

Surety's liability limited.

the director, but not less than five thousand dollars, nor more than fifty thousand dollars: *Provided*, That the aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond.

In the event that a bond has been filed with and approved by the Department of Agriculture of the United States, and satisfactory proof of the filing and approval of the bond has been filed with the director, then the bond so filed shall be considered as in lieu of the bond required by this section.

Passed the Senate March 9, 1955.

Passed the House March 7, 1955.

Approved by the Governor March 22, 1955.

CHAPTER 389.

[Sub. S. B. 173.]

TAXATION—BUSINESS AND OCCUPATION, USE, PUBLIC UTILITIES, MECHANICAL DEVICES.

AN ACT relating to revenue and taxation amending section 2, chapter 228, Laws of 1949, as amended by section 3, chapter 28, Laws of 1951 second extraordinary session, and section 3, chapter 91, Laws of 1953; and amending section 1, chapter 91, Laws of 1953 and RCW 82.04.296; and amending section 5, chapter 28, Laws of 1951 second extraordinary session, as amended by section 5, chapter 91, Laws of 1953, and RCW 82.08.150; and amending section 3, chapter 9, Laws of 1951 first extraordinary session and RCW 82.12.010; and amending section 7, chapter 228, Laws of 1949 and RCW 82.12.020; and amending section 4, chapter 9, Laws of 1951 first extraordinary session and RCW 82.12.030; and amending section 7, chapter 249, Laws of 1945 and RCW 82.12.040; and amending section 10, chapter 228, Laws of 1949 and RCW 82.16.010; and amending section 2, chapter 91, Laws of 1953 and RCW 82.16.026; and amending section 1, chapter 118, Laws of 1941, as amended by sections 18 and 19, chapter 228, Laws of 1949, and RCW 82.28.010, 82.28.020, 82.28.030, 82.28.040, 82.28.050 and 82.28.060; and amending section 25, chapter 228, Laws of 1949, as amended by sections 13 and 14, chapter 9, Laws of 1951 first extraordinary session; and amending section 30, chapter 225, Laws of 1939 and RCW 82.32.340 amending section 1, chapter 5, Laws of

1950 extraordinary session as last amended by section 4, chapter 91, Laws of 1953 and section 2, chapter 195, Laws of 1953 and RCW 82.04.220, 82.04.230 and 82.04.240 through 82.04.290; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 2, chapter 228, Laws of 1949 as amended by section 3, chapter 28, Laws of 1951, second extraordinary session, and section 3, chapter 91, Laws of 1953, (heretofore codified as RCW 82.04.010 through 82.04.210) is divided and amended as set forth in sections 2 through 22 of this act.

Division and amendment.

SEC. 2. (RCW 82.04.010) For the purposes of this chapter, unless otherwise required by the context, the terms used herein shall have the meaning given to them in sections 3 through 22 of this act.

Term meanings.

SEC. 3. (RCW 82.04.020) "Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commission to use a fiscal year in lieu of the calendar year.

Enacted without amendment.

"Tax year."

SEC. 4. (RCW 82.04.030) "Person" or "company," herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint-stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

Enacted without amendment.

"Person" or "company."

SEC. 5. (RCW 82.04.040) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes conditional sale contracts, leases with option to purchase, and any

Enacted without amendment.

"Sale."

other contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

"Casual or isolated sale."

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

"Sale at retail" or "retail sale."

SEC. 6. (RCW 82.04.050) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) other than a sale to one who purchases for the purpose of resale as tangible personal property in the regular course of business or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsection (2), and 82.04.290.

The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: (1) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, excluding, however, services rendered in respect to live animals, birds and insects; (2) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of

tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth to the extent necessary for such constructing or improving, unless the charge therefor is stated separately from other charges made in connection with the work performed, under such rules as the tax commission may prescribe; (3) as a temporary tax until July 1, 1957 for the furnishing of lodging and related services to transients in or by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same.

The term shall not include the sale of or charge made for labor and services rendered in respect to the mere cleaning, fumigating, razing, or moving of existing buildings or structures, or the building, repairing, or improving of any publicly owned street, place, road, highway, bridge, or trestle which is used or to be used primarily for foot or vehicular traffic, nor shall it include sales of feed, seed, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects.

Sale at retail shall not include.

SEC. 7. (RCW 82.04.060) "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property and any sale of or charge made for labor and services rendered in respect to real or personal property, which is not a sale at retail.

Enacted without amendment.

"Sale at wholesale."

This section amended by sec. 4, chap. 10, Laws Ex. Session, 1955.

Enacted without amendment. "Gross proceeds of sales."

SEC. 8. (RCW 82.04.070) "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Enacted without amendment. "Gross income of the business."

SEC. 9. (RCW 82.04.080) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Enacted without amendment. "Value proceeding or accruing."

SEC. 10. (RCW 82.04.090) "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The tax commission may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due.

Enacted without amendment.

SEC. 11. (RCW 82.04.100) "Extractor" means every person who from his own land or from the land of another under a right or license granted

by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber or other natural products, or takes, cultivates, or raises fish, shell fish, or other sea or inland water foods or products. It does not include persons performing under contract the necessary labor or mechanical services for others.

"Extractor."

SEC. 12. (RCW 82.04.110) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the tax commission shall prescribe equitable rules for determining tax liability.

Enacted without amendment.

"Manufacturer."

SEC. 13. (RCW 82.04.120) "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful article of tangible personal property or substance of trade or commerce is produced and shall include the production or fabrication of special made or custom made articles.

Enacted without amendment.

"To manufacture."

SEC. 14. (RCW 82.04.130) "Commercial or industrial use" means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

Enacted without amendment.

"Commercial or industrial use."

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities from extracted products, including byproducts.

Enacted
without
amendment.

"Business."

SEC. 15. (RCW 82.04.140) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

Enacted
without
amendment.

"Engaging in
"business."

SEC. 16. (RCW 82.04.150) "Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

Enacted
without
amendment.

"Cash dis-
count."

SEC. 17. (RCW 82.04.160) "Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date.

Enacted
without
amendment.

"Tuition fee."

"Educational
institution."

SEC. 18. (RCW 82.04.170) "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

Enacted
without
amendment.

"Successor."

SEC. 19. (RCW 82.04.180) "Successor" means any person who, through direct or mesne conveyance, purchases or succeeds to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise, or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging, or otherwise disposing of his business. Any

person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

SEC. 20. (RCW 82.04.190) "Consumer" means the following:

Enacted
without
amendment.

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property other than for the purpose of resale as tangible personal property in the regular course of business or for the purpose of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

"Consumer."

(2) Any person engaged in the business of rendering professional or personal services to persons (as distinguished from services rendered to property of persons) and who are taxable under RCW 82.04-.290;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any publicly owned street, place, road, highway, bridge or trestle which is used or to be used primarily for foot or vehicular traffic, in respect, however, only to tangible personal property used or consumed in such business;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real or personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business, excluding only the United States, the state, and its political subdivisions in respect to labor and services rendered

to their real property which is used or held for public road purposes.

Enacted without amendment.
"In this state."

SEC. 21. (RCW 82.04.200) "In this state" or "within this state" includes all federal areas lying within the exterior boundaries of the state.

Enacted without amendment.
"Byproduct."

SEC. 22. (RCW 82.04.210) "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

Amendment.

SEC. 23. Section 1, chapter 91, Laws of 1953 and RCW 82.04.296 are each amended to read as follows:

Additional tax levied on privilege of engaging in business activities.

From and after the first day of May, 1955, until the thirtieth day of June, 1957 there is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed by this chapter and as a temporary increase thereof, an additional tax in the amount of twenty percent of the tax payable under this chapter. To facilitate collection of this additional tax, the tax commission is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the exact amount of the additional tax hereby imposed.

This section also amended by sec. 1, chap. 10, Laws Ex. Session, 1955.

Amendment.

SEC. 24. Section 3, chapter 9, Laws of 1951 first extraordinary session and RCW 82.12.010 are each amended to read as follows:

Defined.
"Value of the article used."

For the purposes of this chapter:
(1) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The

term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the tax commission may prescribe;

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

"Use."
"Used."
"Using."
"Put to use."

(3) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08;

"Taxpayer."
"Purchaser."

(4) "Retailer" means every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

"Retailer."

(5) The meaning ascribed to words and phrases in chapters 82.04 and 82.08, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers,

"Consumer."

the primary purpose of which is to promote the sale of products or services.

Amendment.

SEC. 25. Section 7, chapter 228, Laws of 1949 and RCW 82.12.020 are each amended to read as follows:

Excise tax levied on use of tangible personal property.

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift or bailment, or extracted or produced or manufactured by the person so using the same: *Provided*, That the tax liability imposed by this chapter upon the use of tangible personal property by a lessee or bailee thereof shall not be construed as affecting the primary liability under this chapter of the lessor or bailor of said property. This tax will not apply with respect to the use of any article of tangible personal property purchased, extracted, produced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property in this state. This tax shall apply to the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state. Except as provided in subdivision (2) of RCW 82.12.030, payment by one purchaser or user of tangible personal property of the tax imposed by chapter 82.08 or 82.12 shall not have the effect of exempting any other purchaser or user of the same property from the taxes imposed by such chapters. The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate of three percent.

Primary liability not affected.

No application.

Application of tax.

Computation of tax.

This section also amended by sec. 3, chap. 10, Laws Ex. Session, 1955.

SEC. 26. Section 4, chapter 9, Laws of 1951 first extraordinary session and RCW 82.12.030 are each amended to read as follows:

Amendment.

The provisions of this chapter shall not apply:

Chapter provisions no application on following.

(1) In respect to the use of any article of tangible personal property brought into the state by a nonresident thereof for his use or enjoyment while temporarily within the state unless such property is used in conducting a nontransitory business activity within the state; or in respect to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than three months, and which is not required to be registered or licensed under the laws of this state; or in respect to the use of household goods, personal effects and private automobiles by a bona fide resident of this state, if such articles were acquired by such person in another state while a bona fide resident thereof and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial;

Use of property brought in by non-resident.

(2) In respect to the use of any article of tangible personal property purchased at retail or acquired by lease, gift or bailment if the sale thereof to, or the use thereof by, the present user or his lessor, bailor or donor has already been subjected to tax under chapter 82.08 or 82.12 and such tax has been paid by the present user or by his lessor, bailor or donor;

Prior taxation.

(3) In respect to the use of any article of tangible personal property the sale of which is specifically taxable under chapter 82.16;

Use of vehicles
in interstate
or foreign
commerce.

(4) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer used primarily for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licenses pursuant to RCW 46.16.100 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state;

Use of personal property.
State prohibited from
taxing.

(5) In respect to the use of any article of tangible personal property which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States;

Motor vehicle
fuel used in
aircraft.

(6) In respect to the use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes and motor vehicle fuel taxable under chapter 82.36: *Provided*, That the use of such fuel upon which a refund of the motor vehicle fuel tax is obtained and shall not be exempt, and the director of licenses shall de-

duct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the tax commission;

(7) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of RCW 82.16-.010;

Use of public utility facilities included in transfer.

(8) In respect to the use of tangible personal property (including household goods) which have been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise;

Use of property purchased at farmer's auction.

(9) In respect to the use of tangible personal property by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same;

Use by volunteer aid and relief corporations.

(10) In respect to the use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association; sales of cattle and milk cows used on the farm;

Use of purebred livestock for breeding purposes.

(11) In respect to the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same;

Use of fuel by extractor or manufacturer.

Use of dual controlled motor vehicles.

(12) In respect to the use of motor vehicles, equipped with dual controls, which are loaned to school districts and used by such districts exclusively in connection with their high school driver training program.

Amendment.

SEC. 27. Section 7, chapter 249, Laws of 1945 and RCW 82.12.040 are each amended to read as follows:

Certificate of registration obtained.

Every person who maintains in this state a place of business or a resident agent or a stock of goods shall obtain from the tax commission a certificate of registration, and shall, at the time of making sales, 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.

Tax collected.

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 of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

Independent selling agent deemed retailer.

Trust relationship.

The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the tax commission and any retailer who appropriates or converts the tax collected to his 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 shall be 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 tax commission in the manner prescribed, whether such failure is the result of his own acts or the result of acts or conditions beyond

Appropriation of tax to own use—misdemeanor.

Failure to collect—personal liability.

his control, he shall nevertheless, be personally liable to the state for the amount of such tax.

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, or makes in any form of advertising, verbal or otherwise, any statements which might infer that he is absorbing the tax or paying the tax for the purchaser or transferee by an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be guilty of a misdemeanor.

SEC. 28. Section 10, chapter 228, Laws of 1949 and RCW 82.16.010 are each amended to read as follows:

For the purposes of this chapter, unless otherwise Defined.
required by the context:

(1) "Railroad business" means the business of "Railroad
business."
operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business;

(2) "Express business" means the business of "Express
business."
carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business;

(3) "Railroad car business" means the business of "Railroad car
business."
operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business;

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale; "Water distri-
bution
business."

"Light and power business."

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale;

"Telephone business."

(6) "Telephone business" means the business of operating or managing any telephone line or part of a telephone line and exchange or exchanges used in the conduct of the business of affording telephonic communication for hire. It includes cooperative or farmer line telephone companies or associations operating an exchange;

"Telegraph business."

(7) "Telegraph business" means the business of affording telegraphic communication for hire;

"Gas distribution business."

(8) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural;

"Highway transportation business."

(9) "Highway transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010;

"Urban transportation business."

(10) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cart-

age, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property;

(11) "Public service business" means any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, public warehouse, toll bridge, toll logging road, water transportation and wharf businesses;

"Public service business."

(12) "Gross operating revenue" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses;

"Gross operating revenue."

(13) The meaning attributed, in chapter 82.04, to the terms "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

Miscellaneous terms.

SEC. 29. Section 2, chapter 91, Laws of 1953 and RCW 82.16.026 are each amended to read as follows:

Amendment.

From and after the first day of May, 1953, until the thirtieth day of June, 1957 there is levied and shall be collected from every person for the act or privilege of engaging within this state in one or more of the businesses named in RCW 82.16.020,

Additional tax on engaging in business.

as a part of the tax imposed by this chapter and as a temporary increase thereof, an additional tax in the amount of ten percent of the tax payable under this chapter. To facilitate collection of this additional tax, the tax commission is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the exact amount of the additional tax hereby imposed.

Division and amendment.

SEC. 30. Section 1, chapter 118, Laws of 1941 as last amended by sections 18 and 19, chapter 228, Laws of 1949 (heretofore codified as RCW 82.28.010 through RCW 82.28.060) is divided and amended as set forth in sections 32 through 37 of this act.

Defined.

SEC. 31. (RCW 82.28.010) For the purposes of this chapter:

"Operator."

(1) "Operator" means the person to whom gross operating income accrues as a result of the operation of the mechanical devices described herein;

"Gross operating income."

(2) "Gross operating income" means the aggregate amount paid in to each mechanical device by all players of that mechanical device during each calendar month, less the amount of pay-outs made from the same mechanical device to such players, but without any deduction for amounts paid out to persons on whose premises the mechanical device is located or amounts paid out for any other purposes;

"Pay-out."

(3) "Pay-out" means any cash payment automatically returned to a player by the mechanical device, or any cash, merchandise, or thing of value won by or given to the player by or on behalf of the operator;

"Player."

(4) "Player" means the person to whom a pay-out accrues;

Miscellaneous terms used.

(5) The meaning ascribed to words and phrases under chapters 82.04 and 82.08, where applicable, shall apply equally in respect to this chapter.

Enacted without amendment.

SEC. 32. (RCW 82.28.020) There is levied and there shall be collected from every person a tax for

the act or privilege of engaging in business as an operator of certain mechanical devices irrespective of whether such activity shall be legal or illegal under the laws of this state or any subdivision thereof: *Provided*, Nothing in this title shall be construed to legalize any activity declared to be in violation of the laws of this state or any subdivision thereof, and the illegality of any such activity shall not be a defense or bar to the collection of any tax imposed thereon by this title.

Tax on operation of certain mechanical devices.

Such tax shall be measured by the application of rates against the gross operating income of the business as follows:

Computation of tax.

(1) Upon every person engaging within this state in business as an operator of any pinball machine, iron claw machine, traveling crane or other similar mechanical device wherein the element of skill or a combination of the elements of chance and skill is involved in determining a pay-out to the player, as to such persons the amount of tax on such business shall be equal to twenty percent of the gross operating income of the business: *Provided*, That this paragraph shall not be applicable to devices which require more than one operation by the player and where the result of any such operation by the player is determined by chance alone;

(2) Upon every person engaging within this state in business as an operator of (a) any mechanical device wherein only the element of chance determines a pay-out to the player, or (b) any mechanical device which requires more than one operation by the player and where the result of any such operation by the player is determined by chance alone, without regard to whether or not an element of skill is involved in any other operation of the device by the player; as to such persons the amount of tax on such business shall be equal to forty

percent of the gross operating income of the business.

Enacted without amendment.

Records to be kept by owner of premises.

SEC. 33. (RCW 82.28.030) Every person who, for a percentage of any portion of the gross operating income, permits the operation upon his premises of the mechanical devices described herein, shall keep and preserve, for a period of one year, suitable records to note the name of the operator and a description of the devices, the gross operating income therefrom and such other information as the tax commission may by general regulation require, which records shall be open to examination at any time by the commission. If any person fails to keep such records, he shall thereupon become liable for all tax due hereunder as an operator of such mechanical device.

Taxes computed on calendar month basis; due date; tax return forms.

SEC. 34. (RCW 82.28.040) The taxes imposed hereunder shall be computed for each mechanical device on a calendar month basis and shall be due and payable in bimonthly installments and remittance therefor shall be made on or before the fifteenth day of each odd-numbered month of each calendar year next succeeding the end of the bimonthly period in which the tax accrued. The tax payer, on or before said fifteenth day of such month, shall make out and sign a return, upon such forms and setting forth such information as the tax commission may require, showing the amount of the tax for which he is liable for the preceding bimonthly period and transmit it to the commission, together with a remittance for such amount in the form required. The tax commission may require sworn returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

Return filed for each device registered.

A return shall be filed for each mechanical device registered with the commission, whether or not the machine was in actual operation during the bi-

monthly period for which the return is made, and whether or not any tax liability was incurred with respect to the operation of the machine during such bimonthly period, and for failure to file a return for any such machine the commission may assess a penalty in the amount of not to exceed twenty-five dollars for each machine not reported, which penalty shall be collected in the same manner as the taxes imposed by this chapter. A taxpayer may report any number of machines on a single return if appropriate information is attached to such single return stating the registration number of each machine reported, the location at which it was operated, and the gross operating income therefrom.

Failure to file return; penalty.

Single return permitted.

SEC. 35. (RCW 82.28.050) Gross operating income taxable under the provisions of this chapter shall not be taxable under the provisions of chapter 82.04, but the tax imposed by this chapter shall be in addition to any other tax to which the taxpayer may be subject under the laws of this state or any subdivision thereof.

Enacted without amendment.

The state does not preempt the field of imposing taxes or license fees with respect to mechanical devices hereby taxed, and this chapter shall not be construed to bar counties and cities or towns from regulating or prohibiting the operation of any such mechanical devices.

SEC. 36. (RCW 82.28.060) All of the provisions contained in chapter 82.32 shall have full force and application with respect to taxes imposed under the provisions of this chapter.

Enacted without amendment.

SEC. 37. Section 25, chapter 228, Laws of 1949, as amended by sections 13 and 14, chapter 9, Laws of 1951 first extraordinary session (heretofore codified as RCW 82.32.210 and 82.32.220) is divided and amended as set forth in sections 39 and 40 of this act.

Division and amendment.

Enacted
without
amendment.

Procedure
when tax, in-
crease or pen-
alty not paid;
warrant
issued; levy
and sale.

Declaration
tax immedi-
ately due
and payable.

Revocation of
certificate of
registration.

Posting copy
of order.

SEC. 38. (RCW 82.32.210) If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant, plus the cost of executing the warrant, and return the warrant to the commission and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. If, however, the commission believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the tax or penalty to be immediately due and payable and may issue a warrant immediately.

If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, the tax commission may by order issued under its official seal, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if such order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the commission have been entered, and until the taxpayer

has deposited with the commission such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the commission may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer.

SEC. 39. (RCW 82.32.220) The sheriff shall file with the clerk of the superior court of his county a copy of the warrant, and thereupon the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the tax or portion thereof and any increases and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom such warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of such personal property shall in any way affect such lien. The lien shall not be superior, however, to bona fide interests of third persons which had vested prior to the filing of the warrant when such third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment: *Provided, however,* That the phrase "bona fide interests of third persons" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed such chattel or real property mortgage or the docu-

Procedure.

Warrants docketed.

Lien.

Priority of lien.

"Bona fide interests of third persons" shall not include.

ment evidencing such credit transaction. The amount of such warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of such clerk, and the sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court. Such warrants so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

Writs of garnishment.

Sheriff's fees.

The sheriff shall be entitled to fees as provided by law for his services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee of one dollar, which shall be added to the amount of the warrant.

Filing fee.

Proceeds from sale.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant.

Amendment.

SEC. 40. Section 30, chapter 225, Laws of 1939 and RCW 82.32.340 are each amended to read as follows:

Tax or penalty deemed uncollectible.

Any tax or penalty which the tax commission deems to be uncollectible, may be transferred from

accounts receivable, subject to approval by the director of budget, to a suspense account and cease to be accounted an asset: *Provided*, That any item transferred shall continue to be a debt due the state from the taxpayer and may at any time within twelve years from the filing of a warrant covering such amount with the clerk of the superior court be transferred back to accounts receivable for the purpose of collection: *Provided further*, The commission may charge off as finally uncollectible any tax or penalty which it deems uncollectible at any time after twelve years from the date of the filing of a warrant covering such tax and penalty with the clerk of the superior court after the commission and the attorney general are satisfied that there are no available and lawful means by which such tax or penalty may thereafter be collected.

Charging off as uncollectible.

The commission, subject to the approval of the director of budget, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer for such taxable year, who has fully paid all taxes, penalties and interest for such taxable year, or any preceding taxable year for which such taxes, penalties and interest have been fully paid.

Authorization to destroy files and records.

SEC. 41. Section 1, chapter 5, Laws of 1950 extraordinary session as last amended by section 4, chapter 91, Laws of 1953 and section 2, chapter 195, Laws of 1953 (heretofore codified as RCW 82.04.220, 82.04.230 and 82.04.240 through 82.04.290) is divided and amended as set forth in sections 2 through 9 of this act.

Division and amendment.

SEC. 42. (RCW 82.04.220) There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of

Enacted without amendment.

Tax levied on engaging in business activities.

sales, or gross income of the business, as the case may be.

Enacted without amendment.

SEC. 43. (RCW 82.04.230) Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, extracted for sale or for commercial or industrial use, multiplied by the rate of one-quarter of one percent;

Tax levied on engaging in business as an extractor.

Measure of tax.

The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Enacted without amendment.

SEC. 44. (RCW 82.04.240) Upon every person except persons taxable under subsection (2) of RCW 82.04.260 engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of one-quarter of one percent.

Tax levied on engaging in business as a manufacturer.

Measure of tax.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Enacted without amendment.

SEC. 45. (RCW 82.04.250) Upon every person engaging within this state in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of one-quarter of one percent.

Enacted without amendment.

SEC. 46. (RCW 82.04.260) (1) Upon every person engaging within this state in the business of buying wheat, oats, corn and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from

such sales multiplied by the rate of one one-hundredth of one percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour manufactured, multiplied by the rate of one-eighth of one percent.

SEC. 47. (RCW 82.04.270) Upon every person except persons taxable under subsection (1) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent. The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales: *Provided*, That the tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying one-quarter of one percent the value of the article so distributed as of the time of such distribution. The tax commission shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers: *Provided further*, That delivery

Tax levied on persons making sales at wholesale.

Measure of tax.

Limitation.

Computation.

trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

Enacted
without
amendment.

SEC. 48. (RCW 82.04.280) Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals or magazines; (2) building, repairing or improving any publicly owned street, place, road, highway, bridge or trestle which is used, or to be used, primarily for foot or vehicular traffic; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one-quarter of one percent.

Enacted
without
amendment.

SEC. 49. (RCW 82.04.290) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.235, 82.04.240, 82.04.250, 82.04.260, 82.04.270, and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of one-half of one percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale."

Effective date.

SEC. 50. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the first day of May, 1955.

Passed the Senate March 9, 1955.

Passed the House March 7, 1955.

Approved by the Governor March 22, 1955.