

**EFFECT OF PSSB 6635 (S-5377. 1/12):**

- In section 101, changes "amounts derived" to "amounts received" as interest on loans for the first mortgage interest B&O deduction.
- Adds section 502, directing which telephone service billing period the sales tax will apply.
- Adds Part VI (SB 6250 - clarifying the definition of leasehold interest).

1 AN ACT Relating to improving revenue and budget sustainability by  
2 repealing, modifying, or revising tax preferences; amending RCW  
3 82.04.4292, 82.04.4266, 82.04.4268, 82.04.4269, 82.04.260, 82.08.986,  
4 82.08.986, 82.12.986, 82.04.214, 82.04.260, and 82.29A.020; adding a  
5 new section to chapter 82.04 RCW; creating new sections; repealing RCW  
6 82.08.0289; providing an effective date; providing a contingent  
7 effective date; providing expiration dates; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that Washington's  
10 budget sustainability depends equally on prudent expenditures and  
11 adequate revenues, and it is in the interest of Washingtonians, who  
12 both pay taxes and receive services, to balance both sides of the  
13 budget. Through this act the legislature intends to increase revenues  
14 by repealing or modifying outdated tax exemptions and updating or  
15 extending expiring preferences that are providing economic benefit to  
16 the state, and by doing so, the legislature intends to improve the  
17 long-term sustainability of the state's budget.

1 **PART I**

2 **LIMITING THE FIRST INTEREST MORTGAGE B&O DEDUCTION TO COMMUNITY BANKS**

3 NEW SECTION. **Sec. 101.** A new section is added to chapter 82.04  
4 RCW to read as follows:

5 (1) Amounts received as interest on loans originated by a person  
6 located in more than ten states, or an affiliate of such person, and  
7 primarily secured by first mortgages or trust deeds on nontransient  
8 residential properties are subject to tax under RCW 82.04.290(2)(a).

9 (2) For the purposes of this subsection, a person is located in a  
10 state if:

11 (a) The person or an affiliate of the person maintains a branch,  
12 office, or one or more employees or representatives in the state; and

13 (b) Such in-state presence allows borrowers or potential borrowers  
14 to contact the branch, office, employee, or representative concerning  
15 the acquiring, negotiating, renegotiating, or restructuring of, or  
16 making payments on, mortgages issued or to be issued by the person or  
17 an affiliate of the person.

18 (3) For purposes of this section:

19 (a) "Affiliate" means a person is affiliated with another person,  
20 and "affiliated" has the same meaning as in RCW 82.04.645; and

21 (b) "Interest" has the same meaning as in RCW 82.04.4292 and also  
22 includes servicing fees described in RCW 82.04.4292(4).

23 **Sec. 102.** RCW 82.04.4292 and 2010 1st sp.s. c 23 s 301 are each  
24 amended to read as follows:

25 (1) In computing tax there may be deducted from the measure of tax  
26 by those engaged in banking, loan, security or other financial  
27 businesses, interest received on investments or loans primarily secured  
28 by first mortgages or trust deeds on nontransient residential  
29 properties.

30 (2) Interest deductible under this section includes the portion of  
31 fees charged to borrowers, including points and loan origination fees,  
32 that is recognized over the life of the loan as an adjustment to yield  
33 in the taxpayer's books and records according to generally accepted  
34 accounting principles.

35 (3) Subsections (1) and (2) of this section notwithstanding, the  
36 following is a nonexclusive list of items that are not deductible under  
37 this section:

1 (a) Fees for specific services such as: Document preparation fees;  
2 finder fees; brokerage fees; title examination fees; fees for credit  
3 checks; notary fees; loan application fees; interest lock-in fees if  
4 the loan is not made; servicing fees; and similar fees or amounts;

5 (b) Fees received in consideration for an agreement to make funds  
6 available for a specific period of time at specified terms, commonly  
7 referred to as commitment fees;

8 (c) Any other fees, or portion of a fee, that is not recognized  
9 over the life of the loan as an adjustment to yield in the taxpayer's  
10 books and records according to generally accepted accounting  
11 principles;

12 (d) Gains on the sale of valuable rights such as service release  
13 premiums, which are amounts received when servicing rights are sold;  
14 and

15 (e) Gains on the sale of loans, except deferred loan origination  
16 fees and points deductible under subsection (2) of this section, are  
17 not to be considered part of the proceeds of sale of the loan.

18 (4) Notwithstanding subsection (3) of this section, in computing  
19 tax there may be deducted from the measure of tax by those engaged in  
20 banking, loan, security, or other financial businesses, amounts  
21 received for servicing loans primarily secured by first mortgages or  
22 trust deeds on nontransient residential properties, including such  
23 loans that secure mortgage-backed or mortgage-related securities, but  
24 only if:

25 (a)(i) The loans were originated by the person claiming a deduction  
26 under this subsection (4) and that person either sold the loans on the  
27 secondary market or securitized the loans and sold the securities on  
28 the secondary market; or

29 (ii)(A) The person claiming a deduction under this subsection (4)  
30 acquired the loans from the person that originated the loans through a  
31 merger or acquisition of substantially all of the assets of the person  
32 who originated the loans, or the person claiming a deduction under this  
33 subsection (4) is affiliated with the person that originated the loans.  
34 For purposes of this subsection, "affiliated" means under common  
35 control. "Control" means the possession, directly or indirectly, of  
36 more than fifty percent of the power to direct or cause the direction  
37 of the management and policies of a person, whether through the  
38 ownership of voting shares, by contract, or otherwise; and

1 (B) Either the person who originated the loans or the person  
2 claiming a deduction under this subsection (4) sold the loans on the  
3 secondary market or securitized the loans and sold the securities on  
4 the secondary market; and

5 (b) The amounts received for servicing the loans are determined by  
6 a percentage of the interest paid by the borrower and are only received  
7 if the borrower makes interest payments.

8 (5) The deductions provided in this section do not apply to persons  
9 subject to tax under section 101 of this act.

10 (6) By June 30, 2015, the joint legislative audit and review  
11 committee must review the deductions provided in this section in  
12 accordance with RCW 43.136.055 and make a recommendation as to whether  
13 the deductions should be continued without modification, modified, or  
14 terminated immediately.

15 **PART II**

16 **EXTENDING THE B&O TAX EXEMPTION FOR FRUIT, VEGETABLE, DAIRY, AND**  
17 **SEAFOOD BUSINESSES**

18 **Sec. 201.** RCW 82.04.4266 and 2011 c 2 s 202 (Initiative Measure  
19 No. 1107) are each amended to read as follows:

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

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

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

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

34 (3) This section expires July 1, (~~2012~~) 2017.

1       **Sec. 202.** RCW 82.04.4268 and 2010 c 114 s 112 are each amended to  
2 read as follows:

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

5       (a) Manufacturing dairy products; or

6       (b) Selling manufactured dairy products to purchasers who transport  
7 in the ordinary course of business the goods out of this state. A  
8 person taking an exemption under this subsection (1)(b) must keep and  
9 preserve records for the period required by RCW 82.32.070 establishing  
10 that the goods were transported by the purchaser in the ordinary course  
11 of business out of this state.

12       (2) "Dairy products" means dairy products that as of September 20,  
13 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,  
14 including byproducts from the manufacturing of the dairy products such  
15 as whey and casein.

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

18       (4) This section expires July 1, (~~2012~~) 2017.

19       **Sec. 203.** RCW 82.04.4269 and 2010 c 114 s 113 are each amended to  
20 read as follows:

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

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

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

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

35       (3) This section expires July 1, (~~2012~~) 2017.

1       **Sec. 204.** RCW 82.04.260 and 2011 c 2 s 203 (Initiative Measure No.  
2 1107) are each amended to read as follows:

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

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

11       (b) Beginning July 1, (~~2012~~) 2017, seafood products that remain  
12 in a raw, raw frozen, or raw salted state at the completion of the  
13 manufacturing by that person; or selling manufactured seafood products  
14 that remain in a raw, raw frozen, or raw salted state at the completion  
15 of the manufacturing, to purchasers who transport in the ordinary  
16 course of business the goods out of this state; as to such persons the  
17 amount of tax with respect to such business is equal to the value of  
18 the products manufactured or the gross proceeds derived from such  
19 sales, multiplied by the rate of 0.138 percent. Sellers must keep and  
20 preserve records for the period required by RCW 82.32.070 establishing  
21 that the goods were transported by the purchaser in the ordinary course  
22 of business out of this state;

23       (c) Beginning July 1, (~~2012~~) 2017, dairy products that as of  
24 September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131,  
25 133, and 135, including by-products from the manufacturing of the dairy  
26 products such as whey and casein; or selling the same to purchasers who  
27 transport in the ordinary course of business the goods out of state; as  
28 to such persons the tax imposed is equal to the value of the products  
29 manufactured or the gross proceeds derived from such sales multiplied  
30 by the rate of 0.138 percent. Sellers must keep and preserve records  
31 for the period required by RCW 82.32.070 establishing that the goods  
32 were transported by the purchaser in the ordinary course of business  
33 out of this state;

34       (d) Beginning July 1, (~~2012~~) 2017, fruits or vegetables by  
35 canning, preserving, freezing, processing, or dehydrating fresh fruits  
36 or vegetables, or selling at wholesale fruits or vegetables  
37 manufactured by the seller by canning, preserving, freezing,  
38 processing, or dehydrating fresh fruits or vegetables and sold to

1 purchasers who transport in the ordinary course of business the goods  
2 out of this state; as to such persons the amount of tax with respect to  
3 such business is equal to the value of the products manufactured or the  
4 gross proceeds derived from such sales multiplied by the rate of 0.138  
5 percent. Sellers must keep and preserve records for the period  
6 required by RCW 82.32.070 establishing that the goods were transported  
7 by the purchaser in the ordinary course of business out of this state;

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

13 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such  
14 persons the amount of tax with respect to the business is equal to the  
15 value of wood biomass fuel manufactured, multiplied by the rate of  
16 0.138 percent.

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

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

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

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

36 (6) Upon every person engaging within this state in business as an  
37 international steamship agent, international customs house broker,  
38 international freight forwarder, vessel and/or cargo charter broker in

1 foreign commerce, and/or international air cargo agent; as to such  
2 persons the amount of the tax with respect to only international  
3 activities is equal to the gross income derived from such activities  
4 multiplied by the rate of 0.275 percent.

5 (7) Upon every person engaging within this state in the business of  
6 stevedoring and associated activities pertinent to the movement of  
7 goods and commodities in waterborne interstate or foreign commerce; as  
8 to such persons the amount of tax with respect to such business is  
9 equal to the gross proceeds derived from such activities multiplied by  
10 the rate of 0.275 percent. Persons subject to taxation under this  
11 subsection are exempt from payment of taxes imposed by chapter 82.16  
12 RCW for that portion of their business subject to taxation under this  
13 subsection. Stevedoring and associated activities pertinent to the  
14 conduct of goods and commodities in waterborne interstate or foreign  
15 commerce are defined as all activities of a labor, service or  
16 transportation nature whereby cargo may be loaded or unloaded to or  
17 from vessels or barges, passing over, onto or under a wharf, pier, or  
18 similar structure; cargo may be moved to a warehouse or similar holding  
19 or storage yard or area to await further movement in import or export  
20 or may move to a consolidation freight station and be stuffed,  
21 unstuffed, containerized, separated or otherwise segregated or  
22 aggregated for delivery or loaded on any mode of transportation for  
23 delivery to its consignee. Specific activities included in this  
24 definition are: Wharfage, handling, loading, unloading, moving of  
25 cargo to a convenient place of delivery to the consignee or a  
26 convenient place for further movement to export mode; documentation  
27 services in connection with the receipt, delivery, checking, care,  
28 custody and control of cargo required in the transfer of cargo;  
29 imported automobile handling prior to delivery to consignee; terminal  
30 stevedoring and incidental vessel services, including but not limited  
31 to plugging and unplugging refrigerator service to containers,  
32 trailers, and other refrigerated cargo receptacles, and securing ship  
33 hatch covers.

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

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

5 (9) Upon every person engaging within this state as an insurance  
6 producer or title insurance agent licensed under chapter 48.17 RCW or  
7 a surplus line broker licensed under chapter 48.15 RCW; as to such  
8 persons, the amount of the tax with respect to such licensed activities  
9 is equal to the gross income of such business multiplied by the rate of  
10 0.484 percent.

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

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

- 27 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- 28 (ii) 0.2904 percent beginning July 1, 2007.

29 (b) Beginning July 1, 2008, upon every person who is not eligible  
30 to report under the provisions of (a) of this subsection (11) and is  
31 engaging within this state in the business of manufacturing tooling  
32 specifically designed for use in manufacturing commercial airplanes or  
33 components of such airplanes, or making sales, at retail or wholesale,  
34 of such tooling manufactured by the seller, as to such persons the  
35 amount of tax with respect to such business is, in the case of  
36 manufacturers, equal to the value of the product manufactured and the  
37 gross proceeds of sales of the product manufactured, or in the case of

1 processors for hire, be equal to the gross income of the business,  
2 multiplied by the rate of 0.2904 percent.

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

5 (d) In addition to all other requirements under this title, a  
6 person reporting under the tax rate provided in this subsection (11)  
7 must file a complete annual report with the department under RCW  
8 82.32.534.

9 (e) This subsection (11) does not apply on and after July 1, 2024.

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

18 (b) Until July 1, 2024, upon every person engaging within this  
19 state in the business of manufacturing or processing for hire: (i)  
20 Timber into timber products or wood products; or (ii) timber products  
21 into other timber products or wood products; as to such persons the  
22 amount of the tax with respect to the business is, in the case of  
23 manufacturers, equal to the value of products, including by-products,  
24 manufactured, or in the case of processors for hire, equal to the gross  
25 income of the business, multiplied by the rate of 0.4235 percent from  
26 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
27 2007, through June 30, 2024.

28 (c) Until July 1, 2024, upon every person engaging within this  
29 state in the business of selling at wholesale: (i) Timber extracted by  
30 that person; (ii) timber products manufactured by that person from  
31 timber or other timber products; or (iii) wood products manufactured by  
32 that person from timber or timber products; as to such persons the  
33 amount of the tax with respect to the business is equal to the gross  
34 proceeds of sales of the timber, timber products, or wood products  
35 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
36 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
37 2024.

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

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

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

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

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

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

37 (v) "Timber products" means:

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

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

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

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

12 (f) Except for small harvesters as defined in RCW 84.33.035, a  
13 person reporting under the tax rate provided in this subsection (12)  
14 must file a complete annual survey with the department under RCW  
15 82.32.585.

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

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

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

### 28 PART III

### 29 AMENDING THE SALES AND USE TAX EXEMPTION FOR CERTAIN EQUIPMENT USED IN 30 COMPUTER DATA CENTERS

31 NEW SECTION. **Sec. 301.** (1) It is the legislature's intent to  
32 encourage immediate investments in technology facilities that can  
33 provide an economic stimulus, sustain long-term jobs that provide  
34 living wages, and help build the digital infrastructure that can enable  
35 the state to be competitive for additional technology investment and  
36 jobs.

1 (2) There is currently an intense competition for data center  
2 construction and operation in many states including: Oregon, Arizona,  
3 North and South Carolina, North Dakota, Iowa, Virginia, Texas, and  
4 Illinois. Unprecedented incentives are available as a result of the  
5 desire of these states to attract investments that will serve as a  
6 catalyst for additional clusters of economic activity.

7 (3) Data center technology has advanced rapidly, with marked  
8 increases in energy efficiency. Large, commercial-grade data centers  
9 leverage the economies of scale to reduce energy consumption.  
10 Combining digitized processes with the economies of scale recognized at  
11 these data centers, today's enterprises can materially reduce the  
12 energy they consume and greatly improve their efficiency.

13 (4) The legislature finds that offering an exemption for server and  
14 related electrical equipment and installation will act as a stimulus to  
15 incent immediate investment. This investment will bring jobs, tax  
16 revenues, and economic growth to some of our state's rural areas.

17 **Sec. 302.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each  
18 amended to read as follows:

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

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

1 (b) A qualifying business or a qualifying tenant claiming the  
2 exemption under this section must present the seller with an exemption  
3 certificate in a form and manner prescribed by the department. The  
4 seller must retain a copy of the certificate for the seller's files.

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

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

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

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

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

24 (A) The net increase in family wage employment positions employed  
25 by qualifying (~~((businesses leasing space within the eligible computer~~  
26 ~~data center from the owner))~~ tenants; and

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

29 (ii)(A) (~~((Lessees of the owner of an eligible computer data~~  
30 ~~center))~~ Qualifying tenants, in addition to their own net increase in  
31 family wage employment positions, may include:

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

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

36 (B) The portion of the net increase in family wage employment  
37 positions to be counted under this subsection (3)(b)(ii) by each  
38 (~~((lessee))~~) qualifying tenant must be in proportion to the amount of

1 space in the eligible computer data center occupied by the ((lessee))  
2 qualifying tenant compared to the total amount of space in the eligible  
3 computer data center occupied by all ((lessees that are qualifying  
4 ~~businesses~~)) qualifying tenants.

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

19 (ii)(A) Family wage employment positions include positions filled  
20 by employees of the owner of the eligible computer data center and by  
21 employees of qualifying ((~~businesses leasing space from the owner of~~  
22 ~~the eligible computer data center~~)) tenants.

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

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

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

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

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

5 (ii) Any person affiliated with a person within the scope of (a)(i)  
6 of this subsection (5). ~~((For purposes of this subsection,~~  
7 ~~"affiliated" means that one person has a direct or indirect ownership~~  
8 ~~interest of at least twenty percent in another person.))~~

9 (b) If a person claims an exemption under this section and  
10 subsequently receives the benefit of the deferral program under chapter  
11 82.60 RCW on either the construction, renovation, or expansion of a  
12 structure or structures used as a computer data center or machinery or  
13 equipment used in a computer data center, the person must repay the  
14 amount of taxes exempted under this section. Interest as provided in  
15 chapter 82.32 RCW applies to amounts due under this section until paid  
16 in full.

17 (6) For purposes of this section the following definitions apply  
18 unless the context clearly requires otherwise:

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

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

32 (ii) For a computer data center comprised of multiple buildings,  
33 each separate building constructed or refurbished specifically, and  
34 used primarily, to house working servers is considered a computer data  
35 center if it has all of the characteristics listed in ~~((a))~~ (b)(i)(A)  
36 through (C) of this subsection (6).

37 (iii) A facility comprised of one building or more than one

1 building must have a combined square footage of at least one hundred  
2 thousand square feet.

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

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

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

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

16 (C) For which the commencement of construction occurs:

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

18 (II) After March 31, 2012, and before July 1, 2015.

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

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

36 ~~((d))~~ (e) "Eligible power infrastructure" means all fixtures and  
37 equipment owned by a qualifying business or qualifying tenant and  
38 necessary for the transformation, distribution, or management of

1 electricity that is required to operate eligible server equipment  
2 within an eligible computer data center. The term includes  
3 ~~((electrical—substations,)) generators((,)) wiring((,—and))~~;  
4 cogeneration equipment; and associated fixtures and equipment, such as  
5 electrical switches, batteries, and distribution, testing, and  
6 monitoring equipment.

7 ~~((e))~~ (f) "Eligible server equipment" means:

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

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

17 ~~((ii))~~ (B) Is installed and put into regular use before April 1,  
18 2018.

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

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

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

30 (iii) For a qualifying tenant who leases space within an eligible  
31 computer data center, "eligible server equipment" means the original  
32 server equipment installed within the space it leases from an eligible  
33 computer data center on or after April 1, 2012, and replacement server  
34 equipment. For purposes of this subsection (6)(f)(iii), "replacement  
35 server equipment" means server equipment that:

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

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

2 ~~((f))~~ (g) "Qualifying business" means a business entity that  
3 exists for the primary purpose of engaging in commercial activity for  
4 profit and that is the owner of an eligible computer data center ~~((or~~  
5 ~~the lessee of at least twenty thousand square feet within an eligible~~  
6 ~~computer data center dedicated to housing working servers, where the~~  
7 ~~server space has not previously been dedicated to housing working~~  
8 ~~servers))~~. The term does not include the state or federal government  
9 or any of their departments, agencies, and institutions; tribal  
10 governments; political subdivisions of this state; or any municipal,  
11 quasi-municipal, public, or other corporation created by the state or  
12 federal government, tribal government, municipality, or political  
13 subdivision of the state.

14 ~~((g) "Server" means blade or rack mount server computers used in~~  
15 ~~a computer data center exclusively to provide electronic data storage~~  
16 ~~and data management services for internal use by the owner or lessee of~~  
17 ~~the computer data center, for clients of the owner or lessee of the~~  
18 ~~computer data center, or both. "Server" does not include personal~~  
19 ~~computers.~~

20 ~~(h) "Server equipment" means the server chassis and all computer~~  
21 ~~hardware contained within the server chassis. "Server equipment" also~~  
22 ~~includes computer software necessary to operate the server. "Server~~  
23 ~~equipment" does not include the racks upon which the server chassis is~~  
24 ~~installed, and computer peripherals such as keyboards, monitors,~~  
25 ~~printers, mice, and other devices that work outside of the computer.)~~

26 (h) "Qualifying tenant" means a business entity that exists for the  
27 primary purpose of engaging in commercial activity for profit and that  
28 leases space from a qualifying business within an eligible computer  
29 data center. The term does not include the state or federal government  
30 or any of their departments, agencies, and institutions; tribal  
31 governments; political subdivisions of this state; or any municipal,  
32 quasi-municipal, public, or other corporation created by the state or  
33 federal government, tribal government, municipality, or political  
34 subdivision of the state. The term also does not include a lessee of  
35 space in an eligible computer data center under (d)(i)(C)(I) of this  
36 subsection (6), if the lessee and lessor are affiliated and:

37 (i) That space will be used by the lessee to house server equipment

1 that replaces server equipment previously installed and operated in  
2 that eligible computer data center by the lessor or another person  
3 affiliated with the lessee; or

4 (ii) Prior to the effective date of this section, the primary use  
5 of the server equipment installed in that eligible computer data center  
6 was to provide electronic data storage and data management services for  
7 the business purposes of either the lessor, persons affiliated with the  
8 lessor, or both.

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

18 (7) This section expires April 1, (~~(2018)~~) 2020.

19 **Sec. 303.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each  
20 amended to read as follows:

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

30 (2)(a) In order to claim the exemption under this section, a  
31 qualifying business or a qualifying tenant must submit an application  
32 to the department for an exemption certificate. The application must  
33 include the information necessary, as required by the department, to  
34 determine that a business or tenant qualifies for the exemption under  
35 this section. The department must issue exemption certificates to  
36 qualifying businesses and qualifying tenants. The department may

1 assign a unique identification number to each exemption certificate  
2 issued under this section.

3 (b) A qualifying business or a qualifying tenant claiming the  
4 exemption under this section must present the seller with an exemption  
5 certificate in a form and manner prescribed by the department. The  
6 seller must retain a copy of the certificate for the seller's files.

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

- 13 (i) Thirty-five family wage employment positions; or
- 14 (ii) Three family wage employment positions for each twenty  
15 thousand square feet of space or less that is newly dedicated to  
16 housing working servers at the eligible computer data center. For  
17 qualifying (~~((businesses that lease space at an eligible computer data~~  
18 ~~center))~~ tenants, the number of family wage employment positions that  
19 must be increased under this subsection (3)(a)(ii) is based only on the  
20 space occupied by the (~~((lessee))~~) qualifying tenant in the eligible  
21 computer data center.

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

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

26 (A) The net increase in family wage employment positions employed  
27 by qualifying (~~((businesses leasing space within the eligible computer~~  
28 ~~data center from the owner))~~ tenants; and

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

31 (ii)(A) (~~((Lessees of the owner of an eligible computer data~~  
32 ~~center))~~ Qualifying tenants, in addition to their own net increase in  
33 family wage employment positions, may include:

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

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

1 (B) The portion of the net increase in family wage employment  
2 positions to be counted under this subsection (3)(b)(ii) by each  
3 ((lessee)) qualifying tenant must be in proportion to the amount of  
4 space in the eligible computer data center occupied by the ((lessee))  
5 qualifying tenant compared to the total amount of space in the eligible  
6 computer data center occupied by all ~~((lessees that are qualifying  
7 businesses))~~ qualifying tenants.

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

22 (ii)(A) Family wage employment positions include positions filled  
23 by employees of the owner of the eligible computer data center and by  
24 employees of qualifying ~~((businesses leasing space from the owner of  
25 the eligible computer data center))~~ tenants.

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

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

37 (4) A qualifying business or a qualifying tenant claiming an

1 exemption under this section or RCW 82.12.986 must complete an annual  
2 ((report)) survey with the department as required under RCW  
3 ((82.32.534)) 82.32.585.

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

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

9 (ii) Any person affiliated with a person within the scope of (a)(i)  
10 of this subsection (5). ((For purposes of this subsection,  
11 "affiliated" means that one person has a direct or indirect ownership  
12 interest of at least twenty percent in another person.))

13 (b) If a person claims an exemption under this section and  
14 subsequently receives the benefit of the deferral program under chapter  
15 82.60 RCW on either the construction, renovation, or expansion of a  
16 structure or structures used as a computer data center or machinery or  
17 equipment used in a computer data center, the person must repay the  
18 amount of taxes exempted under this section. Interest as provided in  
19 chapter 82.32 RCW applies to amounts due under this section until paid  
20 in full.

21 (6) For purposes of this section the following definitions apply  
22 unless the context clearly requires otherwise:

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

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

36 (ii) For a computer data center comprised of multiple buildings,  
37 each separate building constructed or refurbished specifically, and

1 used primarily, to house working servers is considered a computer data  
2 center if it has all of the characteristics listed in ~~((a))~~ (b)(i)(A)  
3 through (C) of this subsection (6).

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

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

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

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

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

20 (C) For which the commencement of construction occurs:

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

22 (II) After March 31, 2012, and before July 1, 2015.

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

33 ~~((ii))~~ (iii) With respect to facilities in existence on April 1,  
34 2010, that are expanded, renovated, or otherwise improved after March  
35 31, 2010, or facilities in existence on April 1, 2012, that are  
36 expanded, renovated, or otherwise improved after March 31, 2012, an  
37 eligible computer data center includes only the portion of the computer

1 data center meeting the requirements in ~~((e))~~ (d)(i)(B) of this  
2 subsection (6).

3 ~~((d))~~ (e) "Eligible power infrastructure" means all fixtures and  
4 equipment owned by a qualifying business, or qualifying tenant and  
5 necessary for the transformation, distribution, or management of  
6 electricity that is required to operate eligible server equipment  
7 within an eligible computer data center. The term includes  
8 ~~((electrical—substations,))~~ generators~~((,))~~; wiring~~((, and))~~;  
9 cogeneration equipment; and associated fixtures and equipment, such as  
10 electrical switches, batteries, and distribution, testing, and  
11 monitoring equipment.

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

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

22 ~~((ii))~~ (B) Is installed and put into regular use before April 1,  
23 2018.

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

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

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

35 (iii) For a qualifying tenant who leases space within an eligible  
36 computer data center, "eligible server equipment" means the original  
37 server equipment installed within the space it leases from an eligible

1 computer data center on or after April 1, 2012, and replacement server  
2 equipment. For purposes of this subsection (6)(f)(iii), "replacement  
3 server equipment" means server equipment that:

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

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

8 ~~((f))~~ (g) "Qualifying business" means a business entity that  
9 exists for the primary purpose of engaging in commercial activity for  
10 profit and that is the owner of an eligible computer data center (or  
11 the lessee of at least twenty thousand square feet within an eligible  
12 computer data center dedicated to housing working servers, where the  
13 server space has not previously been dedicated to housing working  
14 servers)). The term does not include the state or federal government  
15 or any of their departments, agencies, and institutions; tribal  
16 governments; political subdivisions of this state; or any municipal,  
17 quasi-municipal, public, or other corporation created by the state or  
18 federal government, tribal government, municipality, or political  
19 subdivision of the state.

20 ~~((g) "Server" means blade or rack-mount server computers used in~~  
21 ~~a computer data center exclusively to provide electronic data storage~~  
22 ~~and data management services for internal use by the owner or lessee of~~  
23 ~~the computer data center, for clients of the owner or lessee of the~~  
24 ~~computer data center, or both. "Server" does not include personal~~  
25 ~~computers.~~

26 ~~(h) "Server equipment" means the server chassis and all computer~~  
27 ~~hardware contained within the server chassis. "Server equipment" also~~  
28 ~~includes computer software necessary to operate the server. "Server~~  
29 ~~equipment" does not include the racks upon which the server chassis is~~  
30 ~~installed, and computer peripherals such as keyboards, monitors,~~  
31 ~~printers, mice, and other devices that work outside of the computer.)~~

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

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

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

9 (ii) Prior to the effective date of this section, the primary use  
10 of the server equipment installed in that eligible computer data center  
11 was to provide electronic data storage and data management services for  
12 the business purposes of either the lessor, persons affiliated with the  
13 lessor, or both.

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

23 (7) This section expires April 1, (~~(2018)~~) 2020.

24 **Sec. 304.** RCW 82.12.986 and 2010 1st sp.s. c 23 s 1602 are each  
25 amended to read as follows:

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

35 (2) A qualifying business or a qualifying tenant is not eligible  
36 for the exemption under this section unless the department issued an

1 exemption certificate to the qualifying business or a qualifying tenant  
2 for the exemption provided in RCW 82.08.986.

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

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

8 (ii) Any person affiliated with a person within the scope of (a)(i)  
9 of this subsection (3). ~~((For purposes of this subsection,~~  
10 ~~"affiliated" means that one person has a direct or indirect ownership~~  
11 ~~interest of at least twenty percent in another person.))~~

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

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

24 (5) This section expires April 1, ~~((2018))~~ 2020.

25 **PART IV**

26 **NEWSPAPER BUSINESS AND OCCUPATION TAX**

27 **Sec. 401.** RCW 82.04.214 and 2008 c 273 s 1 are each amended to  
28 read as follows:

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

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

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

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

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

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

7 ((+i)) (a) Labeled and identified as part of the printed  
8 newspaper; and

9 ((+ii)) (b) Circulated or distributed:

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

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

14 ~~((+2) Beginning July 1, 2011, "newspaper" means a publication  
15 issued regularly at stated intervals at least twice a month and printed  
16 on newsprint in tabloid or broadsheet format folded loosely together  
17 without stapling, glue, or any other binding of any kind, including any  
18 supplement of a printed newspaper as defined in subsection (1)(b) of  
19 this section.))~~

20 **Sec. 402.** RCW 82.04.260 and 2011 c 2 s 203 (Initiative Measure No.  
21 1107) are each amended to read as follows:

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

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

30 (b) Beginning July 1, 2012, seafood products that remain in a raw,  
31 raw frozen, or raw salted state at the completion of the manufacturing  
32 by that person; or selling manufactured seafood products that remain in  
33 a raw, raw frozen, or raw salted state at the completion of the  
34 manufacturing, to purchasers who transport in the ordinary course of  
35 business the goods out of this state; as to such persons the amount of  
36 tax with respect to such business is equal to the value of the products  
37 manufactured or the gross proceeds derived from such sales, multiplied

1 by the rate of 0.138 percent. Sellers must keep and preserve records  
2 for the period required by RCW 82.32.070 establishing that the goods  
3 were transported by the purchaser in the ordinary course of business  
4 out of this state;

5 (c) Beginning July 1, 2012, dairy products that as of September 20,  
6 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,  
7 including by-products from the manufacturing of the dairy products such  
8 as whey and casein; or selling the same to purchasers who transport in  
9 the ordinary course of business the goods out of state; as to such  
10 persons the tax imposed is equal to the value of the products  
11 manufactured or the gross proceeds derived from such sales multiplied  
12 by the rate of 0.138 percent. Sellers must keep and preserve records  
13 for the period required by RCW 82.32.070 establishing that the goods  
14 were transported by the purchaser in the ordinary course of business  
15 out of this state;

16 (d) Beginning July 1, 2012, fruits or vegetables by canning,  
17 preserving, freezing, processing, or dehydrating fresh fruits or  
18 vegetables, or selling at wholesale fruits or vegetables manufactured  
19 by the seller by canning, preserving, freezing, processing, or  
20 dehydrating fresh fruits or vegetables and sold to purchasers who  
21 transport in the ordinary course of business the goods out of this  
22 state; as to such persons the amount of tax with respect to such  
23 business is equal to the value of the products manufactured or the  
24 gross proceeds derived from such sales multiplied by the rate of 0.138  
25 percent. Sellers must keep and preserve records for the period  
26 required by RCW 82.32.070 establishing that the goods were transported  
27 by the purchaser in the ordinary course of business out of this state;

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

33 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such  
34 persons the amount of tax with respect to the business is equal to the  
35 value of wood biomass fuel manufactured, multiplied by the rate of  
36 0.138 percent.

37 (2) Upon every person engaging within this state in the business of

1 splitting or processing dried peas; as to such persons the amount of  
2 tax with respect to such business is equal to the value of the peas  
3 split or processed, multiplied by the rate of 0.138 percent.

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

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

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

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

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

1 similar structure; cargo may be moved to a warehouse or similar holding  
2 or storage yard or area to await further movement in import or export  
3 or may move to a consolidation freight station and be stuffed,  
4 unstuffed, containerized, separated or otherwise segregated or  
5 aggregated for delivery or loaded on any mode of transportation for  
6 delivery to its consignee. Specific activities included in this  
7 definition are: Wharfage, handling, loading, unloading, moving of  
8 cargo to a convenient place of delivery to the consignee or a  
9 convenient place for further movement to export mode; documentation  
10 services in connection with the receipt, delivery, checking, care,  
11 custody and control of cargo required in the transfer of cargo;  
12 imported automobile handling prior to delivery to consignee; terminal  
13 stevedoring and incidental vessel services, including but not limited  
14 to plugging and unplugging refrigerator service to containers,  
15 trailers, and other refrigerated cargo receptacles, and securing ship  
16 hatch covers.

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

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

26 (9) Upon every person engaging within this state as an insurance  
27 producer or title insurance agent licensed under chapter 48.17 RCW or  
28 a surplus line broker licensed under chapter 48.15 RCW; as to such  
29 persons, the amount of the tax with respect to such licensed activities  
30 is equal to the gross income of such business multiplied by the rate of  
31 0.484 percent.

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

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

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

11 (ii) 0.2904 percent beginning July 1, 2007.

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

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

25 (d) In addition to all other requirements under this title, a  
26 person reporting under the tax rate provided in this subsection (11)  
27 must file a complete annual report with the department under RCW  
28 82.32.534.

29 (e) This subsection (11) does not apply on and after July 1, 2024.

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

1 (b) Until July 1, 2024, upon every person engaging within this  
2 state in the business of manufacturing or processing for hire: (i)  
3 Timber into timber products or wood products; or (ii) timber products  
4 into other timber products or wood products; as to such persons the  
5 amount of the tax with respect to the business is, in the case of  
6 manufacturers, equal to the value of products, including by-products,  
7 manufactured, or in the case of processors for hire, equal to the gross  
8 income of the business, multiplied by the rate of 0.4235 percent from  
9 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
10 2007, through June 30, 2024.

11 (c) Until July 1, 2024, upon every person engaging within this  
12 state in the business of selling at wholesale: (i) Timber extracted by  
13 that person; (ii) timber products manufactured by that person from  
14 timber or other timber products; or (iii) wood products manufactured by  
15 that person from timber or timber products; as to such persons the  
16 amount of the tax with respect to the business is equal to the gross  
17 proceeds of sales of the timber, timber products, or wood products  
18 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
19 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
20 2024.

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

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

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

36 (ii) "Paper and paper products" means products made of interwoven  
37 cellulosic fibers held together largely by hydrogen bonding. "Paper  
38 and paper products" includes newsprint; office, printing, fine, and

1 pressure-sensitive papers; paper napkins, towels, and toilet tissue;  
2 kraft bag, construction, and other kraft industrial papers; paperboard,  
3 liquid packaging containers, containerboard, corrugated, and solid-  
4 fiber containers including linerboard and corrugated medium; and  
5 related types of cellulosic products containing primarily, by weight or  
6 volume, cellulosic materials. "Paper and paper products" does not  
7 include books, newspapers, magazines, periodicals, and other printed  
8 publications, advertising materials, calendars, and similar types of  
9 printed materials.

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

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

19 (v) "Timber products" means:

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

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

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

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

31 (f) Except for small harvesters as defined in RCW 84.33.035, a  
32 person reporting under the tax rate provided in this subsection (12)  
33 must file a complete annual survey with the department under RCW  
34 82.32.585.

35 (13) Upon every person engaging within this state in inspecting,  
36 testing, labeling, and storing canned salmon owned by another person,  
37 as to such persons, the amount of tax with respect to such activities

1 is equal to the gross income derived from such activities multiplied by  
2 the rate of 0.484 percent.

3 (14)(a) Upon every person engaging within this state in the  
4 business of printing a newspaper, publishing a newspaper, or both, the  
5 amount of tax on such business is equal to the gross income of the  
6 business multiplied by the rate of ~~((0.2904))~~ 0.365 percent through  
7 June 30, 2013, and beginning July 1, 2013, multiplied by the rate of  
8 0.35 percent.

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

12 **PART V**

13 **REPEALING THE SALES TAX EXEMPTION FOR CERTAIN PHONE SERVICES**

14 NEW SECTION. Sec. 501. RCW 82.08.0289 (Exemptions--Telephone,  
15 telecommunications, and ancillary services) and 2007 c 6 s 1006, 2007  
16 c 6 s 1005, 2002 c 67 s 6, & 1983 2nd ex.s. c 3 s 30 are each repealed.

17 NEW SECTION. Sec. 502. For services affected by the repeal in  
18 section 501 of this act that cover a billing period starting before and  
19 ending after the effective date of section 1 of this act, RCW  
20 82.08.064(3)(a) is deemed to apply and retail sales tax applies to the  
21 first billing period starting on or after the effective date of section  
22 1 of this act.

23 **PART VI**

24 **CLARIFYING THE DEFINITION OF LEASEHOLD INTEREST**

25 **Sec. 601.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to  
26 read as follows:

27 ~~((As used in this chapter the following terms shall be defined as~~  
28 ~~follows,))~~ The definitions in this section apply throughout this  
29 chapter unless the context ~~((otherwise))~~ requires~~((+))~~ otherwise.

30 (1) "Leasehold interest" ~~((shall))~~ means an interest in publicly  
31 owned real or personal property which exists by virtue of any lease,  
32 permit, license, or any other agreement, written or verbal, between the  
33 public owner of the property and a person who would not be exempt from

1 property taxes if that person owned the property in fee, granting  
2 possession and use, to a degree less than fee simple ownership(~~(+  
3 PROVIDED, That~~)). However, no interest in personal property (excluding  
4 land or buildings) which is owned by the United States, whether or not  
5 as trustee, or by any foreign government (~~(shall)~~) may constitute a  
6 leasehold interest hereunder when the right to use such property is  
7 granted pursuant to a contract solely for the manufacture or production  
8 of articles for sale to the United States or any foreign government.  
9 The term "leasehold interest" (~~(shall)~~) includes the rights of use or  
10 occupancy by others of property which is owned in fee or held in trust  
11 by a public corporation, commission, or authority created under RCW  
12 35.21.730 or 35.21.660 if the property is listed on or is within a  
13 district listed on any federal or state register of historical sites.  
14 The term "leasehold interest" (~~(shall)~~) does not include road or  
15 utility easements, rights of access, occupancy, or use granted solely  
16 for the purpose of removing materials or products purchased from a  
17 public owner or the lessee of a public owner, or rights of access,  
18 occupancy, or use granted solely for the purpose of natural energy  
19 resource exploration. "Leasehold interest" does not include the  
20 preferential use of publicly owned cargo cranes and docks and  
21 associated areas used in the loading and discharging of cargo located  
22 at a port district marine facility. "Preferential use" means that  
23 publicly owned real or personal property is used by a private party  
24 under a written agreement with the public owner, but the public owner  
25 or any third party maintains a right to use the property when not being  
26 used by the private party.

27 (2)(a) "Taxable rent" (~~(shall)~~) means contract rent as defined in  
28 (~~(subsection (a))~~) (c) of this subsection in all cases where the lease  
29 or agreement has been established or renegotiated through competitive  
30 bidding, or negotiated or renegotiated in accordance with statutory  
31 requirements regarding the rent payable, or negotiated or renegotiated  
32 under circumstances, established by public record, clearly showing that  
33 the contract rent was the maximum attainable by the lessor(~~(+  
34 PROVIDED, That~~)). However, after January 1, 1986, with respect to any  
35 lease which has been in effect for ten years or more without  
36 renegotiation, taxable rent may be established by procedures set forth  
37 in (~~(subsection (b))~~) (g) of this subsection. All other leasehold

1 interests (~~shall be~~) are subject to the determination of taxable rent  
2 under the terms of (~~subsection (b)~~) (g) of this subsection.

3 (b) For purposes of determining leasehold excise tax on any lands  
4 on the Hanford reservation subleased to a private or public entity by  
5 the department of ecology, taxable rent (~~shall~~) includes only the  
6 annual cash rental payment made by such entity to the department of  
7 ecology as specifically referred to as rent in the sublease agreement  
8 between the parties and (~~shall~~) does not include any other fees,  
9 assessments, or charges imposed on or collected by such entity  
10 irrespective of whether the private or public entity pays or collects  
11 such other fees, assessments, or charges as specified in the sublease  
12 agreement.

13 (~~(a)~~) (c) "Contract rent" (~~shall~~) means the amount of  
14 consideration due as payment for a leasehold interest, including: The  
15 total of cash payments made to the lessor or to another party for the  
16 benefit of the lessor according to the requirements of the lease or  
17 agreement, including any rents paid by a sublessee; expenditures for  
18 the protection of the lessor's interest when required by the terms of  
19 the lease or agreement; and expenditures for improvements to the  
20 property to the extent that such improvements become the property of  
21 the lessor. Where the consideration conveyed for the leasehold  
22 interest is made in combination with payment for concession or other  
23 rights granted by the lessor, only that portion of such payment which  
24 represents consideration for the leasehold interest (~~shall be~~) is  
25 part of contract rent.

26 (d) "Contract rent" (~~shall~~) does not include: (i) Expenditures  
27 made by the lessee, which under the terms of the lease or agreement,  
28 are to be reimbursed by the lessor to the lessee or expenditures for  
29 improvements and protection made pursuant to a lease or an agreement  
30 which requires that the use of the improved property be open to the  
31 general public and that no profit will inure to the lessee from the  
32 lease; (ii) expenditures made by the lessee for the replacement or  
33 repair of facilities due to fire or other casualty including payments  
34 for insurance to provide reimbursement for losses or payments to a  
35 public or private entity for protection of such property from damage or  
36 loss or for alterations or additions made necessary by an action of  
37 government taken after the date of the execution of the lease or  
38 agreement; (iii) improvements added to publicly owned property by a

1 sublessee under an agreement executed prior to January 1, 1976, which  
2 have been taxed as personal property of the sublessee prior to January  
3 1, 1976, or improvements made by a sublessee of the same lessee under  
4 a similar agreement executed prior to January 1, 1976, and such  
5 improvements shall be taxable to the sublessee as personal property;  
6 (iv) improvements added to publicly owned property if such improvements  
7 are being taxed as personal property to any person.

8 (e) Any prepaid contract rent (~~((shall be))~~) is considered to have  
9 been paid in the year due and not in the year actually paid with  
10 respect to prepayment for a period of more than one year. Expenditures  
11 for improvements with a useful life of more than one year which are  
12 included as part of contract rent (~~((shall))~~) must be treated as prepaid  
13 contract rent and prorated over the useful life of the improvement or  
14 the remaining term of the lease or agreement if the useful life is in  
15 excess of the remaining term of the lease or agreement. Rent prepaid  
16 prior to January 1, 1976, (~~((shall))~~) must be prorated from the date of  
17 prepayment.

18 (f) With respect to a "product lease", the value (~~((shall be))~~) is  
19 that value determined at the time of sale under terms of the lease.

20 ~~((b))~~ (g) If it (~~((shall be))~~) is determined by the department of  
21 revenue, upon examination of a lessee's accounts or those of a lessor  
22 of publicly owned property, that a lessee is occupying or using  
23 publicly owned property in such a manner as to create a leasehold  
24 interest and that such leasehold interest has not been established  
25 through competitive bidding, or negotiated in accordance with statutory  
26 requirements regarding the rent payable, or negotiated under  
27 circumstances, established by public record, clearly showing that the  
28 contract rent was the maximum attainable by the lessor, the department  
29 may establish a taxable rent computation for use in determining the tax  
30 payable under authority granted in this chapter based upon the  
31 following criteria: (i) Consideration (~~((shall))~~) must be given to  
32 rental being paid to other lessors by lessees of similar property for  
33 similar purposes over similar periods of time; (ii) consideration  
34 (~~((shall))~~) must be given to what would be considered a fair rate of  
35 return on the market value of the property leased less reasonable  
36 deductions for any restrictions on use, special operating requirements  
37 or provisions for concurrent use by the lessor, another person or the  
38 general public.

1 (3) "Product lease" as used in this chapter (~~shall~~) means a lease  
2 of property for use in the production of agricultural or marine  
3 products to the extent that such lease provides for the contract rent  
4 to be paid by the delivery of a stated percentage of the production of  
5 such agricultural or marine products to the credit of the lessor or the  
6 payment to the lessor of a stated percentage of the proceeds from the  
7 sale of such products.

8 (4) "Renegotiated" means a change in the lease agreement which  
9 changes the agreed time of possession, restrictions on use, the rate of  
10 the cash rental or of any other consideration payable by the lessee to  
11 or for the benefit of the lessor, other than any such change required  
12 by the terms of the lease or agreement. In addition "renegotiated"  
13 (~~shall~~) means a continuation of possession by the lessee beyond the  
14 date when, under the terms of the lease agreement, the lessee had the  
15 right to vacate the premises without any further liability to the  
16 lessor.

17 (5) "City" means any city or town.

18 (6) "Products" includes natural resource products such as cut or  
19 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
20 ornamental trees and shrubs, ore and minerals, natural gas, geothermal  
21 water and steam, and forage removed through the grazing of livestock.

## 22 PART VII

### 23 MISCELLANEOUS PROVISIONS

24 NEW SECTION. **Sec. 701.** This act does not affect any existing  
25 right acquired or liability or obligation incurred under the sections  
26 amended or repealed or under any rule or order adopted under those  
27 sections, nor does it affect any proceeding instituted under those  
28 sections.

29 NEW SECTION. **Sec. 702.** If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 703.** (1) Parts I, II, and IV through VII of

1 this act are necessary for the immediate preservation of the public  
2 peace, health, or safety, or support of the state government and its  
3 existing public institutions, and take effect July 1, 2012.

4 (2) Section 302 of this act does not take effect if the contingency  
5 in subsection (3) of this section occurs.

6 (3) Section 303 of this act takes effect if Substitute House Bill  
7 No. 2530 or any other legislation repealing RCW 82.32.534 is enacted  
8 during the 2012 1st special session and signed into law.

9 (4) Part III of this act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 immediately.

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