AN ACT Relating to state and local excise taxes; amending RCW 82.63.020, 82.63.045, 82.04.4266, 82.04.4268, 82.04.4269, 82.08.986, 82.12.986, 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, 82.12.022, 82.04.214, 82.16.020, 88.02.620, 82.08.700, 82.12.700, 82.48.080, 82.42.090, 82.04.213, 82.04.330, 82.04.050, 82.04.050, 82.08.855, 82.14.050, 82.14.060, 82.12.225, 84.36.381, 84.36.381, 84.38.030, 82.14.055, 84.52.010, 84.52.010, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 82.32.050, 82.32.060, 82.32.100, 82.32.105, 82.32.160, 82.32.350, 82.21.040, 84.36.480, 82.29A.020, 82.29A.030, 82.29A.040, 63.29.020, 63.29.140, 63.29.170, 63.29.180, 63.29.290, 63.29.300, 63.29.340, 82.08.02087, 82.12.02087, 82.08.195, and 82.04.067; reenacting and amending RCW 82.63.010, 82.04.260, 82.04.260, 82.16.010, 82.29A.020, 63.29.190, and 82.08.02565; adding new sections to chapter 82.04 RCW; adding a new section to chapter 82.63 RCW; adding a new section to chapter 82.16 RCW; adding new sections to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.14 RCW; adding a new section to chapter 84.52 RCW; adding a new section to chapter 54.28 RCW; adding a new section to chapter 82.21 RCW; adding new sections to chapter 63.29 RCW; adding a new section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; adding a new chapter to Title 36 RCW; creating new sections; repealing RCW 82.04.629, 82.04.630, 82.08.0204, 82.12.0204, 82.08.200, 82.12.200, and 43.136.047;

providing effective dates; providing a contingent effective date; providing expiration dates; and declaring an emergency.

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

## PART I
## Reinstating Tax Preferences for High-technology Research and Development

NEW SECTION. **Sec. 101.** (1) This section is the tax preference performance statement for the tax credit contained in section 102 of this act and the tax deferrals contained in sections 103 through 106 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as intended to improve industry competitiveness and create or retain jobs, as indicated in RCW 82.32.808(2) (b) and (c).

(3) It is the legislature's specific public policy objective to improve industry competitiveness and create or retain more jobs. It is the legislature's intent to provide a business and occupation tax credit for high-technology companies performing research and development and a sales and use tax deferral for certain construction for new and expanding high-technology companies conducting research and development in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, or environmental technology, in order to reduce the business costs of performing research and development and to reduce the cost of certain construction and equipment purchases used for research and development in specified areas, thereby encouraging investments in research and development, thereby increasing the number of firms in the industry performing research and development activities, thereby increasing the number of jobs performing research and development in the high-technology industry.

(4) If a review finds that the number of businesses participating in the credit and deferral programs, and the overall number of jobs for businesses participating in the credit and deferral programs performing research and development, have increased compared to the

number at the time of enactment, then the legislature intends to extend the expiration date of the tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to: (a) Employment data available from the employment security department; and (b) North American industrial code system (NAICS) from the department of revenue.

NEW SECTION. **Sec. 102.** A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit is calculated as follows:

(a) Determine the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development;

(b) Subtract 0.92 percent of the person's taxable amount from the amount determined under (a) of this subsection;

(c) Multiply the amount determined under (b) of this subsection by 1.50 percent.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, must be claimed against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year may not exceed the lesser of five hundred thousand dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) For any person claiming the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which

the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year or who is otherwise ineligible, the department must declare the taxes against which the credit was claimed to be immediately due and payable. The department must assess interest, but not penalties, on the taxes against which the credit was claimed. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be claimed by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6) A person claiming the credit provided in this section must file a complete annual survey with the department under RCW 82.32.585.

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

(a) "Qualified research and development" has the same meaning as in RCW 82.63.010.

(b) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(c) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(d) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(8) This section expires January 1, 2025.

**Sec. 103.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly shows a progression in the construction process, at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the

building site, without more, does not constitute meaningful construction.

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

((~~(12)~~)) (13) "Person" has the meaning given in RCW 82.04.030 and includes state universities as defined in RCW 28B.10.016. Person also includes any affiliate of a person. For purposes of this subsection (13), (a) "affiliate" means a person who controls, is controlled by, or is under common control with another person, and (b) "control" means the possession, directly or indirectly, of more than twenty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

((~~(13)~~)) (14) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

((~~(14)~~)) (15) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. Areas used for amusement and recreational activities, physical fitness activities, parking, the selling or furnishing of meals or other food and beverages, or similar commercial and noncommercial activities are not essential or integral to pilot scale manufacturing or qualified research and development. If a building or buildings are used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department. Such rules may include provisions for determining the amount of the deferral based on apportionment of costs of

construction of an investment project consisting of a building or multiple buildings, where qualified research and development or pilot scale manufacturing activities are shifted within a building or from one building to another building.

((~~(15)~~)) (16) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

((~~(16)~~)) (17) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

((~~(17)~~)) (18) "Recipient" means a person receiving a tax deferral under this chapter.

((~~(18)~~)) (19) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality

control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

**Sec. 104.** RCW 82.63.020 and 2010 c 114 s 140 are each amended to read as follows:

(1)(a) Application for deferral of taxes under this chapter must be made to the department before initiation of construction of, or acquisition of equipment or machinery for, the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application must be made ((~~to the department~~)) in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

((~~(2)~~)) (b) Nothing in this subsection (1)(b) may be construed to allow a tax deferral for an investment project for which an application for deferral under this chapter was denied by the department before January 1, 2015.

(2) The department will approve applications that indicate meaningful construction of an eligible investment project will occur within five years of the date of application. Applications indicating that meaningful construction of an eligible investment project will not occur within two years of the date of the application may be required to include additional documentation about the investment project, such as project milestones and other information the department may require. Applications that do not indicate meaningful construction will occur within five years of the date of application must be denied.

(3)(a) Recipients may amend an approved deferral application to update the completion date, estimated expenses, the square footage of the investment project, or other information about the investment project. Amendments must be made in a form and manner prescribed by the department.

(b) Requests to amend a previously approved application for an investment project for which meaningful construction has not commenced within five years of the date of the initial application must be denied.

(4) Each recipient of a deferral of taxes under this chapter must file a complete annual survey with the department under RCW 82.32.585. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must file a complete annual survey, and the applicant is not required to file the annual survey.

((~~(3)~~)) (5) The department must use the information reported on the annual survey required by this section to study the tax deferral program authorized under this chapter. The department must report to the legislature by December 1, 2009, and December 1, 2013. The reports must measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

((~~(4)~~)) (6) A recipient who must repay deferred taxes under RCW 82.63.045 ((~~because the department has found that an investment project is used for purposes other than research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology~~)) is no longer required to file annual surveys under RCW 82.32.585 ((~~beginning on the date an investment project is used for nonqualifying purposes~~)).

NEW SECTION. **Sec. 105.** A new section is added to chapter 82.63 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project. The amount of tax imposed under chapters 82.08 and 82.12 RCW eligible for deferral under this chapter is limited to one million dollars per eligible investment project per person. Only one eligible investment project per person qualifies for a deferral under this chapter during a calendar year.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section expires January 1, 2025.

**Sec. 106.** RCW 82.63.045 and 2010 c 114 s 141 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section and RCW 82.32.585, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under RCW 82.32.585 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

| Year in which use occurs | % of deferred taxes due |
|---|---|
| 1 | 100% |
| 2 | 87.5% |
| 3 | 75% |
| 4 | 62.5% |
| 5 | 50% |
| 6 | 37.5% |
| 7 | 25% |
| 8 | 12.5% |

(b) <u>If the department finds that meaningful construction of an investment project did not begin within five years of the date of the application or that an investment project is not operationally complete within ten years of the date of the initial application for deferral, the full amount of deferred taxes is immediately due.</u>

<u>(c)</u> If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3)(a) Notwithstanding subsection (2) of this section, in the case of an investment project consisting of multiple qualified buildings, the lessee is solely liable for payment of any deferred tax determined by the department to be due and payable under this section beginning on the date the department certifies that the project is operationally complete.

(b) This subsection does not relieve the lessors of its obligation to the lessee under RCW 82.63.010(7) to pass the economic benefit of the deferral to the lessee.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding subsection (2) of this section or RCW 82.32.585, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

## PART II

## Extending the Expiration Date of Tax Preferences for Food Processing

NEW SECTION. **Sec. 201.** This section is the tax preference performance statement for the agricultural processor tax exemptions in sections 202 through 205 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (e).

(2) It is the legislature's specific public policy objective to create and retain jobs and continue providing tax relief to the food processing industry.

(3) To measure the effectiveness of the exemptions in sections 202 through 205 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the following:

(a) The number of businesses that claim the exemptions in sections 202 through 205 of this act;

(b) The change in total taxable income for taxpayers claiming the exemptions under sections 202 through 205 of this act;

(c) The change in total employment for taxpayers claiming the exemptions under sections 202 through 205 of this act; and

(d) For each calendar year, the total amount of exemptions claimed under sections 202 through 205 of this act as a percentage of total taxable income for taxpayers within taxable income categories.

(4) The information provided in the annual survey submitted by the taxpayers under RCW 82.32.585, tax data collected by the department of revenue, and data collected by the employment security department is intended to provide the informational basis for the evaluation under subsection (3) of this section.

(5) In addition to the data sources described under subsection (4) of this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under subsection (3) of this section.

**Sec. 202.** RCW 82.04.4266 and 2014 c 140 s 9 are each amended to read as follows:

(1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) For purposes of this section, "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(4) This section expires July 1, ((~~2015~~)) 2025.

**Sec. 203.** RCW 82.04.4268 and 2013 2nd sp.s. c 13 s 204 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

(a) Manufacturing dairy products; or

(b) Selling dairy products manufactured by the seller to purchasers who either transport in the ordinary course of business the goods out of this state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(2) "Dairy products" has the same meaning as provided in RCW 82.04.260.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(4) This section expires July 1, ((~~2015~~)) 2025.

**Sec. 204.** RCW 82.04.4269 and 2012 2nd sp.s. c 6 s 203 are each amended to read as follows:

(1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(b) Selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070

establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(3) This section expires July 1, ((~~2015~~)) 2025.

**Sec. 205.** RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, ((~~2015~~)) 2025, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, ((~~2015~~)) 2025, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business

out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

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

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

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

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

(d)(i) Beginning July 1, ((~~2015~~)) 2025, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to

the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or

from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

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

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

outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of

the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

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

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

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

## PART III
## Providing a Sales and Use Tax Exemption for Eligible Server Equipment Installed in Certain Data Centers

NEW SECTION. **Sec. 301.** This section is the tax preference performance statement for the sales and use tax exemption contained in sections 302 and 303 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences in sections 302 and 303 of this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this sales and use tax exemption as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b).

(2) It is the legislature's specific public policy objective to improve industry competitiveness. It is the legislature's intent to provide a sales and use tax exemption on eligible server equipment and power infrastructure installed in eligible computer data centers, charges made for labor and services rendered in respect to installing

eligible server equipment, and for construction, installation, repair, alteration, or improvement of eligible power infrastructures in order to increase investment in data center construction in rural Washington counties, thereby adding real and personal property to state and local property tax rolls, thereby increasing the rural county tax base.

(3) If a review finds that the rural county tax base is increased as a result of the construction of computer data centers eligible for the sales and use tax exemption in sections 302 and 303 of this act, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue regarding rural county property tax assessments.

**Sec. 302.** RCW 82.08.986 and 2012 2nd sp.s. c 6 s 302 are each amended to read as follows:

(1) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to charges made for labor and services rendered in respect to installing eligible server equipment. The exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure.

(2)(a) In order to claim the exemption under this section, a qualifying business or a qualifying tenant must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(b) A qualifying business or a qualifying tenant claiming the exemption under this section must present the seller with an exemption certificate in a form and manner prescribed by the

department. The seller must retain a copy of the certificate for the seller's files.

(c) With respect to computer data centers for which the commencement of construction occurs after July 1, 2015, but before July 1, 2019, the exemption provided in this section is limited to no more than eight computer data centers, with total eligible data centers provided under this section limited to twelve from July 1, 2015, through July 1, 2025. Tenants of qualified data centers do not constitute additional data centers under the limit. The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department. Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(3)(a) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment at the eligible computer data center has increased by a minimum of:

(i) Thirty-five family wage employment positions; or

(ii) Three family wage employment positions for each twenty thousand square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center. For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3)(a)(ii) is based only on the space occupied by the qualifying tenant in the eligible computer data center.

(b) In calculating the net increase in family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase in family wage employment positions employed by qualifying tenants; and

(B) The net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(ii)(A) Qualifying tenants, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant must be in proportion to the amount of space in the eligible computer data center occupied by the qualifying tenant compared to the total amount of space in the eligible computer data center occupied by all qualifying tenants.

(c)(i) For purposes of this subsection, family wage employment positions are new permanent employment positions requiring forty hours of weekly work, or their equivalent, on a full-time basis at the eligible computer data center and receiving a wage equivalent to or greater than one hundred fifty percent of the per capita personal income of the county in which the qualified project is located. An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position. For purposes of this subsection (3)(c), "new permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the owner or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the owner of the eligible computer data center and by employees of qualifying tenants.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the requirements in (c)(i) of this subsection (3) are met.

(d) All previously exempted sales and use taxes are immediately due and payable for a qualifying business or qualifying tenant that does not meet the requirements of this subsection.

(4) A qualifying business or a qualifying tenant claiming an exemption under this section or RCW 82.12.986 must complete an annual report with the department as required under RCW 82.32.534.

(5)(a) The exemption provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (5).

(b) If a person claims an exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this section until paid in full.

(6) ((~~For purposes of this section the following definitions apply~~)) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise((~~:~~)).

(a) "Affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW. This definition of "building" only applies to computer data centers for which commencement of construction occurs on or after July 1, 2015.

(c)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer

data center if it has all of the characteristics listed in ((~~(b)~~)) (c)(i)(A) through (C) of this subsection (6).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least one hundred thousand square feet.

((~~(c)~~)) (d) "Electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting web sites. The term also includes providing services such as e-mail, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

((~~(d)~~)) (e)(i) "Eligible computer data center" means a computer data center:

(A) Located in a rural county as defined in RCW 82.14.370;

(B) Having at least twenty thousand square feet dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers; and

(C) For which the commencement of construction occurs:

(I) After March 31, 2010, and before July 1, 2011; ((~~or~~))

(II) After March 31, 2012, and before July 1, 2015; or

(III) After June 30, 2015, and before July 1, 2025.

(ii) For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or other improvements made to existing facilities, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of a computer data center.

(iii) With respect to facilities in existence on April 1, 2010, that are expanded, renovated, or otherwise improved after March 31, 2010, or facilities in existence on April 1, 2012, that are expanded, renovated, or otherwise improved after March 31, 2012, or facilities in existence on July 1, 2015, that are expanded, renovated, or otherwise improved after June 30, 2015, an eligible computer data center includes only the portion of the computer data center meeting the requirements in ((~~(d)~~)) (e)(i)(B) of this subsection (6).

((~~(e)~~)) (f) "Eligible power infrastructure" means all fixtures and equipment owned by a qualifying business or qualifying tenant and necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes generators; wiring; cogeneration equipment; and associated fixtures and equipment, such as electrical switches, batteries, and distribution, testing, and monitoring equipment. The term does not include substations.

((~~(f)~~)) (g) "Eligible server equipment" means:

(i) For a qualifying business whose computer data center qualifies as an eligible computer data center under ((~~(d)~~)) (e)(i)(C)(I) of this subsection (6), the original server equipment installed in an eligible computer data center on or after April 1, 2010, and replacement server equipment. For purposes of this subsection (6)((~~(f)~~)) (g)(i), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, 2018.

(ii) For a qualifying business whose computer data center qualifies as an eligible computer data center under ((~~(d)~~)) (e)(i)(C)(II) of this subsection (6), "eligible server equipment" means the original server equipment installed in an eligible computer data center on or after April 1, 2012, and replacement server equipment. For purposes of this subsection (6)((~~(f)~~)) (g)(ii), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, ((~~2020~~)) 2024.

(iii)(A) For a qualifying business whose computer data center qualifies as an eligible computer data center under (e)(i)(C)(III) of this subsection (6), "eligible server equipment" means the original server equipment installed in a building within an eligible computer data center on or after July 1, 2015, and replacement server equipment. Server equipment installed in movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping

containers, is not "directly installed in a building." For purposes of this subsection (6)(g)(iii)(A), "replacement server equipment" means server equipment that replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use no later than twelve years after the date of the certificate of occupancy.

(iv) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center on or after April 1, 2010, and replacement server equipment. For purposes of this subsection (6) ((~~(f)(iii)~~)) (g)(iv), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; ((~~and~~))

(B) Is installed and put into regular use before April 1, ((~~2020~~)) 2024; and

(C) For tenants leasing space in an eligible computer data center built after July 1, 2015, is installed and put into regular use no later than twelve years after the date of the certificate of occupancy.

((~~(g)~~)) (h) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

((~~(h)~~)) (i) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal

government, municipality, or political subdivision of the state. The term also does not include a lessee of space in an eligible computer data center under ((~~(d)~~)) (e)(i)(C)(I) of this subsection (6), if the lessee and lessor are affiliated and:

(i) That space will be used by the lessee to house server equipment that replaces server equipment previously installed and operated in that eligible computer data center by the lessor or another person affiliated with the lessee; or

(ii) Prior to May 2, 2012, the primary use of the server equipment installed in that eligible computer data center was to provide electronic data storage and data management services for the business purposes of either the lessor, persons affiliated with the lessor, or both.

((~~(i)~~)) (j) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards, monitors, printers, and mice.

((~~(7) This section expires April 1, 2020.~~))

**Sec. 303.** RCW 82.12.986 and 2012 2nd sp.s. c 6 s 304 are each amended to read as follows:

(1) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses or qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to the use of labor and services rendered in respect to installing such server equipment. The exemption also applies to the use by a qualifying business or qualifying tenant of eligible power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure.

(2) A qualifying business or a qualifying tenant is not eligible for the exemption under this section unless the department issued an exemption certificate to the qualifying business or a qualifying tenant for the exemption provided in RCW 82.08.986.

(3)(a) The exemption provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (3).

(b) If a person has received the benefit of the exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this subsection (3)(b) until paid in full. A person is not required to repay taxes under this subsection with respect to property and services for which the person is required to repay taxes under RCW 82.08.986(5).

(4) The definitions and requirements in RCW 82.08.986 apply to this section.

((~~(5) This section expires April 1, 2020.~~))

## PART IV
## Creating a Pilot Program that Provides Incentives for Investments in Washington State Job Creation and Economic Development

NEW SECTION. **Sec. 401.** (1) Businesses that invest capital create jobs and generate economic activity that supports a healthy Washington economy. The legislature finds that these investments result in future revenues that support schools and our communities. Therefore, the legislature finds that a pilot program must be conducted to evaluate the effectiveness of a program that invests business taxes from new investments into workforce training programs that support manufacturing businesses in the state of Washington thereby creating jobs and capital investments in the state for the benefit of its citizens.

(2)(a) This subsection is the tax preference performance statement for the sales and use tax deferral provided in section 404 of this act on expenditures made to build or expand qualified

investment projects and purchases of machinery and equipment. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to create or retain jobs and to provide funding to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations, as indicated in RCW 82.32.808(2) (c) and (f).

(c) It is the legislature's specific public policy objective to provide a pilot program that would provide a sales tax deferral on the construction and expenditure costs of up to five new manufacturing facilities, two of which must be located in eastern Washington. When deferred taxes are repaid, the deferred taxes are reinvested to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations.

(d) To measure the effectiveness of the deferral provided in this part in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee should refer to information available from the employment security department and department of revenue. If a review finds that each eligible investment project generated at least twenty full-time jobs and increased training opportunities for manufacturing and production jobs, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference. For purposes of this subsection (2)(d), full-time jobs includes both temporary construction jobs and permanent full-time employment positions created at the eligible investment project within one year of the date that the facility became operationally complete as determined by the department of revenue.

NEW SECTION. **Sec. 402.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Eligible investment project" means an investment project that incurs up to ten million dollars for each project in costs for

qualified buildings and machinery and equipment on five new, renovated, or expanded manufacturing operations, at least two of which must be located east of the crest of the Cascade mountains.

(3) "Initiation of construction" has the same meaning as in RCW 82.63.010.

(4) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(5) "Manufacturing" has the same meaning as provided in RCW 82.04.120.

(6) "Person" has the same meaning as provided in RCW 82.04.030.

(7) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(8) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(9) "Recipient" means a person receiving a tax deferral under this chapter.

NEW SECTION. **Sec. 403.** The lessor or owner of a qualified building is not eligible for a deferral unless:

(1) The underlying ownership of the building, machinery, and equipment vests exclusively in the same person; or

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.32.585; and

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

NEW SECTION. **Sec. 404.** (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The deferrals are available on a first-in-time basis. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) The department may not approve applications for more than five eligible investment projects.

NEW SECTION. **Sec. 405.** (1) Except as otherwise provided in subsection (2) of this section, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under this part or chapter 82.60 RCW.

(3) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium.

NEW SECTION. **Sec. 406.** (1) The recipient must begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the investment project has been operationally completed. The first payment of ten percent of the deferred taxes will be due on December 31st of the fifth calendar

year after such certified date, with subsequent annual payments of ten percent of the deferred taxes due on December 31st for each of the following nine years.

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

NEW SECTION. **Sec. 407.** (1) State taxes deferred and repaid under this chapter, including any interest or penalties on such amounts, must be deposited in the invest in Washington account created in this section. The invest in Washington account is hereby created in the state treasury must be used exclusively by the state board for community and technical colleges for supporting customized training programs, job skills programs, job readiness training, workforce professional development, and to assist employers with state-approved apprenticeship programs for manufacturing and production occupations.

(2) Revenues to the invest in Washington account consist of amounts transferred by the state treasurer as provided in subsection (3) of this section.

(3) By June 1, 2016, and by June 1st of every subsequent year, the department must notify the state treasurer of the amount of tax, interest, and penalties collected under this section since the effective date of this chapter through May 1, 2016, in the case of the first notification under this subsection (3), and since the previous May 1st for subsequent notifications under this subsection (3). The department may make adjustments to the annual notification under this subsection (3) as may be necessary to correct errors in the previous notification or offset previous amounts that did not qualify for deferral under this section.

(4) By July 1, 2016, and by July 1st of every subsequent year, the state treasurer must transfer the amount included in the

department's most recent notification under subsection (3) of this section from the general fund to the invest in Washington account. Money in the account may only be appropriated for the purposes specified in subsection (1) of this section.

NEW SECTION. **Sec. 408.** (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual survey with the department under RCW 82.32.585. If the economic benefits of the deferral are passed to a lessee as provided in section 403 of this act, the lessee must file a complete annual survey, and the applicant is not required to file a complete annual survey.

(2) If, on the basis of a survey under RCW 82.32.585 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter due to the fact the investment project is no longer used for qualified activities, the amount of deferred taxes outstanding for the investment project is immediately due and payable.

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in section 403 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

NEW SECTION. **Sec. 409.** This part may be known and cited as the invest in Washington act.

NEW SECTION. **Sec. 410.** Sections 401 through 408 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 411.** The expiration provisions of RCW 82.32.805(1)(a) do not apply to sections 406 through 409 of this act.

## PART V
## Continuing Tax Preferences for Aluminum Smelters

NEW SECTION. **Sec. 501.** (1) The legislature finds that the aluminum industry in Washington employs over one thousand people. The legislature further finds that average annual wages and benefits for these employment positions exceed one hundred thousand dollars and that each of these employment positions indirectly generates an additional two to three jobs within the state. The legislature

further finds that the aluminum industry generates substantial taxes for local jurisdictions. The legislature further finds that the aluminum industry was severely impacted by the global economic recession. The legislature further finds that the London metal exchange, where aluminum is traded as a commodity, is extremely volatile and substantially impacts the profitability of the aluminum industry. The legislature further finds that for the aforementioned reasons, the industry continues to struggle with profitability, putting the continued employment of its Washington workforce in jeopardy.

(2)(a) This subsection is the tax preference performance statement for the aluminum industry tax preferences in RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022, as amended in this Part V. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (d).

(c) It is the legislature's specific public policy objective to promote the preservation of employment positions within the Washington aluminum manufacturing industry as the industry continues to grapple with the lingering effects of the economic recession and the volatility of the London metal exchange.

(d) To measure the effectiveness of the exemption provided in this Part V in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate the changes in the number of statewide employment positions for the aluminum industry in Washington.

**Sec. 502.** RCW 82.04.2909 and 2011 c 174 s 301 are each amended to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) This section expires January 1, ((~~2017~~)) 2027.

**Sec. 503.** RCW 82.04.4481 and 2011 c 174 s 302 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in ((~~2017~~)) 2027 and thereafter.

(4) A person claiming the credit provided in this section must file a complete annual report with the department under RCW 82.32.534.

**Sec. 504.** RCW 82.08.805 and 2011 c 174 s 303 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW

82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, ((~~2017~~)) 2027.

**Sec. 505.** RCW 82.12.805 and 2011 c 174 s 305 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, ((~~2017~~)) 2027.

**Sec. 506.** RCW 82.12.022 and 2014 c 216 s 304 are each amended to read as follows:

(1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, ((~~2017~~)) 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under RCW 82.32.534.

(6) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(7) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(8) The use tax imposed in this section must be paid by the consumer to the department.

(9) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered,

name of the consumer to whom delivered, and such other information as the department may require by rule.

(10) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

## PART VI
## Concerning the Definition of a Newspaper

NEW SECTION. **Sec. 601.** This section is the tax preference performance statement for the tax preference contained in this part. Except for the intent expressed in subsections (3) and (4) of this section, this performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment. The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the tax structure, as indicated in RCW 82.32.808(2)(d).

(1) The legislature finds that printing and publishing a newspaper and publishing an electronic version of a newspaper are becoming increasingly integrated activities.

(2) For the administrative ease of both the department of revenue and taxpayers, it is the legislature's specific public policy objective to modernize the state's tax code by imposing an integrated, blended rate on those engaged primarily in printing and publishing of a printed newspaper, yet who also publish an electronic version of a newspaper. Secondarily, the legislature's public policy objective is to help preserve printed newspapers by limiting the tax preference to those that are at least primarily engaged in printing and publishing of a printed newspaper.

(3) If a taxpayer's subscription revenues from publishing an electronic newspaper, whether a stand-alone electronic newspaper or an electronic version of a printed newspaper, exceed the taxpayer's subscription revenues from a printed newspaper, then the legislature intends for all of the taxpayer's newspaper printing activity to be taxed under the manufacturing business and occupation tax classification and all of its publishing and sales revenues to be taxed under the service and other business activities, wholesaling, or retailing business and occupation tax classifications, as

applicable. Under this scenario, the taxpayer's advertising revenues would be subject to the service tax rate in RCW 82.04.290(2), wholesale sales of newspapers would be taxed under RCW 82.04.270, and subscription revenues would be subject to the tax on retailers under RCW 82.04.250(1) for the printed newspaper and RCW 82.04.257(1) for the electronic newspaper.

(4) The legislature intends for the tax preference contained in section 603(14) of this act to be permanent.

**Sec. 602.** RCW 82.04.214 and 2008 c 273 s 1 are each amended to read as follows:

(1)((~~(a) Until June 30, 2011, "newspaper" means:~~

~~(i) A publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper; and~~

~~(ii) An electronic version of a printed newspaper that:~~

~~(A) Shares content with the printed newspaper; and~~

~~(B) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.~~

~~(b)~~)) "Newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

(2) For purposes of this section, "supplement" means a printed publication, including a magazine or advertising section, that is:

((~~(i)~~)) (a) Labeled and identified as part of the printed newspaper; and

((~~(ii)~~)) (b) Circulated or distributed:

((~~(A)~~)) (i) As an insert or attachment to the printed newspaper; or

((~~(B)~~)) (ii) Separate and apart from the printed newspaper so long as the distribution is within the general circulation area of the newspaper.

((~~(2) Beginning July 1, 2011, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely~~

~~together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper as defined in subsection (1)(b) of this section.~~))

**Sec. 603.** RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

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

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

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

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

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount

of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be

stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount

of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

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

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

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

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

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state primarily in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business and on the business of publishing an electronic version of a newspaper, is equal to the gross income of the business multiplied by the rate of ((~~0.2904~~)) 0.35 percent.

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

(c) For the purposes of (a) of this subsection, the following definitions apply:

(i) "Electronic version of a newspaper" and "electronic version of the newspaper" mean an electronic version of a newspaper that shares content with the newspaper and is prominently identified by the same name as the newspaper or otherwise conspicuously indicates that it is a complement to the newspaper.

(ii) "Primarily" means the subscription revenue from a newspaper exceeds the subscription revenue, if any, from an electronic version of the newspaper. Revenue received from a subscriber of both a newspaper and an electronic version of the newspaper must be considered subscription revenue from a newspaper and not from an electronic version of the newspaper. If a taxpayer prints or publishes a newspaper but does not publish an electronic version of a newspaper, the person will be deemed to be engaging within this state primarily in the business of printing a newspaper, publishing a newspaper, or both.

NEW SECTION. **Sec. 604.** The legislature intends for the amendments in section 603 of this act to be permanent. Therefore, the amendments in section 603 of this act are exempt from the ten-year expiration provision in RCW 82.32.805(1)(a) and 82.32.808.

## PART VII
## Providing a Reduced Public Utility Tax for Log Transportation Businesses

NEW SECTION. **Sec. 701.** This section is the tax preference performance statement for the tax preference contained in sections 702 and 703 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(2) It is the legislature's specific public policy objective to support the forest products industry due in part to the industry's efforts to support the local economy by focusing on Washington state based resources thereby reducing global environmental impacts through the manufacturing and use of wood. It is the legislature's intent to provide the forest products industry permanent tax relief by lowering the public utility tax rate attributable to log transportation businesses. Because this reduced public utility rate is intended to be permanent, the reduced rate established in this Part VII is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

**Sec. 702.** RCW 82.16.010 and 2009 c 535 s 1110 are each reenacted and amended to read as follows:

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

(1) "Express business" means the business of 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.

(2) "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.

(3) "Gross income" 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.

(4) "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 and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.

(6) "Motor 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. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

((~~(6)~~)) (7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), ((~~(5), (7),~~)) (6), (8), (9), ((~~(11), and~~)) (10), (12), and (13) of this section or 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, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection ((~~(6)~~)) (7)(b) apply throughout this subsection ((~~(6)~~)) (7).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable,

microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

((~~(7)~~)) (8) "Railroad business" means the business of 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.

((~~(8)~~)) (9) "Railroad car business" means the business of 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.

((~~(9)~~)) (10) "Telegraph business" means the business of affording telegraphic communication for hire.

((~~(10)~~)) (11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

((~~(11)~~)) (12) "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 cartage, 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.

((~~(12)~~)) (13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

((~~(13)~~)) (14) The meaning attributed, in chapter 82.04 RCW, to the term "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.

**Sec. 703.** RCW 82.16.020 and 2013 2nd sp.s. c 9 s 7 are each amended to read as follows:

(1) There is levied and ((~~there shall be~~)) collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax ((~~shall be~~)) is equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent;

(h) Log transportation business: One and twenty-eight one-hundredths percent. The reduced rate established in this subsection

(1)(h) is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses ((~~shall~~)) must be deposited in the education legacy trust account created in RCW 83.100.230 from July 1, 2013, through June 30, 2019, and thereafter in the public works assistance account created in RCW 43.155.050.

## PART VIII
## Concerning Nonresident Vessel Permits and Taxation

**Sec. 801.** RCW 88.02.620 and 2011 c 171 s 133 are each amended to read as follows:

(1) Subject to the limitations provided in subsection (5) of this section, a vessel owner who is a nonresident ((~~natural~~)) person ((~~shall~~)) must apply for a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

(a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and

(b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(3) The department, county auditor or other agent, or subagent appointed by the director ((~~shall~~)) must collect the fee required in RCW 88.02.640(1)((~~(h)~~)) (i) when issuing nonresident vessel permits.

(4) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(5) If the applicant is not a natural person, application for a nonresident vessel permit under this section must be made by mail. The department may not issue more than twenty nonresident vessel permits annually per calendar year under this section to applicants who are not natural persons. The department may only issue a nonresident vessel permit to a person who is not a natural person, if such person is otherwise eligible under this section and is among the first twenty persons who are not natural persons to submit a permit application under this section. For the purposes of determining which applications are received first, the application's postmark date is determinative and only complete and otherwise eligible applications may be considered.

(6) The department ((~~shall~~)) must adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit.

**Sec. 802.** RCW 82.08.700 and 2010 c 106 s 219 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresident ((~~individuals~~)) persons of vessels thirty feet or longer if ((~~an individual~~)) a person purchasing a vessel purchases and displays a valid use permit.

(2)(a) ((~~An individual~~)) A person claiming exemption from retail sales tax under this section must display proof of ((~~his or her~~)) the person's current nonresident status at the time of purchase.

(b) Acceptable proof of a nonresident ((~~individual's~~)) person's status for an individual includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card that has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(c) Acceptable proof of a nonresident person's status, for a person who is not an individual, such as a limited liability company, corporation, or limited partnership, includes:

(i) A current certificate of good standing for the entity from the out-of-state jurisdiction claimed by the person;

(ii) A current list of all principals of the person;

(iii) A copy of the person's certificate of incorporation or the articles of incorporation;

(iv) A completed affidavit of out-of-state residency;

(v) One piece of identification provided by the person, such as a valid driver's license verifying out-of-state residency or a valid identification card that has a photograph of the holder and is issued by an out-of-state jurisdiction; and

(vi) A written and notarized statement signed by a principal of the person's entity that states:

"The entity agrees to make all records available to representatives of the Washington State Department of Revenue for verification of nonresidency status of all principals of the entity. This includes any corporate or ownership documents filed with any and all state, federal, and/or foreign agencies provided for title, documentation, or registry purposes."

(3) Nothing in this section requires the vessel dealer to make tax exempt retail sales to nonresidents. A dealer may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the dealer chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4)(a) Subject to the limitations provided in (b) of this subsection, a vessel dealer ((~~shall~~)) must issue a use permit to a buyer if the dealer is satisfied that the buyer is a nonresident. The use permit must be in a form and manner required by the department and must include an affidavit, signed by the purchaser, declaring that the vessel will be used in a manner consistent with this section. The fee for the issuance of a use permit is five hundred dollars for vessels fifty feet in length or less and eight hundred dollars for vessels greater than fifty feet in length. Funds collected under this section and RCW 82.12.700 must be reported on the dealer's excise tax return and remitted to the department in accordance with RCW 82.32.045. The department must transmit the fees to the state treasurer to be deposited in the state general fund. The use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. A use permit is not

renewable. A purchaser at the time of purchase must make an irrevocable election to take the exemption authorized in this section or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel dealer must maintain a copy of the use permit for the dealer's records. Vessel dealers must provide copies of use permits issued by the dealer under this section and RCW 82.12.700 to the department on a quarterly basis.

(b) A vessel dealer may not issue a use permit to a nonresident person who is not an individual. If the nonresident person is not an individual, the person must apply to the department by mail for a use permit under this section in the form and manner required by the department. The department may not issue more than twenty nonresident use permits annually per calendar year under this section to persons who are not individuals. The department may only issue a nonresident use permit to a person who is not an individual, if such person is otherwise eligible under this section and is among the first twenty persons who are not individuals to submit a permit application under this section. For the purposes of determining which applications are received first, the application's postmark date is determinative and only complete and otherwise eligible applications may be considered.

(5) A nonresident person who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.08.020 on the original selling price of the vessel and must pay the tax directly to the department. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date the vessel was purchased, and accrues until the full amount of tax due is paid to the department.

(6) Any vessel dealer who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any dealer who fails to maintain records of sales to nonresident((~~s~~)) persons as provided in this section, is personally liable for the amount of tax due.

(7) Chapter 82.32 RCW applies to the administration of the fee imposed in this section and RCW 82.12.700.

(8) A vessel dealer that issues use permits under this section and RCW 82.12.700 must file with the department all returns in an electronic format as provided or approved by the department. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(a) Any return required to be filed in an electronic format under this subsection is not filed until received by the department in an electronic format provided or approved by the department.

(b) The electronic filing requirement in this subsection ends when a vessel dealer no longer issues use permits, and the dealer has electronically filed all of its returns reporting the fees collected under this section and RCW 82.12.700.

(c) The department may waive the electronic filing requirement in this subsection for good cause shown.

**Sec. 803.** RCW 82.12.700 and 2007 c 22 s 2 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of a vessel thirty feet or longer if a nonresident ((~~individual~~)) person:

(a) Purchased the vessel from a vessel dealer in accordance with RCW 82.08.700;

(b) Purchased the vessel in the state from a person other than a vessel dealer, but the nonresident ((~~individual~~)) person purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is purchased in this state; or

(c) Acquired the vessel outside the state, but purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is first brought into this state.

(2)(a) Subject to the limitations provided in (b) of this subsection, any vessel dealer that makes tax exempt sales under RCW 82.08.700 ((~~shall~~)) must issue use permits under this section. A vessel dealer ((~~shall~~)) must issue a use permit under this section if the dealer is satisfied that the ((~~individual~~)) person purchasing the permit is a nonresident. The use permit is valid for twelve consecutive months from the date of issuance. A use permit is not renewable, and ((~~an individual~~)) a person may only purchase one use permit for a particular vessel. A person who has been issued a use permit under RCW 82.08.700 for a particular vessel may not purchase a use permit under this section for the same vessel after the use permit issued under RCW 82.08.700 expires.

(b) A vessel dealer may not issue a use permit to a nonresident person who is not an individual. If the nonresident person is not an

individual, the person must apply to the department by mail for a use permit under this section in the form and manner required by the department. The department may not issue more than twenty nonresident use permits annually per calendar year under this section to persons who are not individuals. The department may only issue a nonresident use permit to a person who is not an individual, if such person is otherwise eligible under this section and is among the first twenty persons who are not individuals to submit a permit application under this section. For the purposes of determining which applications are received first, the application's postmark date is determinative and only complete and otherwise eligible applications may be considered.

(c) All other requirements and conditions, not inconsistent with the provisions of this section, relating to use permits in RCW 82.08.700, apply to use permits under this section.

(d) A person may not claim an exemption under RCW 82.12.0251(1) within twenty-four months after a use permit, issued under this section or RCW 82.08.700, for the same vessel, has expired.

(3)(a) Except as provided in (b) of this subsection, a nonresident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.12.020 based on the value of the vessel at the time that the vessel was either purchased in this state under circumstances in which the exemption under RCW 82.08.700 did not apply or was first brought into this state, as the case may be. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date that the vessel was purchased in this state or first brought into the state, and accrues until the full amount of tax due is paid to the department.

(b) A nonresident ((~~individual~~)) person who is exempt under both this section and RCW 82.08.700 and who uses a vessel in this state after ((~~his or her~~)) the use permit for that vessel expires is liable for tax and interest as provided in RCW 82.08.700(5).

(4)(a) Any vessel dealer that issues a use permit to ((~~an individual~~)) a person who does not hold valid identification establishing out-of-state residency, and any dealer that fails to maintain records for each use permit issued that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any, is personally liable for the amount of tax due.

(b) Acceptable proof of a nonresident person's status, for a person who is not an individual, such as a limited liability company, corporation, or limited partnership, is the same as provided in RCW 82.08.700.

## PART IX
## Concerning Distribution and Use of Aircraft Excise Taxes

**Sec. 901.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to read as follows:

The secretary ((~~shall~~)) must regularly pay to the state treasurer the excise taxes collected under this chapter, which ((~~shall~~)) must be credited by the state treasurer ((~~as follows: Ninety percent to the general fund and ten percent~~)) to the aeronautics account ((~~in the transportation fund~~)) for state grants to airports and the administrative expenses associated with grant execution and the collection of excise taxes under this chapter.

**Sec. 902.** RCW 82.42.090 and 2013 c 225 s 305 are each amended to read as follows:

All taxes, interest, and penalties collected under this chapter must be deposited into the aeronautics account hereby created in the state treasury. All taxes, interest, and penalties collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 must be deposited into the state general fund.

## PART X
## Providing a Business and Occupation Tax Credit for Businesses That Hire Veterans

NEW SECTION. **Sec. 1001.** This section is the tax preference performance statement for the tax preference contained in sections 1002 and 1003 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preferences as those intended to induce certain designated behavior by taxpayers and create or retain jobs, as indicated in RCW 82.32.808(2) (a) and (c).

(2) It is the legislature's specific public policy objective to provide employment for unemployed veterans. It is the legislature's intent to provide employers a credit against the business and occupation tax or public utility tax for hiring unemployed veterans which would reduce an employer's tax burden thereby inducing employers to hire and create jobs for unemployed veterans. Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the business and occupation tax and public utility tax credit established under sections 1002 and 1003 of this act by December 31, 2022.

(3) If a review finds that the number of unemployed veterans decreased by thirty percent, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee should refer to the veteran unemployment rates available from the employment security department and the bureau of labor statistics.

NEW SECTION. **Sec. 1002.** A new section is added to chapter 82.04 RCW to read as follows:

(1) A person is allowed a credit against the tax due under this chapter as provided in this section. The credit equals twenty percent of wages and benefits paid to or on behalf of a qualified employee up to a maximum of one thousand five hundred dollars for each qualified employee hired on or after October 1, 2016.

(2) No credit may be claimed under this section until a qualified employee has been employed for at least two consecutive full calendar quarters.

(3) Credits are available on a first-in-time basis. The department must keep a running total of all credits allowed under this section and section 1003 of this act during each fiscal year. The department may not allow any credits that would cause the total credits allowed under this section and section 1003 of this act to exceed five hundred thousand dollars in any fiscal year. If all or part of a claim for credit is disallowed under this subsection, the disallowed portion is carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded.

Priority must be given to credits carried over from a previous fiscal year. The department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(4) The credit may be used against any tax due under this chapter, and may be carried over until used, except as provided in subsection (9) of this section. No refunds may be granted for credits under this section.

(5) If an employer discharges a qualified employee for whom the employer has claimed a credit under this section, the employer may not claim a new credit under this section for a period of one year from the date the qualified employee was discharged. However, this subsection (5) does not apply if the qualified employee was discharged for misconduct, as defined in RCW 50.04.294, connected with his or her work or discharged due to a felony or gross misdemeanor conviction, and the employer contemporaneously documents the reason for discharge.

(6) Credits earned under this section may be claimed only on returns filed electronically with the department using the department's online tax filing service or other method of electronic reporting as the department may authorize. No application is required to claim the credit, but the taxpayer must keep records necessary for the department to determine eligibility under this section including records establishing the person's status as a veteran and status as unemployed when hired by the taxpayer.

(7) No person may claim a credit against taxes due under both this chapter and chapter 82.16 RCW for the same qualified employee.

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

(a)(i) "Qualified employee" means an unemployed veteran who is employed in a permanent full-time position for at least two consecutive full calendar quarters. For seasonal employers, "qualified employee" also includes the equivalent of a full-time employee in work hours for two consecutive full calendar quarters.

(ii) For purposes of this subsection (8)(a), "full time" means a normal work week of at least thirty-five hours.

(b) "Unemployed" means that the veteran was unemployed as defined in RCW 50.04.310 for at least thirty days immediately preceding the date that the veteran was hired by the person claiming credit under this section for hiring the veteran.

(c) "Veteran" means every person who has received an honorable discharge or received a general discharge under honorable conditions or is currently serving honorably, and who has served as a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves.

(9) Credits allowed under this section can be earned for tax reporting periods through June 30, 2022. No credits can be claimed after June 30, 2023.

(10) This section expires July 1, 2023.

NEW SECTION. **Sec. 1003.** A new section is added to chapter 82.16 RCW to read as follows:

(1) A person is allowed a credit against the tax due under this chapter as provided in this section. The credit equals twenty percent of wages and benefits paid to or on behalf of a qualified employee up to a maximum of one thousand five hundred dollars for each qualified employee hired on or after October 1, 2016.

(2) No credit may be claimed under this section until a qualified employee has been employed for at least two consecutive full calendar quarters.

(3) Credits are available on a first-in-time basis. The department must keep a running total of all credits allowed under this section and section 1002 of this act during each fiscal year. The department may not allow any credits that would cause the total credits allowed under this section and section 1002 of this act to exceed five hundred thousand dollars in any fiscal year. If all or part of a claim for credit is disallowed under this subsection, the disallowed portion is carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded. Priority must be given to credits carried over from a previous fiscal year. The department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and

provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(4) The credit may be used against any tax due under this chapter, and may be carried over until used, except as provided in subsection (9) of this section. No refunds may be granted for credits under this section.

(5) If an employer discharges a qualified employee for whom the employer has claimed a credit under this section, the employer may not claim a new credit under this section for a period of one year from the date the qualified employee was discharged. However, this subsection (5) does not apply if the qualified employee was discharged for misconduct, as defined in RCW 50.04.294, connected with his or her work or discharged due to a felony or gross misdemeanor conviction, and the employer contemporaneously documents the reason for discharge.

(6) Credits earned under this section may be claimed only on returns filed electronically with the department using the department's online tax filing service or other method of electronic reporting as the department may authorize. No application is required to claim the credit, but the taxpayer must keep records necessary for the department to determine eligibility under this section including records establishing the person's status as a veteran and status as unemployed when hired by the taxpayer.

(7) No person may claim a credit against taxes due under both chapter 82.04 RCW and this chapter for the same qualified employee.

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

(a)(i) "Qualified employee" means an unemployed veteran who is employed in a permanent full-time position for at least two consecutive full calendar quarters. For seasonal employers, "qualified employee" also includes the equivalent of a full-time employee in work hours for two consecutive full calendar quarters.

(ii) For purposes of this subsection (8)(a), "full time" means a normal work week of at least thirty-five hours.

(b) "Unemployed" means that the veteran was unemployed as defined in RCW 50.04.310 for at least thirty days immediately preceding the

date that the veteran was hired by the person claiming credit under this section for hiring the veteran.

(c) "Veteran" means every person who has received an honorable discharge or received a general discharge under honorable conditions or is currently serving honorably, and who has served as a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves.

(9) Credits allowed under this section can be earned for tax reporting periods through June 30, 2022. No credits can be claimed after June 30, 2023.

(10) This section expires July 1, 2023.

## PART XI
## Defining Honey Bee Products and Services as an Agricultural Product

NEW SECTION. **Sec. 1101.** This section is the tax preference performance statement for the tax preference contained in this Part XI. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

It is the legislature's specific public policy objective to support the honey bee industry and provide tax relief to eligible apiarists. Honey bees pollinate eighty percent of the nation's flowering crops, which include agricultural crops. They are vitally important to agriculture and an integral part of food production. Therefore, the legislature intends to permanently include eligible apiarists within the definition of farmer and define honey bee products as agricultural products so that they may receive the same tax relief as that provided to other sectors of agriculture. Because the legislature intends for the changes in this Part XI to be permanent, they are exempt from the ten-year expiration provision in RCW 82.32.805.

**Sec. 1102.** RCW 82.04.213 and 2014 c 140 s 2 are each amended to read as follows:

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees;

short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal including honey bee products. "Agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products, or animals defined as pet animals under RCW 16.70.020.

(2)(a) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold, and the growing, raising, or producing honey bee products for sale, or providing bee pollination services, by an eligible apiarist. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber.

(b) "Eligible apiarist" means a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(c) "Honey bee products" means queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" does not include manufactured substances or articles.

(3) 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.

(4) "Marijuana," "useable marijuana," and "marijuana-infused products" have the same meaning as in RCW 69.50.101.

**Sec. 1103.** RCW 82.04.330 and 2014 c 140 s 7 are each amended to read as follows:

(1) This chapter does not apply to any farmer in respect to the sale of any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption does not apply to any person selling such products at retail or to any person selling

manufactured substances or articles. This chapter does not apply to bee pollination services provided to a farmer by an eligible apiarist.

(2) This chapter also does not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program.

**Sec. 1104.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each amended to read as follows:

(1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

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

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

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

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

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the

property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and

other service emoluments however designated, received by persons engaging in the following business activities:

(a)(i) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers.

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

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

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

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

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of ((~~this subsection (6)~~))(a) and (b) of this subsection, the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

(b) The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

((~~(b)~~)) (c)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

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

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

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in

this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; (c) farmers for the purpose of providing bee pollination services; and ((~~(c)~~)) (d) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

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

**Sec. 1105.** RCW 82.04.050 and 2015 c 169 s 1 are each amended to read as follows:

(1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

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

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or

becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

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

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

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services

ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Abstract, title insurance, and escrow services;

(b) Credit bureau services;

(c) Automobile parking and storage garage services;

(d) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(e) Service charges associated with tickets to professional sporting events;

(f) The following personal services: Tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services; and

(g)(i) Operating an athletic or fitness facility, including all charges for the use of such a facility or for any associated services and amenities, except as provided in (g)(ii) of this subsection.

(ii) Notwithstanding anything to the contrary in (g)(i) of this subsection (3), the term "sale at retail" and "retail sale" under this subsection does not include:

(A) Separately stated charges for the use of an athletic or fitness facility where such use is primarily for a purpose other than engaging in or receiving instruction in a physical fitness activity;

(B) Separately stated charges for the use of a discrete portion of an athletic or fitness facility, other than a pool, where such discrete portion of the facility does not by itself meet the definition of "athletic or fitness facility" in this subsection;

(C) Separately stated charges for services, such as advertising, massage, nutritional consulting, and body composition testing, that do not require the customer to engage in physical fitness activities to receive the service. The exclusion in this subsection (3)(g)(ii)(C) does not apply to personal training services and instruction in a physical fitness activity;

(D) Separately stated charges for physical therapy provided by a physical therapist, as those terms are defined in RCW 18.74.010, or occupational therapy provided by an occupational therapy practitioner, as those terms are defined in RCW 18.59.020, when performed pursuant to a referral from an authorized health care practitioner or in consultation with an authorized health care practitioner. For the purposes of this subsection (3)(g)(ii)(D), an authorized health care practitioner means a health care practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or 18.71A RCW;

(E) Rent or association fees charged by a landlord or residential association to a tenant or residential owner with access to an athletic or fitness facility maintained by the landlord or residential association, unless the rent or fee varies depending on whether the tenant or owner has access to the facility;

(F) Services provided in the regular course of employment by an employee with access to an athletic or fitness facility maintained by the employer for use without charge by its employees or their family members;

(G) The provision of access to an athletic or fitness facility by an educational institution to its students and staff. However, charges made by an educational institution to its alumni or other members of the public for the use of any of the educational institution's athletic or fitness facilities are a retail sale under this subsection (3)(g). For purposes of this subsection (3)(g)(ii)(G), "educational institution" has the same meaning as in RCW 82.04.170; and

(H) Yoga, tai chi, or chi gong classes held at a community center, park, gymnasium, college or university, hospital or other medical facility, private residence, or any facility that is not primarily used for physical fitness activities other than yoga, tai chi, or chi gong classes.

(iii) Nothing in (g)(ii) of this subsection (3) may be construed to affect the taxation of sales made by the operator of an athletic or fitness facility, where such sales are defined as a retail sale under any provision of this section other than this subsection (3).

(iv) For the purposes of this subsection (3)(g), the following definitions apply:

(A) "Athletic or fitness facility" means an indoor or outdoor facility or portion of a facility that is primarily used for: Exercise classes; strength and conditioning programs; personal training services; tennis, racquetball, handball, squash, or pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or mixed martial arts training; or other activities requiring the use of exercise or strength training equipment, such as treadmills, elliptical machines, stair climbers, stationary cycles, rowing machines, pilates equipment, balls, climbing ropes, jump ropes, and weightlifting equipment.

(B) "Physical fitness activities" means activities that involve physical exertion for the purpose of improving or maintaining the

general fitness, strength, flexibility, conditioning, or health of the participant.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of ((~~this subsection (6)~~))(a) and (b) of this subsection, the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

(b) The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

((~~(b)~~)) (c)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

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

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

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection,

"extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; (c) farmers for the purpose of providing bee pollination services; and ((~~(c)~~)) (d) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities,

radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

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

(15)(a) The term "sale at retail" or "retail sale" includes amounts charged, however labeled, to consumers to engage in any of the activities listed in this subsection (15)(a), including the furnishing of any associated equipment or, except as otherwise provided in this subsection, providing instruction in such activities, where such charges are not otherwise defined as a "sale at retail" or "retail sale" in this section:

(i)(A) Golf, including any variant in which either golf balls or golf clubs are used, such as miniature golf, hitting golf balls at a driving range, and golf simulators, and including fees charged by a golf course to a player for using his or her own cart. However, charges for golf instruction are not a retail sale, provided that if the instruction involves the use of a golfing facility that would otherwise require the payment of a fee, such as green fees or driving range fees, such fees, including the applicable retail sales tax, must be separately identified and charged by the golfing facility operator to the instructor or the person receiving the instruction.

(B) Notwithstanding (a)(i)(A) of this subsection (15) and except as otherwise provided in this subsection (15)(a)(i)(B), the term "sale at retail" or "retail sale" does not include amounts charged to participate in, or conduct, a golf tournament or other competitive event. However, amounts paid by event participants to the golf facility operator are retail sales under this subsection (15)(a)(i). Likewise, amounts paid by the event organizer to the golf facility are retail sales under this subsection (15)(a)(i), if such amounts vary based on the number of event participants;

(ii) Ballooning, hang gliding, indoor or outdoor sky diving, paragliding, parasailing, and similar activities;

(iii) Air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games;

(iv) Access to amusement park, theme park, and water park facilities, including but not limited to charges for admission and locker or cabana rentals. Discrete charges for rides or other attractions or entertainment that are in addition to the charge for admission are not a retail sale under this subsection (15)(a)(iv). For the purposes of this subsection, an amusement park or theme park is a location that provides permanently affixed amusement rides, games, and other entertainment, but does not include parks or zoos for which the primary purpose is the exhibition of wildlife, or fairs, carnivals, and festivals as defined in (b)(i) of this subsection;

(v) Batting cage activities;

(vi) Bowling, but not including competitive events, except that amounts paid by the event participants to the bowling alley operator are retail sales under this subsection (15)(a)(vi). Likewise, amounts paid by the event organizer to the operator of the bowling alley are retail sales under this subsection (15)(a)(vi), if such amounts vary based on the number of event participants;

(vii) Climbing on artificial climbing structures, whether indoors or outdoors;

(viii) Day trips for sightseeing purposes;

(ix) Bungee jumping, zip lining, and riding inside a ball, whether inflatable or otherwise;

(x) Horseback riding offered to the public, where the seller furnishes the horse to the buyer and providing instruction is not the primary focus of the activity, including guided rides, but not including therapeutic horseback riding provided by an instructor certified by a nonprofit organization that offers national or international certification for therapeutic riding instructors;

(xi) Fishing, including providing access to private fishing areas and charter or guided fishing, except that fishing contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xii) Guided hunting and hunting at game farms and shooting preserves, except that hunting contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xiii) Swimming, but only in respect to (A) recreational or fitness swimming that is open to the public, such as open swim, lap

swimming, and special events like kids night out and pool parties during open swim time, and (B) pool parties for private events, such as birthdays, family gatherings, and employee outings. Fees for swimming lessons, to participate in swim meets and other competitions, or to join a swim team, club, or aquatic facility are not retail sales under this subsection (15)(a)(xiii);

(xiv) Go-karting, bumper cars, and other motorized activities where the seller provides the vehicle and the premises where the buyer will operate the vehicle;

(xv) Indoor or outdoor playground activities, such as inflatable bounce structures and other inflatables; mazes; trampolines; slides; ball pits; games of tag, including laser tag and soft-dart tag; and human gyroscope rides, regardless of whether such activities occur at the seller's place of business, but not including playground activities provided for children by a licensed child day care center or licensed family day care provider as those terms are defined in RCW 43.215.010;

(xvi) Shooting sports and activities, such as target shooting, skeet, trap, sporting clays, "5" stand, and archery, but only in respect to discrete charges to members of the public to engage in these activities, but not including fees to enter a competitive event, instruction that is entirely or predominately classroom based, or to join or renew a membership at a club, range, or other facility;

(xvii) Paintball and airsoft activities;

(xviii) Skating, including ice skating, roller skating, and inline skating, but only in respect to discrete charges to members of the public to engage in skating activities, but not including skating lessons, competitive events, team activities, or fees to join or renew a membership at a skating facility, club, or other organization;

(xix) Nonmotorized snow sports and activities, such as downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities, whether engaged in outdoors or in an indoor facility with or without snow, but only in respect to discrete charges to the public for the use of land or facilities to engage in nonmotorized snow sports and activities, such as fees, however labeled, for the use of ski lifts and tows and daily or season passes for access to trails or other areas where nonmotorized snow sports and activities are conducted. However, fees for the following are not retail sales under this

subsection (15)(a)(xix): (A) Instructional lessons; (B) permits issued by a governmental entity to park a vehicle on or access public lands; and (C) permits or leases granted by an owner of private timberland for recreational access to areas used primarily for growing and harvesting timber; and

(xx) Scuba diving; snorkeling; river rafting; surfing; kiteboarding; flyboarding; water slides; inflatables, such as water pillows, water trampolines, and water rollers; and similar water sports and activities.

(b) Notwithstanding anything to the contrary in this subsection (15), the term "sale at retail" or "retail sale" does not include charges:

(i) Made for admission to, and rides or attractions at, fairs, carnivals, and festivals. For the purposes of this subsection, fairs, carnivals, and festivals are events that do not exceed twenty-one days and a majority of the amusement rides, if any, are not affixed to real property;

(ii) Made by an educational institution to its students and staff for activities defined as retail sales by (a)(i) through (xx) of this subsection. However, charges made by an educational institution to its alumni or other members of the general public for these activities are a retail sale under this subsection (15). For purposes of this subsection (15)(b)(ii), "educational institution" has the same meaning as in RCW 82.04.170;

(iii) Made by a vocational school for commercial diver training that is licensed by the workforce training and education coordinating board under chapter 28C.10 RCW; or

(iv) Made for day camps offered by a nonprofit organization or state or local governmental entity that provide youth not older than age eighteen, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities.

**Sec. 1106.** RCW 82.08.855 and 2014 c 97 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3)(a) A purchaser claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. Sellers making tax-exempt sales under this section must obtain an exemption certificate from the purchaser in a form and manner prescribed by the department. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(b)(i) For a person who is an eligible farmer as defined in subsection (4)(b)(iv) of this section, the exemption is conditioned upon:

(A) The eligible farmer having gross sales or a harvested value of agricultural products grown, raised, or produced by that person <u>or gross sales of bee pollination services</u> of at least ten thousand dollars in the first full tax year in which the person engages in business as a farmer; or

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products <u>or bee pollination services</u> having an

estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product or bee pollination service during the first full tax year in which the person engages in business as a farmer.

(ii) If a person fails to meet the condition provided in (b)(i)(A) or (B) of this subsection, the person must repay any taxes exempted under this section. Any taxes for which an exemption under this section was claimed are due and payable to the department within thirty days of the end of the first full tax year in which the person engages in business as a farmer. The department must assess interest on the taxes for which the exemption was claimed as provided in chapter 82.32 RCW, retroactively to the date the exemption was claimed, and accrues until the taxes for which the exemption was claimed are paid. Penalties may not be imposed on any tax required to be paid under this subsection (3) (b)(ii) if full payment is received by the due date.

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

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross sales or harvested value of agricultural products grown, raised, or produced by that person or gross sales of bee pollination services was at least ten thousand dollars for the immediately preceding tax year;

(ii) A farmer as defined in RCW 82.04.213 whose agricultural products had an estimated value of at least ten thousand dollars for the immediately preceding tax year, if the person did not sell or harvest an agricultural product or bee pollination service during that year;

(iii) A farmer as defined in RCW 82.04.213 who has merely changed identity or the form of ownership of an entity that was an eligible farmer, where there was no change in beneficial ownership, and the combined gross sales, harvested value, or estimated value of agricultural products or bee pollination services by both entities met the requirements of (b)(i) or (ii) of this subsection for the immediately preceding tax year;

(iv) A farmer as defined in RCW 82.04.213((.)) who does not meet the definition of "eligible farmer" in (b)(i), (ii), or (iii) of this subsection, and who did not engage in farming for the entire

immediately preceding tax year, because the farmer is either new to farming or newly returned to farming; or

(v) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Farm vehicle" has the same meaning as in RCW 46.04.181.

(d) "Harvested value" means the number of units of the agricultural product that were grown, raised, or produced, multiplied by the average sales price of the agricultural product. For purposes of this subsection (4)(d), "average sales price" means the average price per unit of agricultural product received by farmers in this state as reported by the United States department of agriculture's national agricultural statistics service for the twelve-month period that coincides with, or that ends closest to, the end of the relevant tax year, regardless of whether the prices are subject to revision. If the price per unit of an agricultural product received by farmers in this state is not available from the national agricultural statistics service, average sales price may be determined by using the average price per unit of agricultural product received by farmers in this state as reported by a recognized authority for the agricultural product.

(e) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products<u>, providing bee pollination services, or both</u>. "Qualifying farm machinery and equipment" does not include:

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand-powered tools; and

(iv) Property with a useful life of less than one year.

(f)(i) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment.

(ii) Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined in (f)(i) of this subsection or making repairs as described in subsection (1)(c) of this section.

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve-month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year.

NEW SECTION. **Sec. 1107.** The following acts or parts of acts are each repealed:

(1) RCW 82.04.629 (Exemptions—Honey bee products) and 2013 2nd sp.s. c 13 s 306 & 2008 c 314 s 2;

(2) RCW 82.04.630 (Exemptions—Bee pollination services) and 2013 2nd sp.s. c 13 s 307 & 2008 c 314 s 3;

(3) RCW 82.08.0204 (Exemptions—Honey bees) and 2013 2nd sp.s. c 13 s 308 & 2008 c 314 s 4;

(4) RCW 82.12.0204 (Exemptions—Honey bees) and 2013 2nd sp.s. c 13 s 309 & 2008 c 314 s 5;

(5) RCW 82.08.200 (Exemptions—Honey beekeepers) and 2013 2nd sp.s. c 13 s 302;

(6) RCW 82.12.200 (Exemptions—Honey beekeepers) and 2013 2nd sp.s. c 13 s 303; and

(7) RCW 43.136.047 (Beekeeper evaluation) and 2013 2nd sp.s. c 13 s 304.

NEW SECTION. **Sec. 1108.** The legislature intends for the amendments in this act to be permanent. Therefore, the amendments in this Part XI are exempt from the ten-year expiration provision in RCW 82.32.805.

## PART XII

## Providing Sales and Use Tax Exemptions to Encourage Coal-Fired Electric Generation Plants or Biomass Energy Facilities to Convert to Natural Gas-Fired Plants

NEW SECTION. **Sec. 1201.** This section is the tax preference performance statement for the tax preference contained in sections 1202 and 1203 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(2) It is the legislature's specific public policy objective to retain jobs at existing coal-fired electric generation facilities by providing a tax exemption to allow these facilities to convert into natural gas-fired generation plants or biomass energy facilities rather than shut down entirely. It is the legislature's intent to provide a tax exemption for the conversion of a coal-fired electric generation facility into a natural gas-fired generation plant or biomass energy facility, in order to reduce the costs recently imposed by the legislature on companies that operate coal-fired electric generation facilities, thereby increasing the ability of these companies to continue their operations in Washington state, thereby retaining jobs that otherwise would be lost if a coal-fired electric generation facility were to shut down.

(3) This tax preference is created to provide an opportunity for coal-fired electric generation facilities to convert into natural gas-fired generation plants or biomass energy facilities. This tax preference is meant to expire and, therefore, the joint legislative audit and review committee is exempt from reviewing this tax preference as required in chapter 43.136 RCW.

NEW SECTION. **Sec. 1202.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the requirements in subsection (2) of this section, a taxpayer is eligible for an exemption from the tax imposed by RCW 82.08.020 on the sale of or charge made for:

(a) Labor and services rendered in respect to the constructing of new structures, and expansion or renovation of existing structures, for the purpose of converting a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility;

(b) Materials that will be incorporated as an ingredient or component of new or existing structures during the course of such constructing, expanding, or renovating; or

(c) Machinery and equipment that is required to convert a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility, including labor and services rendered in respect to installing such machinery and equipment.

(2)(a) The exemption in this section is in the form of a remittance. A purchaser claiming an exemption from the tax in the form of a remittance under this section must pay all applicable state and local sales taxes imposed under RCW 82.08.020 and chapter 82.14 RCW on all purchases qualifying for the exemption. After the conversion of a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility is operationally complete, but not earlier than April 1, 2019, the purchaser may then apply to the department for a remittance of one hundred percent of the state and local sales taxes paid under RCW 82.08.020 and chapter 82.14 RCW for purchases qualifying under subsection (1) of this section. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and construction contracts.

(b) The department may not accept any application for a remittance that it does not receive by the later of July 1, 2019, or within one year after the department determines that the conversion of a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility is operationally complete.

(c) The department must determine eligibility under this section based on information provided by the purchaser, which is subject to audit verification by the department. The department must remit exempted amounts to qualifying purchasers who submitted timely applications during the previous calendar quarter. No remittances may be paid before July 1, 2019.

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

(a)(i) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to

the generation of electricity using natural gas or biomass, including repair parts and replacement parts.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(iii) "Biomass energy" means energy derived from solid organic fuels from wood or forest or field residues.

(b) "Operationally complete" means constructed or improved to the point of being functionally capable of generating electricity using natural gas or biomass.

(4) This section expires July 1, 2025.

NEW SECTION. **Sec. 1203.** A new section is added to chapter 82.12 RCW to read as follows:

(1) Subject to the requirements in subsection (2) of this section, a taxpayer is eligible for an exemption from the tax imposed by RCW 82.12.020 on the use of:

(a) Materials that will be incorporated as an ingredient or component of new or existing structures during the course of the constructing of new structures, or expansion or renovation of existing structures, for the purpose of converting a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility; and

(b) Machinery and equipment that is required to convert a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility, including labor and services rendered in respect to installing such machinery and equipment.

(2)(a) A taxpayer is exempt from the tax imposed by RCW 82.12.020 on the use of materials, machinery and equipment, or installation labor, if the taxpayer received a remittance under section 1202 of this act with respect to the purchase of the materials, machinery and equipment, or installation labor.

(b) With respect to materials, machinery and equipment, or installation labor qualifying for the exemption in this section and acquired by the taxpayer without the payment of the sales tax imposed

by RCW 82.08.020, the exemption in this section is in the form of a remittance of the state and local use taxes paid under RCW 82.12.020 and chapter 82.14 RCW. All of the provisions applicable to remittances under section 1202 of this act apply to remittances under this section.

(3) The exemption in this section does not apply to the use of materials, machinery and equipment, and installation labor for machinery and equipment, when first use within this state of such materials, machinery and equipment, and installation labor occurred after June 30, 2025.

(4) The definitions in section 1202 of this act apply to this section.

(5) This section expires July 1, 2025.

**Sec. 1204.** RCW 82.14.050 and 2014 c 216 s 403 are each amended to read as follows:

(1) The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW must contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which must deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue must be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Beginning January 1, 2013, the department of revenue must make deposits in the local sales and use tax account on a monthly basis on the last business day of the month in which distributions required in (a) of this subsection are due. Moneys in the local sales and use tax account may be withdrawn only for:

(a) Distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax; and

(b) Making refunds of taxes imposed under the authority of this chapter and RCW 81.104.170 and exempted under RCW 82.08.962, 82.12.962, 82.08.02565, ((~~and~~)), 82.12.02565, section 1202 of this act, or section 1203 of this act.

(2) All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, insofar as they are applicable to state sales and use taxes, are applicable to taxes imposed pursuant to this chapter.

(3) Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement.

(4) Except as provided in RCW 43.08.190 and subsection (5) of this section, all earnings of investments of balances in the local sales and use tax account must be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly.

(5) Beginning January 1, 2013, the state treasurer must determine the amount of earnings on investments that would have been credited to the local sales and use tax account if the collections had been deposited in the account over the prior month. When distributions are made under subsection (1)(a) of this section, the state treasurer must transfer this amount from the state general fund to the local sales and use tax account and must distribute such sums to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts.

**Sec. 1205.** RCW 82.14.060 and 2014 c 216 s 404 are each amended to read as follows:

(1)(a) Monthly, the state treasurer must distribute from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less:

(i) The deduction provided for in RCW 82.14.050; and

(ii) The amount of any refunds of local sales and use taxes exempted under RCW 82.08.962, 82.12.962, 82.08.02565, ((~~and~~)) 82.12.02565, section 1202 of this act, or section 1203 of this act, which must be made without appropriation.

(b) The state treasurer must make the distribution under this section without appropriation.

(2) In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution may not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein.

## PART XIII
## Providing Use Tax Relief for Individuals Who Support Charitable Activities

NEW SECTION. **Sec. 1301.** (1) This section is the tax preference performance statement for the tax preference in section 1302 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to accomplish a general purpose as indicated in RCW 82.32.808(2)(f).

(3) It is the legislature's specific public policy objective to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt. Because the legislature intends for the changes in this Part XIII to be permanent, they are exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

**Sec. 1302.** RCW 82.12.225 and 2013 2nd sp.s. c 13 s 1402 are each amended to read as follows:

((~~(1)~~)) The provisions of this chapter do not apply in respect to the use of any article of personal property((~~, valued at less than ten thousand dollars,~~)) purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization

or a library, if the gross income the nonprofit organization or library receives from the sale is exempt under RCW 82.04.3651.

((~~(2) This section expires July 1, 2017.~~))

## PART XIV

## Revising a Property Tax Exemption for Veterans with Total Disability Ratings and Their Surviving Spouses or Domestic Partners

NEW SECTION. **Sec. 1401.** (1) This section is the tax preference performance statement for the tax preference in section 1402 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain individuals, as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to provide more extensive property tax relief to veterans with total disability ratings and their surviving spouses or domestic partners to properly recognize their sacrifice on behalf of the nation and to enable them to remain in their residences, thus reducing homelessness and demand for services in state veterans' homes.

(4) To measure the effectiveness of this Part XIV in achieving the objective in subsection (3) of this section, the joint legislative audit and review committee must provide a report to the legislature by December 1, 2020, assessing the impact of the tax preference in reducing homelessness and demand for services in state veterans' homes among veterans with total disability ratings and their surviving spouses or domestic partners.

**Sec. 1402.** RCW 84.36.381 and 2012 c 10 s 73 are each amended to read as follows:

A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any

person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, assisted living facility, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, assisted living facility, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)((~~(a)~~)) The person claiming the exemption must be:

((~~(i)~~)) (a) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability, or the surviving spouse or surviving domestic partner of a person who was receiving an exemption under this subsection at the time of the person's death if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section; or

((~~(ii)~~)) (b) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability((~~.~~

~~(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section~~)), or the surviving spouse or

surviving domestic partner of a person who was receiving an exemption under this subsection at the time of the person's death if the surviving spouse or domestic partner is fifty-seven years of age or older. Those who qualify under this subsection (3)(b) are exempt from all regular and excess property taxes on a residence that meets the requirements of subsections (1) and (2) of this section;

(4) The amount that ((~~the~~)) a person qualifying under subsection (3)(a) of this section is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person under subsection (3)(a) of this section who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less is exempt from all excess property taxes; and

(b)(i) A person under subsection (3)(a) of this section who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person under subsection (3)(a) of this section who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person under subsection (3)(a) of this section who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

NEW SECTION. **Sec. 1403.** This Part XIV is not subject to the expiration date requirements provided in RCW 82.32.805.

NEW SECTION. **Sec. 1404.** This Part XIV applies to the taxes levied for collection in 2016 and thereafter.

## PART XV

## Concerning Property Tax Exemptions for Service-Connected Disabled Veterans and Senior Citizens

NEW SECTION. **Sec. 1501.** This section is the tax preference performance statement for the tax preference contained in section 1502 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not

intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(2) It is the legislature's specific public policy objective to provide tax relief to senior citizens, disabled persons, and veterans. The legislature recognizes that property taxes impose a substantial financial burden on those with fixed incomes and that property tax relief programs have considerable value in addressing this burden. It is the legislature's intent to increase the current statutory static income thresholds which were last modified in 2004.

(3) The expansion of the tax preferences are meant to be permanent and, therefore, not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

**Sec. 1502.** RCW 84.36.381 and 2012 c 10 s 73 are each amended to read as follows:

A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, assisted living facility, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, assisted living facility, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing

association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)(a) The person claiming the exemption must be:

(i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability; or

(ii) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of ((~~thirty-five~~)) forty thousand dollars or less is exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of ((~~thirty~~)) thirty-five thousand dollars or less but greater than ((~~twenty-five~~)) thirty thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of ((~~twenty-five~~)) thirty thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of ((~~thirty-five~~)) forty thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

**Sec. 1503.** RCW 84.38.030 and 2015 c 86 s 313 are each amended to read as follows:

A claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of the claimant's equity value in the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the age and income limits under RCW 84.36.381.

(2) The claimant must be sixty years of age or older on December 31st of the year in which the deferral claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability as defined in RCW 84.36.383. However, any surviving spouse or surviving domestic partner of a person who was receiving a deferral at the time of the person's death qualifies if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section.

(3) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of ((~~forty~~)) forty-five thousand dollars or less.

(4) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community, owned by domestic partners, or owned by cotenants is deemed to be owned by each spouse, each domestic partner, or each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(5) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value. However, if the claimant fails to keep fire and casualty insurance in force to the extent of the state's interest in the claimant's equity value, the amount deferred may not exceed one hundred percent of the claimant's equity value in the land or lot only.

(6) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

NEW SECTION. **Sec. 1504.** This Part XV applies to taxes levied for collection in 2016 and thereafter.

## PART XVI
## Reducing the Frequency of Local Sales and Use Tax Changes

**Sec. 1601.** RCW 82.14.055 and 2003 c 168 s 206 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, a local sales and use tax change ((~~shall~~)) may take effect (a) no sooner than seventy-five days after the department receives notice of the change and (b) only on the first day of January, April, or July((~~, or October~~)).

(2) In the case of a local sales and use tax that is a credit against the state sales tax or use tax, a local sales and use tax change ((~~shall~~)) may take effect (a) no sooner than thirty days after the department receives notice of the change and (b) only on the first day of a month.

(3)(a) A local sales and use tax rate increase imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A local sales and use tax rate decrease imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

(4) For the purposes of this section, "local sales and use tax change" means enactment or revision of local sales and use taxes under this chapter or any other statute, including changes resulting from referendum or annexation.

## PART XVII
## Concerning Access to and Creation of Cultural and Heritage Programs and Facilities

### Subpart A
### INTENT

NEW SECTION. **Sec. 1701.** INTENT. (1) The legislature finds that:

(a) The cultural organizations of the state provide numerous public benefits. Providing support for the state's cultural organizations is in the public interest and will serve multiple public purposes including, among others, enhancing and extending the educational reach and offerings of cultural organizations; ensuring continued and expanded access to the facilities and programs of cultural organizations by economically and geographically underserved populations; and providing financial stability to the organizations to enable them to focus on core missions as well as to continue and extend the numerous public benefits they provide.

(b) Economic impact studies consistently confirm that cultural institutions represent a multibillion dollar segment of the state's overall economy and are directly responsible for tens of thousands of jobs.

(2) The purpose of this chapter is to authorize the cultural access program, under which counties authorize funding for public school cultural access programs and support cultural organizations.

## Subpart B
## DEFINITIONS

NEW SECTION. **Sec. 1702.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrative costs" means all operating, administrative, and maintenance expenses for a program, a designated public agency, or a designated entity.

(2) "Attendance" means the total number of visits by persons in physical attendance during a year at cultural organization facilities located or cultural organization programs provided within the county creating a program, including attendance for which admission was paid, discounted, or free, consistent with and verifiable under guidelines adopted by the appropriate program.

(3) "Cultural organization" means a nonprofit corporation incorporated under the laws of the state of Washington and recognized by the internal revenue service as described in section 501(c)(3) of the internal revenue code of 1986, as amended, with its principal location or locations and conducting a majority of its activities within the state, not including: Any agency of the state or any of

its political subdivisions; any municipal corporation; any organization that raises funds for redistribution to multiple cultural organizations; or any radio or television broadcasting network or station, cable communications system, internet-based communications venture or service, newspaper, or magazine. The primary purpose of the organization must be the advancement and preservation of science or technology, the visual or performing arts, zoology, botany, anthropology, heritage, or natural history and any organization must directly provide programming or experiences available to the general public. Any organization with the primary purpose of advancing and preserving zoology such as zoos and aquariums must be or support a facility that is accredited by the association of zoos and aquariums or its functional successor. A state-related cultural organization may be a cultural organization.

(4) "Designated entity" means the entity designated by the legislative authority of a county creating the program, as required under section 1715(1)(d) of this act. The entity may be a public agency, including the state arts commission established under chapter 43.46 RCW, or a Washington nonprofit corporation that is not a cultural organization eligible for funding under this chapter.

(5) "Designated public agency" means the public agency designated by the legislative authority of a county creating the program, as required under section 1715(2)(h) of this act.

(6) "Program" means a cultural access program established by a county by ordinance.

(7) "Revenues" means revenues from all sources generated by a cultural organization, consistent with generally accepted accounting practices and any program guidelines, excluding: (a) Revenues associated with capital projects other than major maintenance projects including, but not limited to, capital campaign expenses; (b) funds provided under this chapter; (c) revenue that would be considered unrelated business taxable income under the internal revenue code of 1986, as amended; and (d) with respect to a state-related cultural organization, state funding received by it or for the institution it supports. Revenues include transfers from an organization's endowment or reserves and may include the value of in-kind goods and services to the extent permitted under any program guidelines.

(8) "State-related cultural organization" means an organization incorporated as a nonprofit corporation under the laws of the state

of Washington and recognized by the internal revenue service as described in section 501(c)(3) of the internal revenue code of 1986, as amended, with a primary purpose and directly providing programming or experiences available to the general public consistent with the requirements for recognition as a cultural organization under this chapter operating in a facility owned and supported by the state, a state agency, or state educational institution.

## Subpart C
## CULTURAL ACCESS PROGRAM

NEW SECTION. **Sec. 1703.** CREATION. (1) Any county legislative authority may create a cultural access program by ordinance.

(2) Any contiguous group of counties may create a program by entering into an interlocal agreement under chapter 39.34 RCW, approved by resolution of the county legislative authorities.

(3) A city may create a cultural access program if the county legislative authority in which the city is located adopts a resolution stating that the county forfeits its option to create a program or does not place a proposition before the people to create such a program by June 30, 2017. In the event the exception in this subsection occurs, all references in this chapter to a county must include a city that has exercised its authority under this subsection.

NEW SECTION. **Sec. 1704.** START-UP FUNDING AND CONDITIONAL FORMATION. (1) The county creating a program may advance to the program funding for its administrative costs, including the cost of informing the public about the formation of the program, how it is proposed to be funded, and the public benefits to be realized if it is successful. However, this subsection does not authorize the preparation and distribution of information to the general public for the purpose of influencing the outcome of any election called for voter authorization of a proposed tax to support a program.

(2) The county creating a program may provide for repayment of any start-up funding advanced to a program from the proceeds of taxes authorized under sections 1708 through 1710 of this act and approved by voters after the taxes are first collected. The funds may be repaid to such county with interest at the internal rate of return on the invested funds of such county.

NEW SECTION. **Sec. 1705.** NONSUPPLANTATION. In creating a program under this chapter, any county creating the program must affirm that any funding such county usually and customarily provides to cultural organizations similar to funding that would be available to those organizations under this chapter may not be replaced or materially diminished as a result of funding becoming available under this chapter. If an organization designated to receive funds under this chapter is a state-related cultural organization, the funds received under this chapter may not replace or materially diminish any funding usually or customarily provided by the state.

NEW SECTION. **Sec. 1706.** ADVISORY COUNCILS. Each county creating a program under this chapter may establish an advisory council, the membership of which must include citizen representatives of constituencies and organizations with interests relevant to the work of the program including, but not limited to, leaders in the business, educational, and cultural communities. Advisory council members should be residents of the county creating the program. Policies concerning the size and operation of any advisory council must be established by the county that creates the program.

NEW SECTION. **Sec. 1707.** ALTERNATIVE ADMINISTRATIVE ARRANGEMENTS. A county with a population of less than one million five hundred thousand may contract with the state arts commission formed under chapter 43.46 RCW for the provision of consulting, management, or other administrative services to be provided to its program created under this chapter. Any county creating a program may elect to consolidate administration of such a program with that of the entity or public agency designated by the county creating such a program to perform the functions required under section 1715 of this act.

## Subpart D
## FUNDING

NEW SECTION. **Sec. 1708.** PROGRAM TO IMPOSE TAX. (1) A county creating a program under this chapter may impose sales and use taxes under section 1709 of this act or additional regular property tax levies under section 1710 of this act for the purposes authorized under this chapter.

(2) If a county imposes sales and use taxes under section 1709 of this act, the county may not impose an additional regular property tax levy under section 1710 of this act so long as such sales and use taxes are in effect.

(3) If a county imposes an additional regular property tax levy under section 1710 of this act, the county may not impose sales and use taxes under section 1709 of this act so long as such property tax levy is in effect.

(4) All revenue from taxes imposed under this chapter must be credited to a special fund in the treasury of the county imposing such tax and used solely for the purpose of paying all or any part of the cost of cultural access programs as provided in this chapter.

NEW SECTION. **Sec. 1709.** A new section is added to chapter 82.14 RCW to read as follows:

SALES AND USE TAXES. (1) The legislative authority of a county or a city may impose a sales and use tax of up to one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax, for the purposes authorized under chapter 36.--- RCW (the new chapter created in section 1717 of this act). The legislative authority of the county or city may impose the sales and use tax by ordinance and must condition its imposition on the specific authorization of a majority of the voters voting on a proposition submitted at a special election held after June 30, 2016. The ordinance and ballot proposition, if any, may provide for the tax to apply for a period of up to seven consecutive years.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event.

(3) The legislative authority of a county or city may reimpose a tax imposed under this section for one or more additional periods of up to seven consecutive years. The legislative authority of the county or city may reimpose the sales and use tax by ordinance and must condition its reimposition on the prior specific authorization of a majority of the voters voting on a proposition submitted at any general or special election.

(4) Moneys collected under this section may only be used for the purposes set forth in section 1715 of this act.

(5) The department must perform the collection of taxes under this section on behalf of a county or city at no cost to the county or city, and the state treasurer must distribute those taxes as available on a monthly basis to the county or city or, upon the direction of the county or city, to its treasurer or a fiscal agent, paying agent, or trustee for obligations issued or incurred by the program.

(6) The definitions in section 1702 of this act apply to this section.

NEW SECTION. **Sec. 1710.** A new section is added to chapter 84.52 RCW to read as follows:

PROPERTY TAX. (1) The legislative authority of a county or city may impose an additional regular property tax levy for the purposes authorized under chapter 36.--- RCW (the new chapter created in section 1717 of this act). The legislative authority of the county or city may impose the additional levy by ordinance and must condition its imposition of the levy upon prior specific authorization of a majority of the voters voting on a proposition submitted at a general or special election held after June 30, 2016. The ordinance and the ballot proposition must set forth the total dollar amount to be collected in the first year of the levy and the estimated levy rate for the first year and may provide for a levy for a period of up to seven consecutive years. The total dollar amount to be set forth in the ordinance and the ballot proposition may not exceed an amount equal to: (a) The total taxable retail sales and taxable uses in the county or city levying the property tax for the most recent calendar year as reported by the department; multiplied by (b) one-tenth of one percent. Any county or city levying the property tax in this section must calculate the total dollar amount to be collected using the most recent calendar year publicly available data of taxable retail sales published on the department's web site.

(2) The legislative authority of a county or city may reimpose an additional regular property tax levy imposed under subsection (1) of this section for one or more additional periods of up to seven consecutive years. The legislative authority of the county or city may reimpose the levy by ordinance and must condition the reimposition of the levy upon the specific authorization of a majority of the voters voting on a proposition submitted at any general or special election. The ordinance and the ballot proposition

must set forth the total dollar amount to be collected in the first year and the estimated levy rate for the first year of the reimposed levy. The total dollar amount to be set forth in the ordinance and the ballot proposition may not exceed an amount equal to: (a) The total number of taxable retail sales and taxable uses in the county or the city levying the property tax for the most recent calendar year as reported by the department; multiplied by (b) one-tenth of one percent. Any county or city levying the property tax in this section must calculate the total dollar amount to be collected using the most recent calendar year publicly available data of taxable retail sales published on the department's web site.

(3) In the event a county or city is levying property taxes under this section that, in combination with property taxes levied by other taxing districts, exceed the limitation in RCW 84.52.050 or 84.52.043(2), the county's or city's property tax levy under this section must be reduced or eliminated consistent with RCW 84.52.010.

(4) The limitation in RCW 84.55.010 does not apply to the first levy imposed under subsection (1) of this section or to the first levy reimposed under subsection (2) of this section.

(5) The limitations in RCW 84.52.043(1) do not apply to the tax levy authorized in this section.

(6) Moneys collected under this section may only be used for the purposes set forth in section 1715 of this act.

(7) The definitions in section 1702 of this act apply to this section.

**Sec. 1711.** RCW 84.52.010 and 2011 1st sp.s. c 28 s 2 are each amended to read as follows:

(1) Except as is permitted under RCW 84.55.050, all taxes must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the

assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor must recompute and establish a consolidated levy in the following manner:

(a) The full certified rates of tax levy for state, county, county road district, and city or town purposes must be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy takes precedence over all other levies and may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, 84.52.140, and the protected portion of the levy under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies must be reduced as follows:

(i) The portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 must be reduced until the combined rate no

longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district that is protected under RCW 84.52.125 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, must be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; and

(ix) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 must be reduced until the combined rate no longer exceeds

one percent of the true and fair value of any property or must be eliminated.

(b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(i) First, the certified property tax levy authorized under section 1710 of this act must be reduced on a pro rata basis or eliminated;

(ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 must be reduced on a pro rata basis or eliminated;

((~~(ii) Second~~)) (iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts other than the portion of a levy protected under RCW 84.52.815 must be reduced on a pro rata basis or eliminated;

((~~(iii) Third~~)) (iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, must be reduced on a pro rata basis or eliminated;

((~~(iv) Fourth~~)) (v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, must be reduced on a pro rata basis or eliminated;

((~~(v) Fifth~~)) (vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) must be reduced on a pro rata basis or eliminated; and

((~~(vi) Sixth~~)) (vii) Seventh, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, must be reduced on a pro rata basis or eliminated.

**Sec. 1712.** RCW 84.52.010 and 2015 c 170 s 2 are each amended to read as follows:

(1) Except as is permitted under RCW 84.55.050, all taxes must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor must recompute and establish a consolidated levy in the following manner:

(a) The full certified rates of tax levy for state, county, county road district, and city or town purposes must be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy takes precedence over all other levies and may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, and 84.52.140, and the portion of

the levy by a flood control zone district that was protected under RCW 84.52.--- (section 3, chapter 170, Laws of 2015), the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies must be reduced as follows:

(i) The portion of the levy by a flood control zone district that was protected under RCW 84.52.--- (section 3, chapter 170, Laws of 2015) must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district that is protected under RCW 84.52.125 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, must be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; and

(viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(i) First, the certified property tax levy authorized under section 1710 of this act must be reduced on a pro rata basis or eliminated;

(ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, ((~~and~~)) 67.38.130, and section 1710 of this act must be reduced on a pro rata basis or eliminated;

((~~(ii) Second~~)) (iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts other than the portion of a levy protected under RCW 84.52.--- (section 3, chapter 170, Laws of 2015) must be reduced on a pro rata basis or eliminated;

((~~(iii) Third~~)) (iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, must be reduced on a pro rata basis or eliminated;

((~~(iv) Fourth~~)) (v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, must be reduced on a pro rata basis or eliminated;

((~~(v) Fifth~~)) (vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) must be reduced on a pro rata basis or eliminated; and

((~~(vi) Sixth~~)) (vii) Seventh, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, must be reduced on a pro rata basis or eliminated.

## Subpart E
## PUBLIC BENEFITS AND PUBLIC SCHOOL CULTURAL ACCESS PROGRAM

NEW SECTION. **Sec. 1713.** PUBLIC BENEFITS. (1) A program created under this chapter must provide or continue to provide funding authorized under this chapter only to cultural organizations that provide discernible public benefits. Each program created under this chapter must identify a range of public benefits that cultural organizations may provide or continue to provide in satisfaction of this requirement for eligibility to receive funding authorized under this chapter. The public benefits include, without limitation: Reasonable opportunities for access to facilities, programs, and services on a reduced or no admission fee basis, particularly for diverse and underserved populations and communities; providing, through technological and other means, services or programs in locations other than an organization's own facilities; providing educational programs and experiences both at an organization's own facilities and in schools and other venues; broadening cultural

programs, performances, and exhibitions for the enlightenment and entertainment of the public; supporting collaborative relationships with other cultural organizations in order to extend the reach and impact of the collaborating organizations for the benefit of the public; and, in the case of community-based cultural organizations, organizational capacity-building projects or activities that an organization can demonstrate, to the reasonable satisfaction of the designated entity, will enhance the ability of the organization to provide or continue to provide meaningful public benefits not otherwise achievable.

(2) Each program created under this chapter must adopt guidelines establishing a baseline standard of continuous performance with respect to the provision of public benefits required under this chapter and for evaluating the eligibility of any cultural organization to receive funds under this chapter based on the continuous performance of the organization in the provision of the public benefits. The guidelines must include: (a) Procedures for notifying any organization at risk of losing its eligibility to receive funds under this chapter for failure to achieve the program's baseline standard of performance with respect to the continuous provision of public benefits; and (b) measures or procedures available to the organization for either retaining or recovering eligibility, as appropriate.

NEW SECTION. **Sec. 1714.** PUBLIC SCHOOL CULTURAL ACCESS PROGRAM. (1) A program created under this chapter must develop and provide a public school cultural access program, as provided in section 1715 of this act.

(2) To the extent practicable consistent with available resources, the public school cultural access element of a program of a county described in section 1715(2) of this act must include the following attributes:

(a) Provide benefits designed to increase public school student access to the programming offered and facilities operated by regional and community-based cultural organizations receiving funding under this chapter;

(b) Offer benefits to every public school in the county while scaling the range of benefits available to and the frequency of opportunities to participate by any particular school to coincide with the relative percentage of students attending the school who

participate in the national free or reduced-price school meals program;

(c) Benefits provided under the public school cultural access program must include, without limitation:

(i) Establishing and operating, within funding provided to support the public school cultural access program under this subsection, of a centralized service available to regional and community-based cultural organizations receiving funding under this chapter and public schools in the county to coordinate opportunities for public school student access to the programs and activities offered by the organizations both at the facilities and venues operated by the organizations and through programs and experiences provided by the organizations at schools and elsewhere;

(ii) Providing directly or otherwise funding and arranging for transportation for public school students to attend and participate in the programs and activities offered by such organizations;

(iii) In consultation with cultural organizations located within the county, preparing and maintaining a readily accessible and current guide cataloging access opportunities and facilitating scheduling;

(iv) Coordinating closely with cultural organizations to maximize student utilization of available opportunities in a cost-efficient manner including possible scheduling on a single day opportunities for different grade levels at any one school and participation in multiple programs or activities in the same general area for which program-funded transportation is provided;

(v) Supporting the development of tools, materials, and media by cultural organizations to ensure that school access programs and activities correlate with school curricula and extend the reach of access programs and activities for classroom use with or without direct on-site participation, to the extent practicable;

(vi) Building meaningful partnerships with public schools and cultural organizations in order to maximize participation in school access programs and activities and ensure their relevance and effectiveness;

(d) When a program determines that its program element required under (c)(i) through (vi) of this subsection has achieved sufficient scale and participation among public schools located within its boundaries and that it has resources remaining to devote to additional public school cultural access programs without diminishing

such participation, the county may develop and financially support other public school cultural access activities in conjunction with cultural organizations receiving funds under this chapter; public school districts; and other public or nonprofit organizations that support cultural access. Any funding for development and support of such activities provided to cultural organizations receiving funds under this subsection must only be used to supplement the public benefits provided by such organizations as required under this chapter and may not be used by such organizations to replace or diminish funding for such required public benefits;

(e) Preparation of an annual public school cultural access plan for review and adoption prior to implementation; and

(f) Compilation of an annual report documenting the reach and evaluating the effectiveness of program-funded public school cultural access efforts, including recommendations to the county for improvements.

## Subpart F
## USE OF FUNDS

NEW SECTION. **Sec. 1715.** ALLOCATION. (1) A program in a county with a population of less than one million five hundred thousand must allocate the proceeds of taxes authorized under sections 1709 and 1710 of this act as follows:

(a) If any start-up funding has been provided to the program under section 1704 of this act with the expectation that the funding will be repaid, the program must annually reserve from total funds available funding sufficient to provide for repayment of such start-up funding until any such start-up funding has been fully repaid;

(b) The funding determined by the county forming such a program to be reserved for program costs, including direct administrative costs, and repaying any start-up funding provided under section 1705 of this act. Information disclosing the amount of funding to be reserved for program administrative costs must be included in any proposition submitted to voters under section 1709 or 1710 of this act;

(c) The county must determine the percentage of total funds available annually to be reserved for a public school cultural access program established and managed by the county to increase access to cultural activities and programming for public school students

resident in the county. The activities and programming need not be located or provided within the county. In developing its program, the county may consider the attributes prescribed for a public school cultural access program required to be undertaken under section 1714(2) of this act and may also consider providing funding for music and arts education in public schools that is in addition to that provided for in the program of basic education funding;

(d) Remaining funds available annually, including all funds not initially reserved under (a), (b), and (c) of this subsection as well as funds not distributed by the county from the reserved funds must be distributed by the county to the entity designated by the legislative authority of the county creating the program. The county must determine:

(i) Guidelines, consistent with the requirements of this chapter, it deems necessary or appropriate for determining the eligibility of cultural organizations to receive funding under this chapter;

(ii) Criteria for the award of funds to eligible cultural organizations, including the public benefits to be derived from projects submitted for funding;

(iii) The amount of funding to be allocated to support designated entity administrative costs;

(iv) Criteria for the identification by the county or, if so directed by the county, by the designated entity of any cultural organization or organizations that would receive annual distributions of funds in such amounts determined by the county or, if so directed by the county, the designated entity; and

(v) Procedures to be used by the designated entity in awarding funding to other cultural organizations that may, but are not required to include a periodic competitive process for awarding funds for particular purposes or projects proposed by eligible cultural organizations;

(e) In evaluating requests for funding authorized under this chapter, the designated entity responsible for the distribution of the funds must consider the public benefits that any cultural organizations represented will be derived from proposed projects. At the conclusion of a project approved for funding, such organization is required to report to the designated entity on the public benefits realized;

(f) Funds distributed to cultural organizations may be used to support cultural and educational activities, programs, and

initiatives; public benefits and communications; and basic operations. Funds may also be used for: (i) Capital expenditures or acquisitions including, but not limited to, the acquisition of or construction of improvements to real property; and (ii) technology, equipment, and supplies reasonably related to or necessary for a project otherwise eligible for funding under this chapter. Program guidelines may also determine the circumstances under which funds may be used to fund start-up expenses of new community-based cultural organizations;

(g) If the county or designated entity determine the eligibility of a cultural organization to receive funding or the relative magnitude of the funding it receives on the basis of its budget, revenues, or expenses, any determination with respect to a qualifying state-related cultural organization must exclude any state funding received by the organization or for the institution it supports.

(2) A county with a population of more than one million five hundred thousand must allocate the proceeds of the taxes authorized under sections 1709 and 1710 of this act as follows:

(a) If any start-up funding has been provided to the program under section 1704 of this act with the expectation that the funding will be repaid, the program must annually reserve from total funds available annually funding sufficient to provide for repayment of such start-up funding until any such start-up funding has been fully repaid;

(b) After allocating any funds as required in (a) of this subsection, up to one and one-fourth percent of total funds available annually may be used for program administrative costs;

(c) After allocating funds as required in (a) and (b) of this subsection, ten percent of remaining funds available annually must be used to fund a public school cultural access program to be administered by the program;

(d) Seventy-five percent of total remaining funds available annually excluding funds initially reserved under (a), (b), and (c) of this subsection must be reserved for distribution by the program to regional cultural organizations that are cultural organizations that own, operate, or support cultural facilities or provide performances, exhibits, educational programs, experiences, or entertainment that widely benefit and are broadly attended by the public, subject to further definition under guidelines adopted by the program. A regional cultural organization may also generally be

characterized under program guidelines as a financially stable, substantial organization with full-time support and program staff, maintaining a broad-based membership, having year-round or enduring seasonal operations, being a substantial financial contributor to the development, operation, and maintenance of the organization's principal venue or venues, and providing substantial public benefits. The funding must be provided only to those regional cultural organizations that the program determines, on an annual basis, to have met the following guidelines:

(i) For at least the preceding three years, the organization has been continuously in good standing as a nonprofit corporation under the laws of the state of Washington;

(ii) The organization has its principal location or locations and conducts the majority of its activities within the county area primarily for the benefit of county residents;

(iii) The organization has not declared bankruptcy or suspended or substantially curtailed operations for a period longer than six months during the preceding two years;

(iv) The organization provided to the program audited annual financial statements for at least its two most recent fiscal years;

(v) Over the three preceding years, the organization has minimum average annual revenues of at least one million two hundred fifty thousand dollars. The program must annually and cumulatively adjust the minimum revenues by the annual percentage change in the consumer price index for the prior year for the Seattle-Tacoma-Bellevue, Washington metropolitan statistical area for all urban consumer, all goods, as published by the United States department of labor, bureau of labor statistics. The minimum revenues requirement, adjusted for inflation as provided in this section, remains effective through the date on which the initial tax authorized by the voters under section 1709 or 1710 of this act expires. Thereafter, the program must, at the beginning of each subsequent period of funding as approved by the voters, establish initial minimum average annual revenues of not less than the amount of the minimum revenues required during the final year of the immediately preceding period of funding;

(vi) For purposes of determining the eligibility of a regional organization to receive funding or the relative magnitude of the funding it receives on the basis of its revenues, any determination with respect to a qualifying state-related cultural organization must

exclude any state funding received by the organization or for the institution it supports; and

(vii) Any additional guidelines, consistent with section 1702 of this act and this section, as the program deems necessary or appropriate for determining the eligibility of prospective regional cultural organizations to receive funding under this section and for establishing the amount of funding any organization may receive;

(e) Funds available under (d) of this subsection must be distributed among eligible regional cultural organizations based on an annual ranking of eligible organizations by the combined size of their average annual revenues and their average annual attendance, both over the three preceding years. However, an organization's attendance must have twice the weight of the organization's revenues in determining its relative ranking. Available funds must be distributed proportionally among eligible organizations, consistent with the ranking, such that the organization with the largest combined revenues and weighted attendance would receive the most funding and the organization with the smallest combined revenues and weighted attendance would receive the least funding. However, no organization may receive funds in excess of fifteen percent of its average annual revenues over the three preceding years. Any funds available under (d) of this subsection not distributed to regional cultural organizations as a result of application of the formula provided under this subsection (2)(e) must be allocated by the program for distribution under (g) of this subsection;

(f) Funds distributed to regional cultural organizations under (d) of this subsection must be used to support cultural and educational activities, programs and initiatives, public benefits and communications, and basic operations. No funds distributed to regional cultural organizations under (d) of this subsection may be used for capital expenditures or acquisitions including, but not limited to, the acquisition of or the construction of improvements to real property;

(g) In addition to providing or continuing to provide public benefits identified by the program under this section, regional cultural organizations receiving funding under this subsection (2) must participate in good faith in the program's public school cultural access program required under section 1714 of this act. The regional cultural organizations must provide or continue to provide public benefits under this section in addition to participating in

the public school cultural access program. Each regional cultural organization receiving funds authorized under this chapter pursuant to a program allocation formula must annually, prior to year end, preview for the program public benefits the organization's plans to provide or continue to provide in the following year and report on public benefits it provided or continued to provide during the current year;

(h) Remaining funds available annually, including funds not initially reserved under (a) through (d) of this subsection as well as funds not distributed by the program from the reserved funds must be distributed by the program to the public agency designated by the legislative authority of the county creating such a program;

(i) Funds distributed by the designated public agencies under (h) of this subsection must be applied as follows:

(i) Not more than eight percent of such funds must be used for administrative costs of the public agency designated by a county creating the program; and

(ii) The balance must be used to fund community-based cultural organizations that are cultural organizations or a community preservation and development authority formed under chapter 43.167 RCW prior to January 1, 2011, that primarily function, focus their activities, and are supported or patronized within a local community and are not a regional cultural organization, subject to further definition under guidelines adopted by the designated public agency. Designated public agencies must adopt:

(A) Guidelines, consistent with the requirements of this chapter, it deems necessary or appropriate for determining the eligibility of community-based cultural organizations to receive funding under this chapter and for establishing the amount of funding any organization may receive;

(B) Criteria for the award of funds to eligible community-based cultural organizations, including the public benefits to be derived from projects submitted for funding; and

(C) Procedures for conducting, at least annually, a competitive process for the award of available funding;

(j) Funds distributed to community-based cultural organizations may be used to support cultural and educational activities, programs, and initiatives; public benefits and communications; and basic operations. Funds may also be used for: (i) Capital expenditures or acquisitions including, but not limited to, the acquisition of or

construction of improvements to real property; and (ii) technology, equipment, and supplies reasonably related to or necessary for a project otherwise eligible for funding under this chapter. Program guidelines may also determine the circumstances under which funds may be used to fund start-up expenses of new community-based cultural organizations.

## Subpart G
## MISCELLANEOUS

NEW SECTION. **Sec. 1716.** No direct or collateral attack on any program purported to be authorized or created in conformance with chapter 36.-- RCW (the new chapter created in section 1717 of this act) may be commenced more than thirty days after creation.

NEW SECTION. **Sec. 1717.** Sections 1701 through 1708 and 1713 through 1715 of this act constitute a new chapter in Title 36 RCW.

NEW SECTION. **Sec. 1718.** If any provision of this Part XVII or its application to any person or circumstance is held invalid, the remainder of the part or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1719.** The provisions of this Part XVII must be liberally construed to effectuate the policies and purposes of this Part XVII.

## PART XVIII
## Providing Reasonable Tools for the Effective Administration of the Public Utility District Privilege Tax

NEW SECTION. **Sec. 1801.** A new section is added to chapter 54.28 RCW to read as follows:

The following provisions of chapter 82.32 RCW apply with respect to the taxes imposed under this chapter and collected by the department of revenue, unless the context clearly requires otherwise: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, 82.32.105, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.240, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, and any other provision of chapter 82.32 RCW specifically referenced in the statutes listed

in this section. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

**Sec. 1802.** RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended to read as follows:

(1) On or before the fifteenth day of March of each year, each district subject to this tax ((~~shall~~)) must file with the department of revenue a report verified by the affidavit of its manager or secretary on forms prescribed by the department of revenue. Such report ((~~shall~~)) must state ((~~(1)~~)) (a) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; ((~~(2)~~)) (b) the gross revenues derived by the district from the sale of self-generated energy for resale; ((~~(3)~~)) (c) the amount of all generated energy distributed from each of the facilities subject to taxation by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; ((~~(4)~~)) (d) the total cost of all generating facilities and the cost of acquisition of land and land rights for such facilities or for reservoir purposes in each county; and ((~~(5)~~)) (e) such other and further information as the department of revenue reasonably may require in order to administer the provisions of this chapter.

(2) In case of failure by a district to file such report, the department may proceed to determine the information, which determination ((~~shall be~~)) is contestable by the district ((~~only for actual fraud~~)) as provided under RCW 82.32.100(2).

(3)(a) Beginning January 1, 2016, reports due under this section must be filed electronically in a form or manner provided or authorized by the department. However, the department, upon request or its own initiative, may relieve any district from the electronic filing requirement under this subsection for good cause as determined by the department.

(b) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the district from electronically filing the report due under this section; or

(ii) The department determines that relief from the electronic filing requirement under this subsection supports the efficient or effective administration of this chapter.

**Sec. 1803.** RCW 54.28.040 and 1996 c 149 s 16 are each amended to read as follows:

(1)(a) Before May 1st, the department of revenue ((~~shall~~)) must compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which ((~~shall be~~)) is payable on or before the following June 1st.

(b) Beginning January 1, 2016, districts must remit payments due under this section by electronic funds transfer or other form of electronic payment acceptable to the department. However, the department, upon request or its own initiative, may relieve any district from the electronic payment requirement under this subsection for good cause as determined by the department.

(c) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the district from remitting payments due under this section electronically; or

(ii) The department determines that relief from the electronic payment requirement under this subsection supports the efficient or effective administration of this chapter.

(2)(a) If payment of any tax is not received by the department on or before the due date, ((~~there shall be assessed~~)) a penalty of five percent of the amount of the tax is assessed; if the tax is not received within one month of the due date, ((~~there shall be assessed~~)) a total penalty of ten percent of the amount of the tax is assessed; and if the tax is not received within two months of the due date, ((~~there shall be assessed~~)) a total penalty of twenty percent of the amount of the tax is assessed.

(b) If a district fails to file any report electronically or fails to pay electronically any taxes due under a report, the department must assess a penalty equal to five percent of the amount of the tax payable under the report, unless the department has granted a waiver of the electronic filing and payment requirements. Total penalties assessed under this subsection (2)(b) may not exceed five percent of the tax payable under the report and are in addition to any applicable penalties assessed under (a) of this subsection (2).

(3) Upon receipt of the amount of each tax imposed the department of revenue ((~~shall~~)) must deposit the same with the state treasurer, who ((~~shall~~)) must deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received

under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and ((~~shall~~)) must distribute the remainder in the manner hereinafter set forth. The state treasurer ((~~shall~~)) must send a duplicate copy of each transmittal to the department of revenue.

**Sec. 1804.** RCW 54.28.050 and 1982 1st ex.s. c 35 s 21 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after computing the tax imposed by RCW 54.28.020(1), the department of revenue ((~~shall~~)) must instruct the state treasurer, after placing thirty-seven and six-tenths percent in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW 54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1) (b) and (c) as follows((~~:~~)).

(a) If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located.

(b) If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission.

(c) If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance ((~~shall~~)) must be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if ((~~said~~)) the powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance ((~~shall~~)) must be distributed to the county in which the facilities are located.

(2) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county's proportionate share of amounts previously

distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(3) The provisions of this section ((~~shall~~)) do not apply to the distribution of taxes collected under RCW 54.28.025.

**Sec. 1805.** RCW 54.28.055 and 1986 c 189 s 1 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, after computing the tax imposed by RCW 54.28.025(1), the department of revenue ((~~shall~~)) must instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district, and library district ((~~shall~~)) must receive a percentage of the amount for distribution to counties, cities, fire protection districts, and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries ((~~as defined in RCW 27.12.010(4)~~)), rural county library districts ((~~as defined in RCW 27.12.010(5)~~)), intercounty rural library districts ((~~as defined in RCW 27.12.010(6)~~)), and island library districts as those terms are defined in RCW 27.12.010((~~(7)~~)). The population of a library district, for purposes of such a distribution, ((~~shall~~)) may not include any population within the library district and the impact area that also is located within a city or town.

(3) Distributions under this section must be adjusted as follows:

(a) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share ((~~shall~~)) must be prorated among the state and remaining local districts.

(b) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county's, city's, fire protection district's, and library district's proportionate share of amounts previously

distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(4) All distributions directed by this section to be made on the basis of population ((~~shall~~)) must be calculated in accordance with data to be provided by the office of financial management.

**Sec. 1806.** RCW 82.32.050 and 2008 c 181 s 501 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department ((~~shall~~)) must assess against the taxpayer such additional amount found to be due and ((~~shall~~)) must add thereto interest on the tax only. The department ((~~shall~~)) must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount ((~~shall~~)) becomes due and ((~~shall~~)) must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest ((~~shall be~~)) is computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest ((~~shall be~~)) is variable and computed as provided in subsection (2) of this section. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest ((~~shall be~~)) is variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, ((~~shall~~)) must be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest ((~~shall~~)) must be computed until the date of payment. The rate of interest ((~~shall be~~)) is variable and computed as provided in subsection (2) of this

section. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer ((~~shall be~~)) is an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year ((~~shall~~)) must be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average ((~~shall~~)) must be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver ((~~shall~~)) also extends the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date, including reports required under RCW 54.28.030.

**Sec. 1807.** RCW 82.32.060 and 2009 c 176 s 4 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax,

penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992.

This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the

refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

**Sec. 1808.** RCW 82.32.100 and 2007 c 111 s 107 are each amended to read as follows:

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department ((~~shall~~)) will proceed, in ((~~such~~)) the manner ((~~as~~)) it ((~~may~~)) deems best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it ((~~shall~~)) must proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action ((~~shall~~)) may not deprive ((~~such~~)) the person from appealing the assessment as provided in this chapter. The department ((~~shall~~)) must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the total amount of such tax, penalties, and interest, and the total amount ((~~shall~~)) becomes due and ((~~shall~~)) must be paid within thirty days from the date of such notice.

(3) No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver ((~~shall~~)) also extends the period for making a refund or credit as provided in RCW 82.32.060(2).

**Sec. 1809.** RCW 82.32.105 and 1998 c 304 s 13 are each amended to read as follows:

(1) If the department ((~~of revenue~~)) finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department ((~~of revenue shall~~)) must waive or cancel any penalties imposed under this

chapter, or under the chapter in which the tax is imposed, with respect to such tax.

(2) The department ((~~shall~~)) must waive or cancel the penalty imposed under RCW 82.32.090(1) or 54.28.040(2)(a) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086, or for the report due under chapter 54.28 RCW; and

(b)(i) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(ii) For purposes of the state taxes imposed under chapter 54.28 RCW, a taxpayer will be deemed to have met the requirements for a penalty waiver in this subsection (2)(b) if:

(A) By the due dates, the taxpayer has filed the reports required under RCW 54.28.030 and paid the full amount of taxes as computed by the department for the two tax years immediately preceding the tax year for which a penalty waiver is requested; and

(B) The taxpayer has complied with the electronic filing and payment requirements in RCW 54.28.040 for the tax year for which a penalty waiver is requested and the two tax years immediately preceding that tax year, absent a waiver granted by the department.

(3) The department ((~~shall~~)) must waive or cancel interest imposed under this chapter, or under the chapter in which the tax is imposed, if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department ((~~of revenue shall~~)) must adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

**Sec. 1810.** RCW 82.32.160 and 2007 c 111 s 110 are each amended to read as follows:

(1) Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, or notice of state taxes due under chapter 54.28 RCW, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment. The petition ((~~shall~~)) must set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department ((~~shall~~)) must promptly consider the petition and may grant or deny it. If denied, the petitioner ((~~shall~~)) must be notified by mail, or electronically as provided in RCW 82.32.135((~~, thereof forthwith~~)). If a conference is granted, the department ((~~shall~~)) must fix the time and place therefor and notify the petitioner thereof by mail or electronically as provided in RCW 82.32.135. After the conference the department may make such determination as may appear to it to be just and lawful and ((~~shall~~)) must mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. If no such petition is filed within the thirty-day period the assessment covered by the notice ((~~shall~~)) becomes final.

(2) The procedures provided ((~~for herein shall~~)) in this section apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmental rules and regulations as may be necessary to accommodate a claim for exemption or credit.

**Sec. 1811.** RCW 82.32.350 and 1971 ex.s. c 299 s 23 are each amended to read as follows:

The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title, or any tax in respect to which this section is specifically made applicable, for any taxable period or periods.

## PART XIX

## Concerning a Hazardous Substance Tax Exemption for Certain Hazardous Substances that Are Used as Agricultural Crop Protection Products and

**Warehoused but not Otherwise Used, Manufactured, Packaged, or Sold in this State**

NEW SECTION. **Sec. 1901.** A new section is added to chapter 82.21 RCW to read as follows:

(1) The legislature categorizes the tax preference in section 1902 of this act as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b).

(2) The legislature's specific public policy objective is to clarify an existing exemption from the hazardous substance tax for agricultural crop protection products to incentivize storing products in Washington state as they are engaged in interstate commerce. The legislature finds that the agricultural industry is a vital component of Washington's economy, providing thousands of jobs throughout the state. The legislature further finds that Washington state is the ideal location for distribution centers for agricultural crop protection products because Washington is an efficient transportation hub for Pacific Northwest farmers, and encourages crop protection products to be managed in the most protective facilities, and transported using the most sound environmental means. However, products being warehoused in the state are diminishing because agricultural crop protection products are being redirected to out-of-state distribution centers as a direct result of Washington's tax burden. Relocation of this economic activity is detrimental to Washington's economy through the direct loss of jobs and hazardous substance tax revenue, thereby negatively impacting the supply chain for Washington farmers, thereby causing increased transportation usage and risk of spillage, thereby failing to encourage the most environmentally protective measures. Therefore, it is the intent of the legislature to encourage the regional competitiveness of agricultural distribution by clarifying an exemption from the hazardous substance tax for agricultural crop protection products that are manufactured out-of-state, warehoused or transported into the state, but ultimately shipped and sold out of Washington state.

(3) If a review finds an average increase in revenue of the hazardous substance tax, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and

review committee may refer to data available from the department of revenue.

**Sec. 1902.** RCW 82.21.040 and 1989 c 2 s 11 are each amended to read as follows:

The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5)<u>(a) Any possession of a hazardous substance as defined in RCW 82.21.020(1)(c) that is solely for use by a farmer or certified applicator as an agricultural crop protection product and warehoused in this state or transported to or from this state, provided that the person possessing the substance does not otherwise use, manufacture, package for sale, or sell the substance in this state.</u>

<u>(b) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.</u>

<u>(i) "Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 as amended as of the effective date of this section, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.</u>

<u>(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.</u>

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(6) Persons or activities which the state is prohibited from taxing under the United States Constitution.

((~~(6) Any persons possessing a hazardous substance where such possession first occurred before March 1, 1989.~~))

## PART XX

## Concerning the Taxation of Certain Rented Property Owned by Nonprofit Fair Associations

NEW SECTION. **Sec. 2001.** (1) This section is the tax preference performance statement for the tax preference contained in section 2002 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as intended to accomplish a general purpose not identified in RCW 82.32.808(2)(a) through (e).

(3) It is the legislature's specific public policy objective to support nonprofit fairs that obtained a majority of their property from a city or county between 1995 and 1998. The legislature intends to make their property tax exemption permanent, while requiring the collection of leasehold excise tax on any rentals of their exempt property that exceed fifty consecutive days. Because the legislature intends for the changes in this Part XX to be permanent, they are exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

**Sec. 2002.** RCW 84.36.480 and 2013 c 212 s 2 are each amended to read as follows:

(1) Except as provided otherwise in subsections (2) and (3) of this section, the real and personal property of a nonprofit fair

association that sponsors or conducts a fair or fairs that is eligible to receive support from the fair fund, as created in RCW 15.76.115 and allocated by the director of the department of agriculture, is exempt from taxation. To be exempt under this subsection (1), the property must be used exclusively for fair purposes, except as provided in RCW 84.36.805. However, the loan or rental of property otherwise exempt under this section to a private concessionaire or to any person for use as a concession in conjunction with activities permitted under this section ((~~shall~~)) do not nullify the exemption if the concession charges are subject to agreement and the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property.

(2)(a) Except as provided otherwise in this subsection and subsection (3) of this section, the real and personal property owned by a nonprofit fair association organized under chapter 24.06 RCW and used for fair purposes is exempt from taxation if the majority of such property, as determined by assessed value, was purchased or acquired by the same nonprofit fair association from a county or a city between 1995 and 1998.

(b) ((~~The exemption under this subsection (2) may not be claimed for taxes levied for collection in 2019 and thereafter.~~)) The use of exempt property for rental purposes does not negate the exemption under this subsection. However, any rental exceeding fifty consecutive days during any calendar year is subject to leasehold excise tax under chapter 82.29A RCW. For purposes of this subsection, "rental" means a lease, permit, license, or any other agreement granting possession and use, to a degree less than fee simple ownership, between the nonprofit fair association and a person who would not be exempt from property taxes if that person owned the property in fee.

(3) A nonprofit fair association with real and personal property having an assessed value of more than fifteen million dollars is not eligible for the exemptions under this section.

**Sec. 2003.** RCW 82.29A.020 and 2014 c 207 s 3 and 2014 c 140 s 26 are each reenacted and amended to read as follows:

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

(1)(a) "Leasehold interest" means an interest in publicly owned, or specified privately owned, real or personal property which exists

by virtue of any lease, permit, license, or any other agreement, written or verbal, between the ((~~public~~)) owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. However, no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government may constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" includes the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites.

(b) The term "leasehold interest" does not include:

(i) Road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from ((~~a public~~)) an owner or the lessee of ((~~a public~~)) an owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration; or

(ii) The preferential use of publicly owned cargo cranes and docks and associated areas used in the loading and discharging of cargo located at a port district marine facility. "Preferential use" means that publicly owned real or personal property is used by a private party under a written agreement with the public owner, but the public owner or any third party maintains a right to use the property when not being used by the private party.

((~~(c) "Publicly owned real or personal property" includes real or personal property owned by a federally recognized Indian tribe in the state and exempt from tax under RCW 84.36.010.~~))

(2)(a) "Taxable rent" means contract rent as defined in (c) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. With respect to a leasehold interest in privately owned property, "taxable rent"

means contract rent. However, after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in (g) of this subsection. All other leasehold interests are subject to the determination of taxable rent under the terms of (g) of this subsection.

(b) For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent includes only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and does not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(c) "Contract rent" means the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest is part of contract rent.

(d) "Contract rent" does not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or

agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements are taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

(e) Any prepaid contract rent is considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent must be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, must be prorated from the date of prepayment.

(f) With respect to a "product lease", the value is that value determined at the time of sale under terms of the lease.

(g) If it is determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration must be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration must be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter means a lease of property for use in the production of agricultural or marine

products, not including the production of marijuana as defined in RCW 69.50.101, to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" means a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

(7) "Publicly owned, or specified privately owned, real or personal property" includes real or personal property:

(a) Owned in fee or held in trust by a public entity and exempt from property tax under the laws or Constitution of this state or the Constitution of the United States;

(b) Owned by a federally recognized Indian tribe in the state and exempt from property tax under RCW 84.36.010;

(c) Owned by a nonprofit fair association exempt from property tax under RCW 84.36.480(2), but only with respect to that portion of the fair's property subject to the tax imposed in this chapter pursuant to RCW 84.36.480(2)(b); or

(d) Owned by a community center exempt from property tax under RCW 84.36.010.

**Sec. 2004.** RCW 82.29A.020 and 2014 c 140 s 26 are each amended to read as follows:

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

(1)(a) "Leasehold interest" means an interest in publicly owned, or specified privately owned, real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the ((~~public~~)) owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. However, no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government may constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" includes the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites.

(b) The term "leasehold interest" does not include:

(i) Road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from ((~~a public~~)) an owner or the lessee of ((~~a public~~)) an owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration((~~. "Leasehold interest" does not include~~)); or

(ii) The preferential use of publicly owned cargo cranes and docks and associated areas used in the loading and discharging of cargo located at a port district marine facility. "Preferential use" means that publicly owned real or personal property is used by a private party under a written agreement with the public owner, but the public owner or any third party maintains a right to use the property when not being used by the private party.

(2)(a) "Taxable rent" means contract rent as defined in (c) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. With respect to a leasehold interest in privately owned property, "taxable rent"

means contract rent. However, after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in (g) of this subsection. All other leasehold interests are subject to the determination of taxable rent under the terms of (g) of this subsection.

(b) For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent includes only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and does not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(c) "Contract rent" means the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest is part of contract rent.

(d) "Contract rent" does not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or

agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements are taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

(e) Any prepaid contract rent is considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent must be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, must be prorated from the date of prepayment.

(f) With respect to a "product lease", the value is that value determined at the time of sale under terms of the lease.

(g) If it is determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration must be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration must be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter means a lease of property for use in the production of agricultural or marine

products, not including the production of marijuana as defined in RCW 69.50.101, to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" means a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

(7) "Publicly owned, or specified privately owned, real or personal property" includes real or personal property:

(a) Owned in fee or held in trust by a public entity and exempt from property tax under the laws or Constitution of this state or the Constitution of the United States;

(b) Owned by a federally recognized Indian tribe in the state and exempt from property tax under RCW 84.36.010;

(c) Owned by a nonprofit fair association exempt from property tax under RCW 84.36.480(2), but only with respect to that portion of the fair's property subject to the tax imposed in this chapter pursuant to RCW 84.36.480(2)(b); or

(d) Owned by a community center exempt from property tax under RCW 84.36.010.

**Sec. 2005.** RCW 82.29A.030 and 2010 c 281 s 3 are each amended to read as follows:

(1)((~~(a)~~)) There is levied and collected a leasehold excise tax on the act or privilege of occupying or using publicly owned, or specified privately owned, real or personal property ((~~or real or~~

~~personal property of a community center~~)) through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent. However, after the computation of the tax a credit is allowed for any tax collected pursuant to RCW 82.29A.040.

((~~(b) For the purposes of this subsection, "community center" has the same meaning as provided in RCW 84.36.010.~~))

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

**Sec. 2006.** RCW 82.29A.040 and 1975-'76 2nd ex.s. c 61 s 4 are each amended to read as follows:

(1) The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned, or specified privately owned, real or personal property through a leasehold interest in publicly owned property within the territorial limits of such county or city. The tax levied by a county under authority of this section shall not exceed six percent and the tax levied by a city shall not exceed four percent of taxable rent((~~: PROVIDED, That~~)). However, any county ordinance levying such tax shall contain a provision allowing a credit against the county tax for the full amount of any city tax imposed upon the same taxable event.

(2) The department of revenue shall perform the collection of such taxes on behalf of such county or city.

NEW SECTION. **Sec. 2007.** Sections 2003, 2005, and 2006 of this act apply with respect to taxable rent, as defined in RCW 82.29A.020, payable on or after the effective date of this section.

NEW SECTION. **Sec. 2008.** Section 2002 of this act applies to taxes levied for collection in 2019 and thereafter.

## PART XXI
## Improving the Administration of Unclaimed Property Laws

**Sec. 2101.** RCW 63.29.020 and 2011 c 116 s 1 are each amended to read as follows:

(1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less

any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unpresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate ((~~subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to~~)) lawfully issued under chapter 19.240 RCW, except lawfully issued gift certificates presumed abandoned under RCW 63.29.110. Nothing in this section limits the application of chapter 19.240 RCW.

(7) Except as provided in RCW 63.29.350, this chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens.

(8)(a) This chapter does not apply to a premium paid by an agricultural fair by check.

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

(i) "Agricultural fair" means a fair or exhibition that is intended to promote agriculture by including a balanced variety of exhibits of livestock and agricultural products, as well as related manufactured products and arts, including: Products of the farm home and educational contests, displays, and demonstrations designed to

train youth and to promote the welfare of farmers and rural living; and

(ii) "Premium" means an amount paid for exhibits and educational contests, displays, and demonstrations of an educational nature. A "premium" does not include judges' fees and expenses; livestock sale revenues; or prizes or amounts paid for promotion or entertainment activities such as queen contests, parades, dances, rodeos, and races.

**Sec. 2102.** RCW 63.29.140 and 2004 c 168 s 15 are each amended to read as follows:

(1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) A gift certificate that is lawfully issued under chapter 19.240 RCW and that is presumed abandoned under this section may, but need not be, included in the report as provided under RCW 63.29.170(4). ((~~If a gift certificate that is presumed abandoned under this section is not timely reported as provided under RCW 63.29.170(4), RCW 19.240.005 through 19.240.110 apply to the gift certificate.~~))

**Sec. 2103.** RCW 63.29.170 and 2004 c 168 s 16 are each amended to read as follows:

(1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter ((~~shall~~)) must report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include, except as provided in RCW 63.29.140(3), all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5)<u>(a) Beginning July 1, 2016, reports due under this section must be filed electronically in a form or manner provided or authorized by the department. However, the department, upon request or its own initiative, may relieve any holder or class of holders from the electronic filing requirement under this subsection for good cause as determined by the department.</u>

<u>(b) For purposes of this subsection, "good cause" means:</u>

(i) A circumstance or condition exists that, in the department's judgment, prevents the holder from electronically filing the report due under this section; or

(ii) The department determines that relief from the electronic filing requirement under this subsection supports the efficient or effective administration of this chapter.

(6) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter ((~~shall~~)) must send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars.

**Sec. 2104.** RCW 63.29.180 and 2005 c 367 s 2 are each amended to read as follows:

(1) The department ((~~shall~~)) must cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in the printed or online version of a newspaper of general circulation within this state, which the department determines is most likely to give notice to the apparent owner of the property.

(2) The published notice must be entitled "Notice to Owners of Unclaimed Property" and contain a summary explanation of how owners may obtain information about unclaimed property reported to the department.

(3) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department ((~~shall~~)) must mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address. The department is not required to mail notice under this subsection if the address listed in the report appears to the department to be insufficient for the purpose of the delivery of mail.

(4) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name of the person reporting the property and the type of property described in the report.

(5) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040.

**Sec. 2105.** RCW 63.29.190 and 2005 c 502 s 4, 2005 c 367 s 3, and 2005 c 285 s 2 are each reenacted and amended to read as follows:

(1)(a) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170 ((~~shall~~)) must pay or deliver to the department all abandoned property required to be reported at the time of filing the report. Beginning July 1, 2016, holders who are required to file a report electronically under this chapter must remit payments under this section by electronic funds transfer or other form of electronic payment acceptable to the department. However, the department, upon request or its own initiative, may relieve any holder or class of holders from the electronic payment requirement under this subsection for good cause as determined by the department.

(b) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the holder from remitting payments due under this section electronically; or

(ii) The department determines that relief from the electronic payment requirement under this subsection supports the efficient or effective administration of this chapter.

(2)(a) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or other municipal or quasi-municipal corporations ((~~shall~~)) must provide to the department a report of property it is holding pursuant to this section. The report ((~~shall~~)) must identify the property and owner in the manner provided

in RCW 63.29.170 and the department ((~~shall~~)) must publish the information as provided in RCW 63.29.180.

(b)(i) A public transportation authority that holds funds representing value on abandoned fare cards may retain the funds until the owner notifies the authority and establishes ownership as provided in RCW 63.29.135.

(ii) For the purposes of this subsection (2)(b), "public transportation authority" means a municipality, as defined in RCW 35.58.272, a regional transit authority authorized by chapter 81.112 RCW, a public mass transportation system authorized by chapter 47.60 RCW, or a city transportation authority authorized by chapter 35.95A RCW.

(3)(a) The contents of a safe deposit box or other safekeeping repository presumed abandoned under RCW 63.29.160 and reported under RCW 63.29.170 ((~~shall~~)) must be paid or delivered to the department within six months after the final date for filing the report required by RCW 63.29.170.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder ((~~shall~~)) must file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(4) The holder of an interest under RCW 63.29.100 ((~~shall~~)) must deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate.

**Sec. 2106.** RCW 63.29.290 and 1983 c 179 s 29 are each amended to read as follows:

(1) The expiration, after September 1, 1979, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) Except as otherwise provided in this section, no action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than six years after the duty arose.

(3) No action or proceeding may be commenced by the department with respect to any assessment under this chapter more than three years after the later of (a) the due date for payment of the assessment including any extension granted by the department or (b) thirty days after the final decision on any petition for review under section 2110 of this act.

**Sec. 2107.** RCW 63.29.300 and 1983 c 179 s 30 are each amended to read as follows:

(1) The department may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. Nothing in this chapter requires reporting of property which is not subject to payment or delivery.

(2) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The department may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter.

(3) If a person is treated under RCW 63.29.120 as the holder of the property only insofar as the interest of the business association in the property is concerned, the department, pursuant to subsection (2) of this section, may examine the records of the person if the department has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) Material obtained by any person during any examination authorized under this chapter, or whether the holder was, is being, or will be examined or subject to an examination, is confidential information and may not be disclosed to any person except as provided in RCW 63.29.380.

(5) If an examination of the records of a person results in the disclosure of property reportable and payable or deliverable under this chapter, the department must assess against the person the amount that should have been reported and paid as determined or approved by the department. An assessment must also include a demand to deliver any property that should have been reported and delivered to the department under this chapter. The assessment must include interest and penalties as provided in RCW 63.29.340. The department may assess the cost of the examination against the holder at the rate of one hundred forty dollars a day for each examiner, but in no case may the charges exceed the lesser of three thousand dollars or the value of the property found to be reportable and payable or deliverable. No assessment ((~~shall~~)) for costs may be imposed ((~~where~~)) when the person proves that failure to report and deliver property was inadvertent. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the business association.

((~~(5)~~)) (6) If a holder fails after June 30, 1983, to maintain the records required by RCW 63.29.310 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the department may ((~~require the holder to report and pay~~)) assess such amounts as may reasonably be estimated from any available records.

(7)(a) Except as provided in (b) of this subsection, all amounts and property identified in any assessment issued by the department under this section must be paid or delivered to the department within thirty days of issuance.

(b) If a timely petition for review of an assessment is filed with the department as provided in section 2110 of this act, only the uncontested amounts and property must be paid or delivered to the department within thirty days of the issuance of the assessment.

**Sec. 2108.** RCW 63.29.340 and 2011 c 96 s 45 are each amended to read as follows:

(1) A person who fails to pay or deliver property ((~~within the time prescribed by this chapter shall be~~)) when due is required to pay to the department interest at the rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered((~~, unless~~)). However, the department must waive or cancel interest imposed under this subsection if:

(a) The department finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105;

(b) The failure to timely pay or deliver the property within the time prescribed by this chapter was the direct result of written instructions given to the person by the department; or

(c) The extension of a due date for payment or delivery under an assessment issued by the department was not at the person's request and was for the sole convenience of the department.

(2) ((~~A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.~~

~~(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for up to three hundred sixty-four days, or both.~~)) If a person fails to file any report or to pay or deliver any amounts or property when due under a report required under this chapter, there is assessed a penalty equal to ten percent of the amount unpaid and the value of any property not delivered.

(3) If an examination results in an assessment for amounts unpaid or property not delivered, there is assessed a penalty equal to ten percent of the amount unpaid and the value of any property not delivered.

(4) If a person fails to pay or deliver to the department by the due date any amounts or property due under an assessment issued by the department to the person, there is assessed an additional penalty

of five percent of the amount unpaid and the value of any property not delivered.

(5) Penalties under subsections (2) through (4) of this section may be waived or canceled only if the department finds that the failure to pay or deliver within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of penalties under RCW 82.32.105.

(6) If a person willfully fails to file a report or to provide written notice to apparent owners as required under this chapter, the department may assess a civil penalty of one hundred dollars for each day the report is withheld or the notice is not sent, but not more than five thousand dollars.

(7) If a holder, having filed a report, failed to file the report electronically as required by RCW 63.29.170, or failed to pay electronically any amounts due under the report as required by RCW 63.29.190, the department must assess a penalty equal to five percent of the amount payable or deliverable under the report, unless the department grants the taxpayer relief from the electronic filing and payment requirements. Total penalties assessed under this subsection may not exceed five percent of the amount payable and value of property deliverable under the report.

(8) The penalties imposed in this section are cumulative.

NEW SECTION. **Sec. 2109.** A new section is added to chapter 63.29 RCW to read as follows:

(1)(a) If, upon receipt of an application by a holder for a refund or return of property, or upon an examination of the report or records of any holder, it is determined by the department that any amount, interest, or penalty has been paid in excess of that properly due under this chapter or that any property was delivered to the department under this chapter in error, then with the exception of amounts delivered by the department to a claimant under RCW 63.29.240, the excess amount must be refunded to the holder, or the property delivered in error returned to the holder, as the case may be.

(b)(i) Except as otherwise provided in RCW 63.29.200(2) or this section, no refund or return of property may be made for any amount or property paid or delivered, or for any interest or penalty paid,

more than six years after the end of the calendar year in which the payment or delivery occurred.

(ii) The expiration of the limitations period in this subsection will not bar a refund or the return of property if a complete application for such refund or return of property was received by the department before the expiration of such limitations period.

(2) The execution of a written waiver signed by the holder and the department will extend the time for making a refund of any amounts paid, or a return of property delivered in error, during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, a complete application for refund or return of such amounts or property is made by the holder or the department discovers a refund is due or a return of property under this section is required.

(3) For purposes of subsections (1) and (2) of this section, an application for a refund or return of property is complete if it includes information the department deems sufficient to substantiate the holder's claim for a refund or return of property. If the department receives an incomplete application before the expiration of the limitations period in subsection (1)(b)(i) of this section or before the expiration of an applicable waiver period as authorized under subsection (2) of this section, the department must grant the holder thirty days to provide sufficient documentation to substantiate the holder's claim for a refund or return of property. The department may, at its sole discretion, grant a holder up to an additional ninety days to substantiate its claim. If the holder provides sufficient substantiation documentation to the department within the additional time granted but after the expiration of the limitations period in subsection (1)(b)(i) of this section or an applicable waiver period as authorized under subsection (2) of this section, the holder will be deemed to have provided a complete application before the expiration of such limitations or waiver period.

(4) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, persons who are required to pay amounts due under this chapter electronically must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(5) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for amounts, penalties, or interest paid by the holder, and costs, in a suit by any holder must be paid in the same manner, as provided in subsection (4) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(6) Interest at the rate computed under RCW 82.32.050(2) must be added to the amount of any refund allowed by the department or any court. Interest must be computed from the date the department received the excess payment, until the date the refund is issued.

NEW SECTION. **Sec. 2110.** A new section is added to chapter 63.29 RCW to read as follows:

Any person having been issued an assessment by the department, or a denial of an application for a refund or return of property, under the provisions of this chapter is entitled to a review by the department conducted in accordance with the provisions of RCW 34.05.410 through 34.05.494, subject to judicial review under RCW 34.05.510 through 34.05.598. A petition for review under this section is timely if received in writing by the department before the due date of the assessment, including any extension of the due date granted by the department, or in the case of a refund or return application, thirty days after the department rejects the application in writing, regardless of any subsequent action by the department to reconsider its initial decision. The period for filing a petition for review under this section may be extended as provided in a rule adopted by the department under chapter 34.05 RCW or upon a written agreement signed by the holder and the department.

NEW SECTION. **Sec. 2111.** A new section is added to chapter 63.29 RCW to read as follows:

(1) Any person who has paid or delivered property to the department under the provisions of this chapter, except one who has failed to keep and preserve records as required in this chapter, feeling aggrieved by such payment or delivery, may appeal to the superior court of Thurston county. The person filing a notice of appeal under this section is deemed the plaintiff, and the department, the defendant.

(2) An appeal under this section must be made within:

(a) The time limitation for a refund provided in section 2109 of this act; or

(b) Thirty days after the department rejects in writing an application for refund or return of property, regardless of any subsequent action by the department to reconsider its initial decision, if:

(i) An application for refund or return of property has been made to the department within the time limitation provided in (a) of this subsection (2) or the limitation provided in RCW 63.29.200(2), as applicable; and

(ii) The time limitation provided under this subsection (2)(b) is later than the time limitation provided in (a) of this subsection (2).

(3)(a) In an appeal filed under this section, the plaintiff must set forth the amount or property, if any, payable or deliverable on the report or assessment that the plaintiff is contesting, which the holder concedes to be the correct amount payable or deliverable, and the reason why the amount payable or deliverable should be reduced or abated.

(b) The appeal is perfected only by serving a copy of the notice of appeal upon the department and filing the original with proof of service with the clerk of the superior court of Thurston county, within the time specified in subsection (2) of this section.

(4)(a) The trial in the superior court on appeal must be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden is on the plaintiff to (i) prove that the amount paid by that person is incorrect, either in whole or in part, or the property in question was delivered in error to the department, and (ii) establish the correct amount payable or the property required to be delivered to the department, if any.

(b) Both parties are entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount due, if any, that should be paid by the plaintiff.

(c) Either party may seek appellate review in the same manner as other civil actions are appealed to the appellate courts.

(5) An appeal may be maintained under this section without the need for the plaintiff to first:

(a) Protest against the payment of any amount due or reportable under this chapter or to make any demand to have such amount refunded or returned; or

(b) Petition the department for a refund, return of property, or a review of its action as authorized in section 2110 of this act.

(6) No court action or proceeding of any kind may be maintained by the plaintiff to recover any amount paid, delivered, or reported to the department under this chapter, except as provided in this section or as may be available to the plaintiff under RCW 34.05.510 through 34.05.598.

(7) No appeal may be maintained under this section with respect to matters reviewed by the department under the provisions of chapter 34.05 RCW.

NEW SECTION. **Sec. 2112.** A new section is added to chapter 63.29 RCW to read as follows:

(1) The department may enter into an agreement in writing with any holder with respect to any duties under this chapter or any property or amounts due under this chapter, including penalties and interest.

(2) Upon its execution by all parties, the agreement is final and conclusive as to the periods, property, and any other matters expressly covered by the agreement. Except upon a showing of fraud or malfeasance, or of misrepresentation of a material fact:

(a) The agreement may not be reopened as to the matters agreed upon, nor may the agreement be modified, by any officer, employee, or agent of the state, or the holder; and

(b) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, or refund, or credit made in accordance with the agreement, may not be annulled, modified, set aside, or disregarded.

(3) No agreement under this section may affect a holder's obligations to an owner or an owner's rights against a holder, except as expressly provided in RCW 63.29.200.

(4) No agreement under this section may include any indemnification of any holder for amounts or property that has not been paid or delivered to the department. Nothing in this subsection (4) may be construed to affect the finality and conclusiveness of any agreement under this section to the extent provided in subsection (2) of this section.

NEW SECTION. **Sec. 2113.** (1) Section 2101 of this act applies only with respect to gift certificates issued on or after the effective date of section 2101 of this act.

(2) Section 2102 of this act applies only with respect to gift certificates issued on or after the effective date of section 2102 of this act.

(3) Section 2106 of this act applies only with respect to original assessments issued on or after the effective date of section 2106 of this act.

(4) Section 2108 of this act applies only with respect to reports initially due, or property initially payable or deliverable, or other duties that arise initially on or after the effective date of section 2108 of this act.

(5) Section 2109 of this act applies only with respect to (a) requests for refund or the return of property, where the request is originally received by the department on or after the effective date of section 2109 of this act, and (b) excess payments or property improperly delivered, where such excess payments or improper delivery are discovered by the department on or after the effective date of section 2109 of this act.

## PART XXII
## Improving Tax Fairness

### Subpart A
### Sales and use tax exemptions for digital automated services used solely for business purposes

NEW SECTION. **Sec. 2201.** (1) In 2009 the legislature enacted comprehensive legislation addressing the excise taxation of digital products. The term "digital products" encompasses two categories of electronically transferred goods and services: "Digital goods," such as a digital music file or an e-book, and "digital automated services," such as an online research application.

(2) In general, the legislation provided that retail sales of digital products are subject to retail sales tax, unless specifically exempted. One of the exemptions provided in the 2009 enactment, as modified by 2010 clean-up legislation, was for sales of digital goods used solely for business purposes. The legislature's purpose in enacting this exemption was to provide businesses with a meaningful

sales and use tax exemption for digital business inputs. This exemption is not currently subject to an expiration date or to accountability reporting requirements.

(3) The legislature finds that there has been a significant migration of digital business inputs from digital goods to digital automated services in the past several years, which was not anticipated in 2009 and 2010. The legislature further finds that this migration has significantly undermined the effect of the legislature's policy choice to provide substantial sales and use tax relief for the acquisition of digital business inputs.

(4) Therefore, the legislature intends in sections 2202 and 2203 of this act to reaffirm and restore the policy choice it made in 2009 of providing substantial sales and use tax relief to businesses for their acquisition of digital business inputs. This intent is accomplished by providing prospectively a sales and use tax exemption for digital automated services used solely for business purposes. Because this exemption provides parity for digital goods and digital automated services used solely for business purposes and functions to restore the legislature's goal of exempting digital business inputs from sales and use tax, sections 2202 and 2203 of this act are exempt from the provisions of RCW 82.32.805 and 82.32.808.

**Sec. 2202.** RCW 82.08.02087 and 2010 c 111 s 402 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of digital ((~~goods~~)) <u>products</u>, and services rendered in respect to digital goods, where the digital ((~~goods~~)) <u>products,</u> and services rendered in respect to digital goods are purchased solely for business purposes. The exemption provided by this section also applies to the sale to a business of a digital code if all of the digital ((~~goods~~)) <u>products</u> to be obtained through the use of the code will be used solely for business purposes.

(2) ((~~The exemption is available only when the buyer provides the seller with~~)) <u>Sellers making tax-exempt sales under this section must obtain from the purchaser</u> an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) <u>The exemption in this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.</u>

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

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Services rendered in respect to digital goods" means those services defined as a retail sale in RCW 82.04.050(2)(g).

**Sec. 2203.** RCW 82.12.02087 and 2010 c 111 s 502 are each amended to read as follows:

(1) The provisions of this chapter do not apply to the use by a business of digital ((~~goods~~)) products, and services rendered in respect to digital goods, where the digital ((~~goods~~)) products and services rendered in respect to digital goods are used solely for business purposes. The exemption provided by this section also applies to the use by a business of a digital code if all of the digital ((~~goods~~)) products to be obtained through the use of the code will be used solely for business purposes.

(2) The exemption in this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.

(3) For purposes of this section, the definitions in RCW 82.08.02087 apply.

**Sec. 2204.** RCW 82.08.195 and 2010 c 111 s 601 are each amended to read as follows:

(1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) The tax imposed by RCW 82.08.020 does not apply in respect to a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the sale is to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection 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" has the same meaning as in RCW 82.08.0293.

(7) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product or one or more digital products and other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (7).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 nor to that portion of the selling price of the code attributable to any digital ((~~goods~~)) products, the sale of which is exempt under RCW 82.08.02087.

## Subpart B

## Clarifying the sales and use tax exemption for machinery equipment used in manufacturing, research and development, or testing operations

NEW SECTION. **Sec. 2205.** (1) The legislature in 1995 established sales and use tax exemptions for manufacturing machinery and equipment, commonly referred to as the "M&E exemption." In 1996, the legislature expanded the exemption to include machinery and equipment used by a manufacturer in a research and development operation.

(2) The legislature finds that software developers that created and produced prewritten computer software have historically qualified for this exemption because the production of prewritten computer software contained on a disc or other tangible storage media provided to the buyer is considered to be a manufacturing activity. The legislature further finds that changes in the software industry have resulted in most prewritten computer software sold today being delivered to buyers electronically. As a result of this change, questions have been raised about the continued applicability of the machinery and equipment exemption to the development and production of prewritten computer software.

(3) Therefore, the legislature intends in section 2206 of this act to clarify its intent that the machinery and equipment exemption applies to developers of prewritten computer software, regardless of how the software is delivered to buyers. As a clarification of its

intent, the legislature does not intend section 2206 of this act to be considered the expansion of an existing tax preference for purposes of RCW 82.32.805 and 82.32.808.

**Sec. 2206.** RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s 13 are each reenacted and amended to read as follows:

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

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

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

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

(iii) The department must determine eligibility under this section based on the information provided by the gas distribution business, which is subject to audit verification by the department.

The department must on a quarterly basis remit exempted amounts to qualifying businesses who submitted applications during the previous quarter.

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

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

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

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

(i) Hand-powered tools;

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

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

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

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

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

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

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

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

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

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

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

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

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

(i) Prints newspapers or other materials; or

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

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

(f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the preparation of food products on the premises of a person selling food products at retail.

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

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

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

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

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

## Subpart C
## Remote sellers

NEW SECTION. **Sec. 2207.** (1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

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

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

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

(6) Nothing in sections 2207 through 2210 of this act may be construed as relieving in-state businesses and other businesses having a substantial nexus with Washington through a direct physical presence in this state from their Washington sales and use tax collection obligations.

NEW SECTION. **Sec. 2208.** A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.050 and 82.08.054 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) This section is subject to section 2210 of this act.

**Sec. 2209.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each amended to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if 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 in any tax year the person has:

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

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

(iii) More than two hundred fifty 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 tax 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 tax year; but the department may require the averaging of monthly values during the tax 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 tax 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 those amounts included in the numerator of the receipts factor under RCW 82.04.462 and, 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).

(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) Subsections (1) through (5) of this section only apply with respect to the taxes imposed under this chapter on apportionable activities as defined in RCW 82.04.460. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence.

(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 section 2208 of this act 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 section 2208 of this act. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in section 2208 of this act. To the extent that the presumption in section 2208 of this act is no

longer operative pursuant to section 2210 of this act, the presumption in this subsection (6)(c)(ii) is no longer operative. 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) or to narrow the scope of the terms "agent" or "other representative" in this subsection (6)(c).

NEW SECTION. **Sec. 2210.** A new section is added to chapter 82.32 RCW to read as follows:

(1) If the department determines that a change, taking effect after the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of section 2208 of this act, such conflicting provision or provisions of section 2208 of 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 section 2208 of 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 section 2208 of this act.

(b) A change in the streamlined sales and use tax agreement conflicts with section 2208 of this act if one or more provisions of section 2208 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) 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 section 2208 of this act, the department:

(a) May adopt rules in accordance with chapter 34.05 RCW 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) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of section 2208 of 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) of this subsection (3).

(4) For purposes of this section, "remote seller" has the same meaning as in section 2208 of this act.

## Subpart D
## Miscellaneous

NEW SECTION. **Sec. 2211.** If any provision of this Part XXII or its application to any person or circumstance is held invalid, the remainder of the part or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 2212.** Section 2206 of this act applies prospectively and retroactively.

# PART XXIII
# Miscellaneous Provisions

NEW SECTION. **Sec. 2301.** (1) Except as provided otherwise in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

(2) Parts I, II, IV, VI through VIII, XVIII, and XIX of this act is 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 September 1, 2015.

(3) Part XXII of this act takes effect October 1, 2015.

(4) Part X of this act takes effect October 1, 2016.

(5) Section 1105 of this act takes effect January 1, 2016.

(6) Section 1712 of this act takes effect January 1, 2018.

(7) Except for section 2004 of this act, Part XX of this act takes effect January 1, 2019.

(8) Section 2004 of this act takes effect January 1, 2022.

NEW SECTION. **Sec. 2302.** Part VIII of this act expires July 1, 2019.

NEW SECTION. **Sec. 2303.** Section 1104 of this act expires January 1, 2016.

NEW SECTION. **Sec. 2304.** Section 1711 of this act expires January 1, 2018.

NEW SECTION. **Sec. 2305.** Section 2003 of this act expires January 1, 2022.

NEW SECTION. **Sec. 2306.** (1) Section 2108 of this act takes effect July 1, 2016, unless the department of revenue determines that it is unable to efficiently and effectively implement any of the provisions of section 2108 of this act, in which case section 2108 of this act takes effect July 1, 2017.

(2) The department of revenue must provide written notice of the effective date of section 2108 of this act to the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department, as well as post notice of the effective date on its public web site. The notice must be provided no later than June 1, 2016.

NEW SECTION. **Sec. 2307.** Sections 2207 through 2210 of this act expire July 1, 2025.

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