

For the purposes of this chapter:

(1)(a)(i) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (A) The seller's cost of the property sold; (B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (D) delivery charges; and (E) installation charges.

(ii) When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a)(i) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except ((~~"seller" does not mean~~)) as otherwise provided in this subsection (2).

(ii) "Seller" includes marketplace facilitators, whether making sales in their own right or facilitating sales on behalf of marketplace sellers.

(b)(i) "Seller" does not include:

((~~(i)~~)) (A) The state and its departments and institutions when making sales to the state and its departments and institutions; or

((~~(ii)~~)) (B) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

((~~(b)~~)) (ii) For the purposes of ((~~(a) of~~)) this subsection (2)(b), the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state," "within this state," "marijuana," "useable marijuana," and "marijuana-infused products" applies equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

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

(9) The definitions in RCW 82.04.192 apply to this chapter;

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital goods and digital codes unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences; and

(11) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(12) The terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include or relate to marijuana, useable marijuana, or marijuana-infused products unless the applicable term is explicitly defined to include marijuana, useable marijuana, or marijuana-infused products.

(13)(a) "Affiliated person" means a person that, with respect to another person:

(i) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(ii) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(b) For purposes of this subsection (13):

(i) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of the other person; and

(ii) An indirect ownership interest in a person is an ownership interest in an entity that has an ownership interest in the person or in an entity that has an indirect ownership interest in the person.

(14) "Marketplace" means a physical or electronic place, including, but not limited to, a store, a booth, an internet web site, a catalog or a dedicated sales software application, where tangible personal property, digital codes and digital products, or services are offered for sale.

(15)(a) "Marketplace facilitator" means a person that:

(i) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a marketplace owned or operated by the person;

(ii) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between the buyer and seller. For purposes of this subsection, mere advertising does not constitute transmitting or otherwise communicating the offer or acceptance between the buyer and seller; and

(iii) Engages directly or indirectly, through one or more affiliated persons, in any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

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

(F) Taking orders; or

(G) Providing customer service or accepting or assisting with returns or exchanges.

(b)(i) "Marketplace facilitator" does not include:

(A) A person who provides internet advertising services, including listing products for sale, so long as the person does not also engage in the activity described in (a)(ii) of this subsection (15) in addition to any of the activities described in (a)(iii) of this subsection (15); or

(B) A person with respect to the provision of travel agency services or the operation of a marketplace or that portion of a marketplace that enables consumers to purchase transient lodging accommodations in a hotel or other commercial transient lodging facility.

(ii) The exclusion in this subsection (15)(b) does not apply to a marketplace or that portion of a marketplace that facilitates the retail sale of transient lodging accommodations in homes, apartments, cabins, or other residential dwelling units.

(iii) For purposes of this subsection (15)(b), the following definitions apply:

(A) "Hotel" has the same meaning as in RCW 19.48.010.

(B) "Travel agency services" means arranging or booking, for a commission, fee or other consideration, vacation or travel packages, rental car or other travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations.

(16) "Marketplace seller" means a seller that makes retail sales through any marketplace operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department under RCW 82.32.030.

(17) "Remote seller" means any seller, including a marketplace facilitator, who does not have a physical presence in this state and makes retail sales to purchasers or facilitates retail sales on behalf of marketplace sellers.

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

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

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

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

~~(4)~~)) (a) From October 1, 2018, through December 31, 2019, a seller is obligated to collect and remit to the department the taxes imposed under this chapter, except as otherwise provided in RCW 82.08.0531(2) and this subsection, if the seller, in the current or immediately preceding calendar year, had:

(i) More than one hundred thousand dollars of cumulative gross receipts from this state;

(ii) Subject to the limitation in (c)(ii) of this subsection (1), two hundred or more separate transactions for the delivery of products into this state; or

(iii) Subject to the limitation in RCW 82.32.531, physical presence in this state under RCW 82.04.067.

(b) Cumulative gross receipts counting toward the threshold in (a)(i) of this subsection include a person's gross income of the business from all retail sales made by the seller and sourced to this state under RCW 82.32.730.

(c)(i) Transactions counting toward the threshold in (a)(ii) of this subsection include all retail sales transactions made by the seller and sourced to this state under RCW 82.32.730.

(ii) From the effective date of this section, a seller is relieved of the obligation to collect the taxes imposed under this chapter and remit those taxes to the department if that obligation arose solely based on the threshold in (a)(ii) of this subsection.

(iii) For purposes of the threshold in (a)(ii) of this subsection "transaction" means an agreement to furnish a product or products for consideration, and includes a sale as defined in RCW 82.04.040.

(iv) The term "transaction" does not include an agreement if the agreement is canceled or rescinded before any of the products are delivered to the buyer or other recipient designated by the buyer, the seller retains no part of the consideration from the buyer, and the seller did not collect from the buyer any tax imposed or authorized under this title.

(v) With regard to agreements requiring multiple payments by the consumer, such as a lease, rental, or installment sale, such agreements count as a single transaction for purposes of this subsection, regardless of the number of payments required under the agreement. However, any modification of such an agreement that provides for additional payments is counted as an additional transaction.

(d)(i) Subject to (b) and (c) of this subsection (1), for a marketplace facilitator, receipts and transactions counting toward the thresholds in (a)(i) and (ii) of this subsection include, in addition to the cumulative gross receipts and separate transactions of its own sales, the cumulative gross receipts and separate transactions from sales by all marketplace sellers through the marketplace facilitator's marketplace, including marketplace sellers that are not obligated to collect the taxes under this chapter pursuant to the provisions of this section.

(ii) For a purchase made by one consumer through a marketplace facilitator, where the purchase involves sales by multiple marketplace sellers, the purchase is deemed to be one transaction for the marketplace facilitator and one transaction apiece for each marketplace seller.

(2) Beginning January 1, 2020, a seller with a substantial nexus with this state under RCW 82.04.067 is obligated to collect and remit to the department the taxes imposed under this chapter.

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

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

(ii) "Gross income of the business" has the same meaning as provided in RCW 82.04.080.

(iii) "Product" has the same meaning as provided in RCW 82.32.023.

(b) The definitions in RCW 82.13.010 apply to this section through June 30, 2019.

(4)(a) A seller whose obligation to collect the taxes imposed under this chapter arises after October 1, 2018, must begin collecting taxes imposed under this chapter as follows:

(i) For a remote seller, on the first day of the first calendar month that is at least thirty days from the date that the remote seller becomes required under subsection (1) or (2) of this section to collect the taxes imposed under this chapter.

(ii) For a seller that has a physical presence in this state, immediately upon establishing a tax collection obligation under subsection (1)(a)(iii) or (2) of this section.

(b) Nothing in this subsection (4) affects the ongoing tax collection obligation of any seller that was required, or elected, to collect the taxes imposed under this chapter on or before October 1, 2018.

(5) This section is subject to RCW 82.32.762.

NEW SECTION. **Sec.**  A new section is added to chapter 82.02 RCW to read as follows:

A seller that is obligated to collect the taxes imposed under chapter 82.08 RCW must also collect all other applicable taxes and fees in effect as of the effective date of this section, or enacted after December 31, 2018. For purposes of this section, "taxes and fees" means any monetary exaction, regardless of its label, imposed on a buyer and that the seller is required to collect and pay over to the department.

**Part II**

**Marketplace Facilitators**

**Sec.**  RCW 82.08.0531 and 2017 3rd sp.s. c 28 s 203 are each amended to read as follows:

(1)((~~(a)~~)) For purposes of this chapter and chapters 82.04 and 82.12 RCW, a marketplace facilitator ((~~or referrer~~)) is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's ((~~physical or electronic~~)) marketplace ((~~or directly resulting from a referral of the purchaser by the referrer~~)).

((~~(b)~~)) (2) Beginning October 1, 2018, marketplace facilitators subject to a tax collection obligation under RCW 82.08.052 (1) or (2) must collect and remit to the department retail sales tax on all taxable retail sales made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller is subject to a tax collection obligation under RCW 82.08.052 (1) or (2). Beginning January 1, 2020, the collection obligation of a marketplace facilitator under this chapter also applies to any other taxes and fees, as defined under section 107 of this act, that are imposed on a retail sale made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller has a tax collection obligation under RCW 82.08.052 (1) or (2).

(3) In addition to other applicable recordkeeping requirements, the department may require a marketplace facilitator ((~~or referrer~~)) to provide or make available to the department any information the department determines is reasonably necessary to enforce the provisions of this chapter and chapter 82.13 RCW. Such information may include documentation of sales made by marketplace sellers through the marketplace facilitator's ((~~physical or electronic~~)) marketplace ((~~or directly resulting from a referral by the referrer~~)). The department may prescribe by rule the form and manner for providing this information.

((~~(2)~~)) (4)(a) Beginning July 1, 2019, to ensure that marketplace sellers have the necessary information to timely and accurately file their excise tax returns with the department pursuant to RCW 82.32.045, a marketplace facilitator must, at a minimum, provide each of its marketplace sellers with access, through a written report or other means, to gross sales information for all Washington sales made as an agent of the marketplace seller under this section during the immediately preceding month. Marketplace facilitators must provide such access within fifteen calendar days following the end of each month.

(b) If a marketplace seller does not receive the gross sales information for all Washington sales through a marketplace facilitator, as required under (a) of this subsection (4), the marketplace seller may determine its business and occupation tax liability under chapter 82.04 RCW based on a reasonable method of estimating Washington sales as may be required or approved by the department.

(c) For purposes of this subsection, "Washington sales" means any sale sourced to this state under RCW 82.32.730, regardless of whether the sale is a retail sale.

(5) If a marketplace facilitator ((~~or referrer~~)) has fully complied with the requirements of subsection (4)(a) of this section, the marketplace facilitator is relieved of liability under this chapter and chapter 82.12 RCW for failure to collect the correct amount of tax to the extent that the marketplace facilitator ((~~or referrer~~)) can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator ((~~or referrer~~)) by the marketplace seller, unless the marketplace facilitator((~~, or referrer,~~)) and marketplace seller are affiliated persons. Where the marketplace facilitator ((~~or referrer~~)) is relieved of liability under this subsection ((~~(2)~~)) (5), the marketplace seller is solely liable for the amount of uncollected tax due.

((~~(3)~~)) (6)(a) Subject to the limits in (b) and (c) of this subsection ((~~(3)~~)) (6), a marketplace facilitator ((~~or referrer~~)) that has fully complied with the requirements of subsection (4)(a) of this section is relieved of liability under this chapter and chapter 82.12 RCW for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator ((~~or referrer~~)) can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace ((~~or directly resulting from a referral of the purchaser by the referrer~~));

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

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

(b) Liability relief for a marketplace facilitator under (a) of this subsection ((~~(3)~~)) (6) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales facilitated by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar year((~~s~~)) 2019((~~, 2020, 2021, 2022, and 2023~~)), the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) ((~~Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.~~

~~(c) Liability relief for a referrer under (a) of this subsection (3) for a calendar year is limited as follows:~~

~~(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.~~

~~(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.~~

~~(iii) Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.~~)) The provisions of this subsection (6) do not apply to retail sales made after December 31, 2019.

(c) For purposes of this subsection (6), a retail sale is deemed to be facilitated by a marketplace facilitator when the marketplace facilitator either:

(i) Accepts the order for the product;

(ii) Communicates to the marketplace seller the buyer's offer to purchase the product;

(iii) Accepts the buyer's payment for the product; or

(iv) Delivers or arranges for delivery of the product.

(d) Where the marketplace facilitator or referrer is relieved of liability under this subsection ((~~(3)~~)) (6), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection ((~~(4)~~)) (7) of this section.

(e) The department may by rule determine the manner in which a taxpayer may claim the liability relief provided under this subsection.

((~~(4)~~)) (7) Except as otherwise provided in this section, a marketplace seller obligated ((~~or electing~~)) to collect the taxes imposed under this chapter and chapter 82.12 RCW is not required to collect such taxes on all taxable retail sales through a marketplace operated by a marketplace facilitator ((~~or directly resulting from a referral of the purchaser to the marketplace seller by the referrer~~)) if the marketplace seller has obtained documentation from the marketplace facilitator ((~~or referrer~~)) indicating that the marketplace facilitator ((~~or referrer~~)) is registered with the department and will collect all applicable taxes due under this chapter and chapter 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator ((~~or taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer~~)). The documentation required by this subsection ((~~(4)~~)) (7) must be provided in a form and manner prescribed by or acceptable to the department. This subsection ((~~(4)~~)) (7) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter or chapter 82.12 RCW resulting from a marketplace facilitator's ((~~or referrer's~~)) failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator ((~~or referrer~~)) by the marketplace seller.

((~~(5) Except as otherwise provided in this section, a marketplace seller that is also a remote seller subject to RCW 82.08.053(1) is relieved of its obligation to collect sales or use taxes imposed under RCW 82.08.053 with respect to all taxable retail sales through a marketplace operated by a marketplace facilitator that provides the marketplace seller with written confirmation that the marketplace facilitator has elected to comply with the notice and reporting requirements of RCW 82.13.020 in lieu of collecting sales and use taxes.~~

~~(6) Notwithstanding subsections (4) and (5) of this section, a marketplace seller is not relieved of the obligation to collect taxes imposed under this chapter and chapter 82.12 RCW or comply with RCW 82.08.053 with respect to retail sales of digital products and digital codes, other than (a) specified digital products and digital games and (b) digital codes used to redeem specified digital products and digital games, until January 1, 2020.~~

~~(7)~~)) (8) No class action may be brought against a marketplace facilitator ((~~or referrer~~)) in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator ((~~or referrer~~)), regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund from the department as provided under chapter 82.32 RCW.

((~~(8)~~)) (9) Nothing in this section affects the obligation of any purchaser to remit sales or use tax and any other applicable taxes and fees, as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax.

((~~(9) This section is subject to the provisions of RCW 82.32.733.~~

~~(10) The definitions in RCW 82.13.010 apply to this section.~~))

**Part III**

**Repealing and Modifying Conflicting and Unnecessary Laws**

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

(1)RCW 82.08.053 (Remote sellers, referrers, and marketplace facilitators—Tax collection and remittance) and 2017 3rd sp.s. c 28 s 202;

(2)RCW 82.13.010 (Definitions) and 2017 3rd sp.s. c 28 s 204;

(3)RCW 82.13.020 (Notice and reporting requirements) and 2017 3rd sp.s. c 28 s 205;

(4)RCW 82.13.030 (Penalties) and 2017 3rd sp.s. c 28 s 206;

(5)RCW 82.13.040 (Administration of chapter) and 2017 3rd sp.s. c 28 s 207;

(6)RCW 82.13.050 (Liability, administration, and enforcement under chapters 82.08 and 82.12 RCW) and 2017 3rd sp.s. c 28 s 208;

(7)RCW 82.32.047 (Taxes—Payable by consumer directly to department—When due) and 2017 3rd sp.s. c 28 s 209;

(8)RCW 82.32.733 (Changes in federal law or the streamlined sales and use tax agreement after July 7, 2017—Conflicts) and 2017 3rd sp.s. c 28 s 214; and

(9)RCW 82.32.763 (Remote seller, referrer, and marketplace facilitator—Recovery procedures—Liability) and 2017 3rd sp.s. c 28 s 210.

**Sec.**  RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each amended to read as follows:

(1) Except as otherwise provided in this chapter and subsection (5) of this section, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than:

(i) Twenty-eight thousand dollars per year; or

(ii) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their taxable amount from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

(5)(a) Taxes imposed under chapter 82.08 or 82.12 RCW on taxable events that occur beginning January 1, 2019, through June 30, 2019, and payable by a consumer directly to the department are due, on returns prescribed by the department, by July 25, 2019.

(b) This subsection (5) does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(i) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(ii) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to subsection (4) of this section.

**Part IV**

**Ensuring Continuing Compliance with the Streamlined Sales & Use Tax**

**Agreement and Addressing Potential Federal Preemption**

**Sec.**  RCW 82.08.0293 and 2017 3rd sp.s. c 28 s 101 are each amended to read as follows:

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

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

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

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

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

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

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

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

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

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(c)(i) "Prepared food" means:

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

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

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

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

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

(ii) Food is "sold with eating utensils provided by the seller" if:

(A) The seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is prepackaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the North American industry classification system (NAICS);

(B) A plate, glass, cup, or bowl is necessary to receive the food or food ingredient, and the seller makes those utensils available to its customers; or

(C)(I) The seller makes utensils available to its customers, and the seller has more than seventy-five percent prepared food sales. For purposes of this subsection (2)(c)(ii)(C), a seller has more than seventy-five percent prepared food sales if the seller's gross retail sales of prepared food under (c)(i)(A), (c)(i)(C), and (c)(ii)(B) of this subsection equal more than seventy-five percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, and dietary supplements.

(II) However, even if a seller has more than seventy-five percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients must be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(III) The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than ninety days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first ninety days of operation materially depart from the seller's estimate.

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

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

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

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

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

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

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

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

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

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

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

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

(b) For soft drinks, bottled water, and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

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

**Sec.**  RCW 82.32.020 and 2015 c 86 s 309 are each amended to read as follows:

For the purposes of this chapter:

(1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" apply equally to the provisions of this chapter.

(2) Unless the context clearly requires otherwise, the term "tax" includes any monetary exaction, regardless of its label, that the department is responsible for collecting, but not including interest, penalties, the surcharge imposed in RCW 40.14.027, or fees incurred by the department and recouped from taxpayers.

(3) Whenever "property" or "personal property" is used, those terms must be construed to include digital goods and digital codes unless: (a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property; (b) it is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or (c) to construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences.

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

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions as outlined in the contract between the streamlined sales tax governing board and the certified service provider, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection (4)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, a digital good or digital code, an extended warranty, or a digital automated service or other service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur.

**Sec.**  RCW 82.32.715 and 2007 c 6 s 301 are each amended to read as follows:

(1) The department ((~~shall~~)) must adopt by rule monetary allowances for certified service providers((~~, model 2 sellers, and model 3 sellers and all other sellers that are not model 1 or~~)) selected by model 1 sellers and also for model 2 sellers. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the allowances and the conditions under which they are allowed. The monetary allowances must be reasonable and provide adequate incentive for certified service providers and sellers to collect and remit sales and use taxes under the agreement. Monetary allowances will be funded solely from state sales and use taxes. The department may modify its rules for monetary allowances in light of the holding of the United States supreme court in *South Dakota v. Wayfair, Inc.*, Docket No. 17-494, issued June 21, 2018.

(2) For certified service providers, the monetary allowance may include a base rate that applies to taxable transactions processed by the certified service provider. ((~~Additionally, for a period not to exceed twenty-four months following a seller's registration under RCW 82.32.030(3), the monetary allowance may include a percentage of tax revenue generated by the seller.~~))

(3) For model 2 sellers, the monetary allowance may include a base rate and a percentage of revenue generated by a seller registering under RCW 82.32.030(3), but ((~~shall~~)) may not exceed a period of twenty-four months.

((~~(4) For model 3 sellers and all other sellers that are not model 1 sellers or model 2 sellers, the monetary allowance may include a percentage of tax revenue generated by a seller registering under RCW 82.32.030(3), but shall not exceed a period of twenty-four months.~~))

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

(1) If the department determines that a change, taking effect after ((~~September 1, 2015~~)) the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act), such conflicting provision or provisions of ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act), including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act) if the change ((~~clearly allows states to impose greater sales and use tax collection obligations on remote sellers than provided for, or~~)) clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for((~~, under RCW 82.08.052~~)) under chapter . . ., Laws of 2019 (this act).

(b) A change in the streamlined sales and use tax agreement conflicts with ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act) if one or more provisions of ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act) causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3)(a) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of ((~~RCW 82.08.052, the department~~)) chapter . . ., Laws of 2019 (this act):

((~~(a)~~)) (i) For purposes of conflicts between the streamlined sales and use tax agreement and chapter . . ., Laws of 2019 (this act), the department may adopt rules in accordance with chapter 34.05 RCW, including emergency rules, that are consistent with the streamlined sales and use tax agreement ((~~and that impose sales and use tax collection obligations on remote sellers to the fullest extent allowed under state and federal law~~)); and

((~~(b)~~)) (ii) For purposes of conflicts between federal law and chapter . . ., Laws of 2019 (this act), the department must, by rule or rules adopted in accordance with chapter 34.05 RCW, including emergency rules:

(A) Impose sales and use tax collection obligations and business and occupation tax on remote sellers to the fullest extent allowed under state and federal law, which may include adopting provisions identical or substantially similar to those in sections 202 and 204(6)(c)(ii), chapter 5, Laws of 2015 3rd sp. sess.; and

(B) Implement election, notice, and reporting provisions substantially similar to those in sections 202 through 207, chapter 28, Laws of 2017 3rd sp. sess. The department must impose such election, notice, and reporting provisions only on remote sellers and marketplace facilitators against whom the department is unable to enforce a tax collection obligation as a result of a change in federal law. The department must not impose election, notice, and reporting provisions on referrers as defined in section 204, chapter 28, Laws of 2017 3rd sp. sess. The department must impose penalties for failure to comply with notice or reporting requirements consistent with those penalties imposed in section 206, chapter 28, Laws of 2017 3rd sp. sess.

(b) For purposes of (a)(i) and (ii) of this subsection (3), the department must include information on its web site informing taxpayers and the public (i) of the provision or provisions of ((~~RCW 82.08.052~~)) chapter . . ., Laws of 2019 (this act) that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a)(i) and (ii) of this subsection (3).

(4) For purposes of this section, "remote seller" ((~~has the same meaning as in RCW 82.08.052~~)) and "marketplace facilitator" have the same meaning as in RCW 82.13.010 through June 30, 2019, and RCW 82.08.010 beginning July 1, 2019.

**Sec.**  RCW 34.05.328 and 2018 c 207 s 8 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency must:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency must place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan must describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency must do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency must report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, the state building code council, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute, including any rules of the department of revenue adopted under the authority of RCW 82.32.762(3);

(vi) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency must state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of regulatory assistance, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, must report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report must document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

**Part V**

**Eliminating Unfair Tax Advantages for Foreign Marketplace Sellers and Peer-to-Peer Car Rental Marketplace Facilitators**

**Sec.**  RCW 82.04.610 and 2007 c 477 s 2 are each amended to read as follows:

(1) This chapter does not apply to:

(a) The sale of tangible personal property in ((~~import or~~)) export commerce; and

(b) The wholesale sale of tangible personal property in import commerce, but only when the wholesale sale is:

(i) A sale of unroasted coffee beans; or

(ii) Between a parent company and its wholly owned subsidiary.

(2) Tangible personal property is in import commerce while the property is in the process of import transportation. Except as provided in (a) through (c) of this subsection, property is in the process of import transportation from the time the property begins its transportation at a point outside of the United States until the time that the property is delivered to the buyer in this state. Property is also in the process of import transportation if it is merely flowing through this state on its way to a destination in some other state or country. However, property is no longer in the process of import transportation when the property is:

(a) Put to actual use in any state, territory, or possession of the United States for any purpose;

(b) Resold by the importer or any other person after the property has arrived in this state or any other state, territory, or possession of the United States, regardless of whether the property is in its original unbroken package or container; or

(c) Processed, handled, or otherwise stopped in transit for a business purpose other than shipping needs, if the processing, handling or other stoppage of transit occurs within the United States, including any of its possessions or territories, or the territorial waters of this state or any other state, regardless of whether the processing, handling, or other stoppage of transit occurs within a foreign trade zone.

(3)(a) Tangible personal property is in export commerce when the seller delivers the property to:

(i) The buyer at a destination in a foreign country;

(ii) A carrier consigned to and for transportation to a destination in a foreign country;

(iii) The buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the property has begun; or

(iv) The buyer in this state if the property is capable of being transported to a foreign destination under its own power, the seller files a shipper's export declaration with respect to the property listing the seller as the exporter, and the buyer immediately transports the property directly to a destination in a foreign country. This subsection (3)(a)(iv) does not apply to sales of motor vehicles as defined in RCW 46.04.320.

(b) The exemption under this subsection (3) applies with respect to property delivered to the buyer in this state if, at the time of delivery, there is a certainty of export, and the process of export has begun. The process of exportation will not be deemed to have begun if the property is merely in storage awaiting shipment, even though there is reasonable certainty that the property will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export. The process of exportation begins when the property starts its final and certain continuous movement to a destination in a foreign country.

(4) Persons claiming an exemption under this section must keep and maintain records for the period required by RCW 82.32.070 establishing their right to the exemption.

**Part VI**

**Sourcing Mitigation for Local Governments**

**Sec.**  RCW 82.14.500 and 2017 3rd sp.s. c 28 s 402 are each amended to read as follows:

(1) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer, on July 1, 2011, and each July 1st thereafter through July 1, 2019, must transfer into the streamlined sales and use tax mitigation account from the general fund the sum required to mitigate actual net losses as determined under this section.

(2) Beginning July 1, 2008, and continuing until the department determines annual losses under subsection (3) of this section, the department must determine the amount of local sales tax net loss each local taxing jurisdiction experiences as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title each calendar quarter. The department must determine losses by analyzing and comparing data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008, on a calendar quarter basis. The department's analysis may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section. To determine net losses, the department must reduce losses by the amount of voluntary compliance revenue for the calendar quarter analyzed. Beginning December 31, 2008, distributions must be made quarterly from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing its net losses for the previous calendar quarter. Distributions must be made on the last working day of each calendar quarter and must cease when distributions under subsection (3) of this section begin.

(3)(a) By December 31, 2009, or such later date the department in consultation with the oversight committee determines that sufficient data is available, the department must determine each local taxing jurisdiction's annual loss. The department must determine annual losses by comparing at least twelve months of data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008. The department is not required to determine annual losses on a recurring basis, but may make any adjustments to annual losses as it deems proper as a result of the annual reviews provided in (b) of this subsection. Beginning the calendar quarter in which the department determines annual losses, and each calendar quarter thereafter through September 30, 2019, distributions must be made from the streamlined sales and use tax mitigation account by the state treasurer on the last working day of the calendar quarter, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing one-fourth of the jurisdiction's annual loss reduced by voluntary compliance revenue reported during the previous calendar quarter and marketplace facilitator/remote seller revenue reported during the previous calendar quarter.

(b) The department's analysis of annual losses must be reviewed by December 1st of each year and may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section.

(4) The department must convene an oversight committee to assist in the determination of losses. The committee includes one representative of one city whose revenues are increased, one representative of one city whose revenues are reduced, one representative of one county whose revenues are increased, one representative of one county whose revenues are decreased, one representative of one transportation authority under RCW 82.14.045 whose revenues are increased, and one representative of one transportation authority under RCW 82.14.045 whose revenues are reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight committee must meet quarterly with the department to review and provide additional input and direction on the department's analyses of losses. Local taxing jurisdictions may also present to the oversight committee additional information to improve the department's analyses of the jurisdiction's loss. Beginning January 1, 2010, the oversight committee must meet at least annually with the department by December 1st.

(5) The rule-making provisions of chapter 34.05 RCW do not apply to this section.

(6)(a) As a result of part II of chapter 28, Laws of 2017 3rd sp. sess., local sales and use tax revenue is anticipated to increase due to additional tax remittance by marketplace facilitators, remote sellers, and consumers. This additional revenue will further mitigate the losses that resulted from the sourcing provisions of the streamlined sales and use tax agreement under this title and should be reflected in mitigation payments to negatively impacted local jurisdictions.

(b) Beginning January 1, 2018, and continuing through September 30, 2019, the department must determine the increased sales and use tax revenue each local taxing jurisdiction experiences from marketplace facilitator/remote seller revenue as a result of ((~~RCW 82.08.053, 82.08.0531, 82.32.047, and 82.32.763, chapter 82.13 RCW, and~~)) sections 201((~~, 211, and~~)) through 213, chapter 28, Laws of 2017 3rd sp. sess. each calendar quarter. The department must convene the mitigation advisory committee before January 1, 2018, to receive input on the determination of marketplace facilitator/remote seller revenue. Beginning with distributions made after March 31, 2018, distributions from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, must be reduced by the amount of its marketplace facilitator/remote seller revenue reported during the previous calendar quarter. ((~~No later than December 1, 2019, the department will determine the total marketplace facilitator/remote seller revenue for each local taxing jurisdiction for reporting periods beginning January 1, 2018, through reporting periods ending June 30, 2019. If the total distribution made from the streamlined sales and use tax mitigation account to a local taxing jurisdiction was not fully reduced by its total amount of marketplace facilitator/remote seller revenue for reporting periods beginning January 1, 2018, through reporting periods ending June 30, 2019, the department must reduce the local taxing jurisdiction's distribution of local sales and use tax under RCW 82.14.060 by the excess amount received.~~))

**Part VII**

**Conforming Amendments**

**Sec.**  RCW 34.05.010 and 2014 c 97 s 101 are each amended to read as follows:

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

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by ((~~electronic mail or facsimile mail~~)) email or fax.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes((~~, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW 82.04.067~~)).

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal or electronic service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company.

**Sec.**  RCW 82.04.066 and 2017 3rd sp.s. c 28 s 301 are each amended to read as follows:

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

**Sec.**  RCW 82.04.43391 and 2017 c 323 s 503 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax interest and fees on loans secured by commercial aircraft primarily used to provide routine air service and owned by:

(a) An air carrier, as defined in RCW 82.42.010, which is primarily engaged in the business of providing passenger air service;

(b) An affiliate of such air carrier; or

(c) A parent entity for which such air carrier is an affiliate.

(2) The deduction authorized under this section is not available to any person who is physically present in this state as determined under RCW 82.04.067((~~(6)~~)).

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

(a) "Affiliate" means a person is "affiliated," as defined in RCW 82.04.645, with another person; and

(b) "Commercial aircraft" means a commercial airplane as defined in RCW 82.32.550.

**Sec.**  RCW 82.12.040 and 2017 3rd sp.s. c 28 s 213 are each amended to read as follows:

(1) Every person who is subject to a collection obligation under chapter 82.08 RCW((~~, except a person making a valid election to comply with the notice and reporting provisions of RCW 82.13.020,~~)) must obtain from the department a certificate of registration((~~, and~~)). Such persons must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. This section does not apply to any retail sale if, in respect to such sale, the seller is subject to a tax collection obligation under chapter 82.08 RCW.

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

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

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

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

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

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

**Part VIII**

**Miscellaneous**

NEW SECTION. **Sec.**  The repeals and amendments in this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or amended, or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act applies prospectively only, except for sections 106 and 201 of this act, which apply both prospectively and retroactively to October 1, 2018.

NEW SECTION. **Sec.**  Sections 101, 104, 106, 201, 402, 403, 404, 405, and 501 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. **Sec.**  Sections 105, 301, 302, 401, and 704 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019.

NEW SECTION. **Sec.**  Sections 102, 103, 107, 701, 702, and 703 of this act take effect January 1, 2020.

NEW SECTION. **Sec.**  Section 601 of this act expires October 1, 2019.

**--- END ---**