

Title 82

EXCISE TAXES

Chapters

82.01 Department of revenue.
 82.02 General provisions.
 82.03 Board of tax appeals.
 82.04 Business and occupation tax.
 82.08 Retail sales tax.
 82.12 Use tax.
 82.14 Local retail sales and use taxes.
 82.14A Cities and towns—License fees and taxes on financial institutions.
 82.14B Counties—Tax on telephone access line use.
 82.16 Public utility tax.
 82.18 Solid waste collection tax.
 82.19 Litter tax.
 82.21 Hazardous substance tax—Model toxics control act.
 82.23A Petroleum products—Underground storage tank program funding.
 82.23B Oil spill response tax.
 82.24 Tax on cigarettes.
 82.25 Tax on vapor products.
 82.26 Tax on tobacco products.
 82.27 Tax on enhanced food fish.
 82.29A Leasehold excise tax.
 82.32 General administrative provisions.
 82.32A Taxpayer rights and responsibilities.
 82.33 Economic and revenue forecasts.
 82.33A Economic climate council.
 82.34 Pollution control facilities—Tax exemptions and credits.
 82.38 Fuel tax act.
 82.41 Multistate motor fuel tax agreement.
 82.42 Aircraft fuel tax.
 82.44 Motor vehicle excise tax.
 82.45 Excise tax on real estate sales.
 82.46 Counties and cities—Excise tax on real estate sales.
 82.47 Border area motor vehicle fuel and special fuel tax.
 82.48 Aircraft excise tax.
 82.49 Watercraft excise tax.
 82.50 Travel trailers and campers excise tax.
 82.51 Heavy equipment rental tax.
 82.52 Extension of excises to federal areas.
 82.56 Multistate tax compact.
 82.58 Simplified sales and use tax administration act.
 82.60 Tax deferrals for investment projects in rural counties.
 82.62 Tax credits for eligible business projects in rural counties.
 82.63 Tax deferrals for high-technology businesses.
 82.64 Syrup tax.
 82.65A Intermediate care facilities for persons with intellectual disabilities.
 82.70 Commute trip reduction incentives.
 82.73 Washington main street program tax incentives.
 82.74 Tax deferrals for fruit and vegetable businesses.

82.75 Tax deferrals for biotechnology and medical device manufacturing businesses.
 82.80 Local option transportation taxes.
 82.82 Community empowerment zones—Tax deferral program.
 82.84 Local grocery tax restrictions.
 82.85 Job creation and economic development investment incentives—Pilot program.
 82.86 988 behavioral health crisis response and suicide prevention line tax.
 82.87 Capital gains tax.
 82.89 Tax deferrals for investment projects.
 82.90 Tax deferrals for solar canopies.
 82.92 Tax deferrals for underdeveloped urban land redevelopment.
 82.94 Tax deferrals for manufacturing and research and development.
 82.98 Construction.

Additional taxes, see titles pertaining to particular taxing authorities, e.g., counties, cities, school districts, public utility districts.

Expenditure limitations: Chapter 43.135 RCW.

Hotels, motels, special excise tax on charges for furnishing lodging: Chapter 67.28 RCW.

Termination of tax preferences: Chapter 43.136 RCW.

Chapter 82.01 RCW DEPARTMENT OF REVENUE

Sections

82.01.050 Department established—Director of revenue.
 82.01.060 Director—Powers and duties—Rule-making authority.
 82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.
 82.01.080 Director—Delegation of powers and duties—Responsibility.
 82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission.
 82.01.100 Assistance to other state agencies in administration and collection of taxes.
 82.01.115 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor.

Apportionment factors (for school districts) to be based on current figures—Rules and regulations: RCW 28A.150.400.

Escheat of postal savings system accounts, director's duties: Chapter 63.48 RCW.

Gambling activities, reports to department of revenue: RCW 9.46.130.

Motor vehicle fund, distribution of amount to counties, department to furnish information: RCW 46.68.124.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Questionnaires—Job opportunities for welfare recipients—Department to mail: RCW 74.08A.350.

Refunds of erroneous or excessive payments: RCW 43.88.170.

Termination of tax preferences: Chapter 43.136 RCW.

82.01.050 Department established—Director of revenue. There is established a department of state government

to be known as the department of revenue of the state of Washington, of which the chief executive officer shall be known as the director of revenue. [1967 ex.s. c 26 § 2.]

Additional notes found at www.leg.wa.gov

82.01.060 Director—Powers and duties—Rule-making authority. The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, must:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature. However, the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner;

(7) Provide the opportunity for any person feeling aggrieved by any action taken against the person by the department in the administration of chapters 19.02, 19.80, and 59.30 RCW to request a review of the department's action. Such review may be conducted as a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494; and

(8)(a) Establish background investigation policies applicable to those current and prospective department employees and contractors that are or may be authorized by the department to access federal tax information. Such policies must require a criminal history record check through the Washington state patrol criminal identification system and through the federal bureau of investigation, at the expense of the department. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card, which must be forwarded by the Washington state patrol to the federal bureau of investigation. The department's background investigation policies must also satisfy

any specific background investigation standards established by the internal revenue service.

(b) Information received by the department pursuant to this subsection may be used only for the purposes of making, supporting, or defending decisions regarding the appointment, hiring, or retention of persons, or for complying with any requirements from the internal revenue service. Further dissemination or use of the information is prohibited, notwithstanding any other provision of law. [2017 c 323 § 801; 2011 c 298 § 36; 1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services. The director shall have charge and general supervision of the department of revenue. The director shall appoint an assistant director for administration, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the assistant director, and subject to the provisions of chapter 41.06 RCW may appoint and employ such clerical, technical and other personnel as may be necessary to carry out the powers and duties of the department. The director may also enter into personal service contracts with out-of-state individuals or business entities for the performance of auditing services outside the state of Washington when normal efforts to recruit classified employees are unsuccessful. The director may agree to pay to the department's employees or contractors who reside out of state such amounts in addition to their ordinary rate of compensation as are necessary to defray the extra costs of facilities, living, and other costs reasonably related to the out-of-state services, subject to legislative appropriation for those purposes. The special allowances shall be in such amounts or at such rates as are approved by the office of financial management. This section does not apply to audit functions performed in states contiguous to the state of Washington. [1997 c 156 § 1; 1982 c 128 § 1; 1967 ex.s. c 26 § 4.]

Additional notes found at www.leg.wa.gov

82.01.080 Director—Delegation of powers and duties—Responsibility. The director may delegate any power or duty vested in or transferred to the director by law, or executive order, to the assistant director or to any of the director's subordinates; but the director shall be responsible for the official acts of the officers and employees of the department. [1997 c 156 § 2; 1967 ex.s. c 26 § 5.]

82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission. Except for the powers and duties devolved upon the board of tax appeals by the provisions of RCW 82.03.010 through 82.03.190, the director of revenue shall, after July 1, 1967, exercise those powers, duties and functions theretofore vested in the tax

commission of the state of Washington, including all powers, duties and functions of the commission acting as the commission or as the state board of equalization or in any other capacity. [1967 ex.s. c 26 § 6.]

82.01.100 Assistance to other state agencies in administration and collection of taxes. Assistance of the department of revenue in the administration or collection of those state taxes which are administered or collected by other state agencies may be requested by the agencies concerned. Such assistance may be given by the director to the extent that the limitations of time, personnel and the conduct of the duties of the department shall allow. The department shall be reimbursed by any agency to which assistance is rendered. [1967 ex.s. c 26 § 11.]

82.01.115 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor. See RCW 43.06.400.

**Chapter 82.02 RCW
GENERAL PROVISIONS**

Sections

82.02.010	Definitions.
82.02.020	State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
82.02.030	Additional tax rates.
82.02.040	Authority of operating agencies to levy taxes.
82.02.050	Impact fees—Intent—Limitations.
82.02.060	Impact fees—Local ordinances—Required provisions—Exemptions.
82.02.070	Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.080	Impact fees—Refunds.
82.02.090	Impact fees—Definitions.
82.02.100	Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.
82.02.110	Impact fees—Extending use of school impact fees.
82.02.200	Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.
82.02.210	Washington compliance with streamlined sales and use tax agreement—Intent—Report.
82.02.220	Exclusion of steam, electricity, or electrical energy from definition of certain terms.
82.02.230	One statewide rate and one jurisdiction-wide rate for sales and use taxes.
82.02.240	Professional employer organizations—Liability for certain taxes and fees.
82.02.250	Nexus—Requirement to pay taxes and fees.
82.02.260	Seller obligation to collect sales taxes.

82.02.010 Definitions. For the purpose of this title, unless the context clearly requires otherwise:

- (1) "Cannabis," "cannabis-infused products," and "useable cannabis" have the meanings provided in RCW 69.50.101;
- (2) "Department" means the department of revenue of the state of Washington;
- (3) "Director" means the director of the department of revenue of the state of Washington;
- (4) "Taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any busi-

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ness or performs any act for which a tax is imposed by this title. "Taxpayer" also includes any person liable for any fee or other charge collected by the department under any provision of law, including registration assessments and delinquency fees imposed under RCW 59.30.050; and

(5) Words in the singular number include the plural and the plural include the singular. Words in one gender include all other genders. [2022 c 16 § 137; 2014 c 140 § 30; 2011 c 298 § 37; 1979 c 107 § 9; 1967 ex.s. c 26 § 14; 1961 c 15 § 82.02.010. Prior: 1935 c 180 § 3; RRS § 8370-3.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

- (1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;
- (2) The payment shall be expended in all cases within five years of collection; and
- (3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), 43.21C.428, and beginning July 1, 2014, RCW 35.91.020.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2013 c 243 § 4; 2010 c 153 § 3; 2009 c 535 § 1103; 2008 c 113 § 2; 2006 c 149 § 3; 2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Intent—2010 c 153: See note following RCW 43.21C.420.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Construction—2006 c 149: See notes following RCW 36.70A.540.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.02.030 Additional tax rates. The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 82.16.020(2), 82.27.020(5), and 82.29A.030(2) shall be seven percent. [1993 sp.s. c 25 § 107; 1993 c 492 § 312; 1990 c 42 § 319. Prior: 1987 1st ex.s. c 9 § 6; 1987 c 472 § 15; 1987 c 80 § 4; 1986 c 296 § 5; 1985 c 471 § 9; 1983 2nd ex.s. c 3 § 6; 1983 c 7 § 8; 1982 2nd ex.s. c 14 § 1; 1982 1st ex.s. c 35 § 31.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.02.040 Authority of operating agencies to levy taxes. Nothing in this title may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 55.]

Additional notes found at www.leg.wa.gov

82.02.050 Impact fees—Intent—Limitations. (1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3)(a)(i) Counties, cities, and towns collecting impact fees must, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction. The deferral system must include a process by which an applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment. The deferral system offered by a county, city, or town under this subsection (3) must include one or more of the following options:

(A) Deferring collection of the impact fee payment until final inspection;

(B) Deferring collection of the impact fee payment until certificate of occupancy or equivalent certification; or

(C) Deferring collection of the impact fee payment until the time of closing of the first sale of the property occurring after the issuance of the applicable building permit.

(ii) Counties, cities, and towns utilizing the deferral process required by this subsection (3)(a) may withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fees have been paid in full.

(iii) The amount of impact fees that may be deferred under this subsection (3) must be determined by the fees in effect at the time the applicant applies for a deferral.

(iv) Unless an agreement to the contrary is reached between the buyer and seller, the payment of impact fees due at closing of a sale must be made from the seller's proceeds. In the absence of an agreement to the contrary, the seller bears strict liability for the payment of the impact fees.

(b) The term of an impact fee deferral under this subsection (3) may not exceed eighteen months from the date of building permit issuance.

(c) Except as may otherwise be authorized in accordance with (f) of this subsection (3), an applicant seeking a deferral under this subsection (3) must grant and record a deferred impact fee lien against the property in favor of the county, city, or town in the amount of the deferred impact fee. The deferred impact fee lien, which must include the legal description, tax account number, and address of the property, must also be:

(i) In a form approved by the county, city, or town;

(ii) Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in the county where the property is located;

(iii) Binding on all successors in title after the recordation; and

(iv) Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(d)(i) If impact fees are not paid in accordance with a deferral authorized by this subsection (3), and in accordance with the term provisions established in (b) of this subsection (3), the county, city, or town may institute foreclosure proceedings in accordance with chapter 61.12 RCW.

(ii) If the county, city, or town does not institute foreclosure proceedings for unpaid school impact fees within forty-five days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.

(e)(i) Upon receipt of final payment of all deferred impact fees for a property, the county, city, or town must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at his or her expense, is responsible for recording the lien release.

(ii) The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

(f) A county, city, or town with an impact fee deferral process on or before April 1, 2015, is exempt from the requirements of this subsection (3) if the deferral process delays all impact fees and remains in effect after September 1, 2016.

(g)(i) Each applicant for a single-family residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this subsection (3) for the first twenty single-family residential construction building permits per county, city, or town. A county, city, or town, however, may elect, by ordinance, to defer more than twenty single-family residential construction building permits for an applicant. If the county, city, or town collects impact fees on behalf of one or more school districts for which the collection of impact fees could be delayed, the county, city, or town must consult with the district or districts about the additional deferrals. A county, city, or town considering additional deferrals must give substantial weight to recommendations of each applicable school district regarding the number of additional deferrals. If the county, city, or town disagrees with the recommendations of one or more school districts, the county, city, or town must provide the district or districts with a written rationale for its decision.

(ii) For purposes of this subsection (3)(g), an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

(h) Counties, cities, and towns may collect reasonable administrative fees to implement this subsection (3) from permit applicants who are seeking to delay the payment of impact fees under this subsection (3).

(i) In accordance with RCW *44.28.812 and 43.31.980, counties, cities, and towns must cooperate with and provide requested data, materials, and assistance to the department of commerce and the joint legislative audit and review committee.

(4) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(5)(a) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town is required to adopt its development regulations under chapter 36.70A RCW, continued authorization to collect and expend impact fees is contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(i) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(ii) Additional demands placed on existing public facilities by new development; and

(iii) Additional public facility improvements required to serve new development.

(b) If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the

county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible. [2015 c 241 § 1; 1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

*Reviser's note: RCW 44.28.812 expired January 1, 2022.

Effective date—2015 c 241: "This act takes effect September 1, 2016." [2015 c 241 § 5.]

SEPA: RCW 43.21C.065.

Additional notes found at www.leg.wa.gov

82.02.060 Impact fees—Local ordinances—Required provisions—Exemptions. The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or prorable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, including development of an early learning facility, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3)(a) May not impose an impact fee on development activities of an early learning facility greater than that imposed on commercial retail or commercial office development activities that generate a similar number, volume, type, and duration of vehicle trips;

(b) When a facility or development has more than one use, the limitations in this subsection (3) or the exemption applicable to an early learning facility in subsections (2) and (4) of this section only apply to that portion that is developed as an early learning facility. The impact fee assessed on an early learning facility in such a development or facility may not exceed the least of the impact fees assessed on comparable businesses in the facility or development;

(4) May provide an exemption from impact fees for low-income housing or for early learning facilities. Local governments that grant exemptions for low-income housing or for early learning facilities under this subsection (4) may either: Grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other

than impact fee accounts; or provide a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts, except as provided in (b) of this subsection. These exemptions are subject to the following requirements:

(a) An exemption for low-income housing granted under subsection (2) of this section or this subsection (4) must be conditioned upon requiring the developer to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion;

(b) An exemption for early learning facilities granted under subsection (2) of this section or this subsection (4) may be a full waiver without an explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts if the local government requires the developer to record a covenant that requires that at least 25 percent of the children and families using the early learning facility qualify for state subsidized child care, including early childhood education and assistance under chapter 43.216 RCW, and that provides that if the property is converted to a use other than for an early learning facility, the property owner must pay the applicable impact fees in effect at the time of conversion, and that also provides that if at no point during a calendar year does the early learning facility achieve the required percentage of children and families qualified for state subsidized child care using the early learning facility, the property owner must pay 20 percent of the impact fee that would have been imposed on the development had there not been an exemption within 90 days of the local government notifying the property owner of the breach, and any balance remaining thereafter shall be a lien on the property; and

(c) Covenants required by (a) and (b) of this subsection must be recorded with the applicable county auditor or recording officer. A local government granting an exemption under subsection (2) of this section or this subsection (4) for low-income housing or an early learning facility may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption. A school district who receives school impact fees must approve any exemption under subsection (2) of this section or this subsection (4);

(5) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(6) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(7) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(8) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development; and

(9) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

For purposes of this section, "low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

For the purposes of this section, "early learning facility" has the same meaning as in RCW 43.31.565. [2021 c 72 § 1; 2012 c 200 § 1; 1990 1st ex.s. c 17 § 44.]

Additional notes found at www.leg.wa.gov

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.

(1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3)(a) Except as provided otherwise by (b) of this subsection, impact fees shall be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(b) School impact fees must be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [2011 c 353 § 8; 2009 c 263 § 1; 1990 1st ex.s. c 17 § 46.]

(2022 Ed.)

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

82.02.080 Impact fees—Refunds. (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within ten years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first-class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [2011 c 353 § 9; 1990 1st ex.s. c 17 § 47.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

82.02.090 Impact fees—Definitions. The definitions in this section apply throughout RCW 82.02.050 through 82.02.090 unless the context clearly requires otherwise.

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include:

(a) Buildings or structures constructed by a regional transit authority; or

(b) Buildings or structures constructed as shelters that provide emergency housing for people experiencing home-

lessness, or emergency shelters for victims of domestic violence, as defined in RCW 70.123.020.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser is considered the owner of the real property if the contract is recorded.

(5) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. An improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town is not considered a project improvement.

(6) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas must be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. [2018 c 133 § 1. Prior: 2010 c 86 § 1; 2008 c 42 § 1; 1990 1st ex.s. c 17 § 48.]

Effective date—2018 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2018." [2018 c 133 § 2.]

Additional notes found at www.leg.wa.gov

82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW. (1) A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements.

(2) A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share

related to the delivery of emergency medical services. [2011 c 331 § 3; 1992 c 219 § 2.]

Intent—2011 c 331: "The legislature recognizes that fire sprinkler systems in private residences may prevent catastrophic losses of life and property, but that financial, technical, and other issues often discourage property owners from installing these protective systems.

It is the intent of the legislature to eradicate barriers that prevent the voluntary installation of sprinkler systems in private residences by promoting education regarding the effectiveness of residential fire sprinklers, and by providing financial and regulatory incentives to homeowners, builders, and water purveyors for voluntarily installing the systems. It is the further intent of the legislature to fully preserve the rulings of *Fisk v. City of Kirkland*, 164 Wn.2d 891 (2008), *Stiefel v. City of Kent*, 132 Wn. App.523 (2006), and similar cases." [2011 c 331 § 1.]

82.02.110 Impact fees—Extending use of school impact fees. Criteria must be developed by the office of the superintendent of public instruction for extending the use of school impact fees from six to ten years and this extension must require an evaluation for each respective school board of the appropriateness of the extension. [2009 c 263 § 2.]

82.02.200 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications. The director may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 6.]

Intent—1997 c 51: See note following RCW 19.02.300.

82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent—Report. (1) It is the intent of the legislature that Washington join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW. The agreement provides for a simpler and more uniform sales and use tax structure among states that have sales and use taxes. The intent of the legislature is to bring Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers.

(2) Chapter 168, Laws of 2003 does not include changes to Washington law that may be required in the future and that are not fully developed under the agreement. These include, but are not limited to, changes relating to online registration, reporting, and remitting of payments by businesses for sales and use tax purposes, monetary allowances for sellers and their agents, sourcing, and amnesty for businesses registering under the agreement.

(3) It is the intent of the legislature that the provisions of this title relating to the administration and collection of state and local sales and use taxes be interpreted and applied consistently with the agreement.

(4) The department of revenue shall report to the fiscal committees of the legislature by January 1st of the year immediately following any year during which the streamlined sales and use tax agreement is amended, if legislation is required to keep Washington in compliance with the agreement. [2022 c 56 § 3; 2007 c 6 § 105; 2003 c 168 § 1.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.02.220 Exclusion of steam, electricity, or electrical energy from definition of certain terms. When the terms "ingredient," "component part," "incorporated into," "goods," "products," "by-products," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this title, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 701.]

Additional notes found at www.leg.wa.gov

82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes. (1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 35.21.280, 36.38.010, 36.38.040, *67.40.090, 82.80.030, or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. [2009 c 289 § 3; 2004 c 153 § 405; 2003 c 168 § 801.]

***Reviser's note:** RCW 67.40.090 was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010.

Additional notes found at www.leg.wa.gov

82.02.240 Professional employer organizations—Liability for certain taxes and fees. (1) A professional employer organization is not liable for any tax imposed by or under the authority of this title or Title 35 RCW or any other tax, fee, or charge that the department administers based solely on the activities or status of a covered employee having a coemployment relationship with the professional employer organization.

(2) This subsection does not exempt a professional employer organization from:

(a) Any tax imposed by or under the authority of this or any other title based on:

(i) Professional employer services provided by the professional employer organization; or

(ii) The status or activities of employees of the professional employer organization that are not covered employees coemployed with a client; or

(b) The duty to withhold, collect, report, and remit payroll-related and unemployment taxes as required by state law and regulation.

(3) The definitions in RCW 82.04.540 apply to this section. [2006 c 301 § 8.]

Additional notes found at www.leg.wa.gov

82.02.250 Nexus—Requirement to pay taxes and fees. A person that has a substantial nexus under RCW 82.04.067 is obligated to pay all applicable taxes and fees

(2022 Ed.)

imposed on that person's business activity, including any taxes and fees enacted after December 31, 2018. For purposes of this section, "taxes and fees" means any monetary exaction, regardless of its label, that is imposed directly on a person engaging in business and that the department is responsible for collecting. [2019 c 8 § 104.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: "Sections 101, 104, 106, 201, 402, 403, 404, 405, and 501 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 14, 2019]." [2019 c 8 § 804.]

Existing rights and liability—2019 c 8: "The repeals and amendments in this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or amended, or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them." [2019 c 8 § 801.]

Retroactive application—2019 c 8: "This act applies prospectively only, except for sections 106 and 201 of this act, which apply both prospectively and retroactively to October 1, 2018." [2019 c 8 § 803.]

82.02.260 Seller obligation to collect sales taxes. A seller that is obligated to collect the taxes imposed under chapter 82.08 RCW must also collect all other applicable taxes and fees in effect as of January 1, 2020, or enacted after December 31, 2018. For purposes of this section, "taxes and fees" means any monetary exaction, regardless of its label, imposed on a buyer and that the seller is required to collect and pay over to the department. [2019 c 8 § 107.]

Effective date—2019 c 8 §§ 102, 103, 107, and 701-703: See note following RCW 82.04.067.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Chapter 82.03 RCW BOARD OF TAX APPEALS

Sections

82.03.010	Board created.
82.03.020	Members—Number—Qualifications—Appointment.
82.03.030	Terms—Vacancies.
82.03.040	Removal of members—Grounds—Procedure.
82.03.050	Operation on full-time basis—Salary—Compensation—Travel expenses.
82.03.060	Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board.
82.03.070	Executive director, tax referees, clerk, assistants.
82.03.080	Chair.
82.03.090	Office of board—Quorum—Hearings.
82.03.100	Findings and decisions—Signing—Filing—Public inspection.
82.03.110	Publication of findings and decisions.
82.03.120	Journal of final findings and decisions.
82.03.130	Appeals to board—Jurisdiction as to types of appeals—Filing.
82.03.140	Appeals to board—Election of formal or informal hearing.
82.03.150	Appeals to board—Informal hearings, powers of board or tax referees—Assistance.
82.03.160	Appeals to board—Formal hearings, powers of board or tax referees—Assistance.
82.03.170	Rules of practice and procedure.
82.03.180	Judicial review.
82.03.190	Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure—Notice.
82.03.200	Appeals from county board of equalization—Evidence submission in advance of hearing.

Limitation on increase in property value in appeals to board of tax appeals from county board of equalization: RCW 84.08.060.

Review of sale price established for certain shorelands: RCW 79.125.450.

82.03.010 Board created. There is hereby created the board of tax appeals of the state of Washington as an agency of state government. [1967 ex.s. c 26 § 30.]

Additional notes found at www.leg.wa.gov

82.03.020 Members—Number—Qualifications—Appointment. (1) The board of tax appeals, hereinafter referred to as the board, must consist of three members qualified by experience and training in the field of state and local taxation, appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their terms may be members of the same political party.

(2) Beginning with appointments made after June 7, 2018, at least two members of the board must be attorneys licensed to practice law in the state of Washington with substantial knowledge of Washington tax law. At least one attorney member must have substantial experience in making a record suitable for judicial review. Any nonattorney member must have substantial experience in the fields of residential and commercial property appraisal.

(3) Each member of the board must attend at least twenty hours of judicial training deemed by the board to be appropriate for instructing members in Washington law, evidentiary procedures, and judicial practice and ethics. [2018 c 174 § 1; 1967 ex.s. c 26 § 31.]

82.03.030 Terms—Vacancies. Members of the board must be appointed for a term of six years and until their successors are appointed and have qualified. Vacancies must be filled by appointment by the governor, in accordance with RCW 82.03.020, for the unexpired portion of the term in which the vacancy occurs. [2018 c 174 § 2; 1967 ex.s. c 26 § 32.]

82.03.040 Removal of members—Grounds—Procedure. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who must transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice must thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal must fix the time of the hearing, which must be public, and the procedure for the hearing, and the decision of such tribunal are final and not subject to review by the supreme court. Removal of any member of the board by the tribunal disqualifies that member from reappointment. [2018 c 174 § 3; 1967 ex.s. c 26 § 33.]

82.03.050 Operation on full-time basis—Salary—Compensation—Travel expenses. (1) The board must operate on a full-time basis. Each member of the board must devote his or her full time and efforts to the efficient discharge of the duties of the board.

(2) Board members must receive an annual salary in the same range as that established for equivalent members of class four boards under RCW 43.03.250.

(3) Each board member must receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060 as now

existing or hereafter amended. [2018 c 174 § 4; 2013 c 23 § 311; 1975-'76 2nd ex.s. c 34 § 176; 1970 ex.s. c 65 § 2; 1967 ex.s. c 26 § 34.]

Additional notes found at www.leg.wa.gov

82.03.060 Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board. (1) No member of the board may be a candidate for or hold any other public office or trust, and may not engage in any occupation or business interfering with or inconsistent with his or her duty as a member of the board, or serve on or under any committee of any political party; and

(2) No member of the board may, for a period of one year after the termination of his or her membership on the board, act in a representative capacity before the board on any matter. [2018 c 174 § 5; 2013 c 23 § 312; 1967 ex.s. c 26 § 35.]

82.03.070 Executive director, tax referees, clerk, assistants. The board may appoint, discharge and fix the compensation of an executive director, tax referees, a clerk, and such other clerical, professional and technical assistants as may be necessary. Tax referees shall not be subject to chapter 41.06 RCW. [1988 c 222 § 2; 1967 ex.s. c 26 § 36.]

82.03.080 Chair. (1) The board must meet and elect from among its members a chair at least biennially.

(2) A majority of the board constitutes a quorum when transacting official business of the agency. The board may act when one board position is vacant. [2018 c 174 § 7; 2013 c 23 § 313; 1967 ex.s. c 26 § 37.]

82.03.090 Office of board—Quorum—Hearings. The principal office of the board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1967 ex.s. c 26 § 38.]

82.03.100 Findings and decisions—Signing—Filing—Public inspection. The board must make findings of fact and prepare a written decision in each case decided by it, and such findings and decision are effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and are open to public inspection at all reasonable times. [2018 c 174 § 10; 1967 ex.s. c 26 § 39.]

82.03.110 Publication of findings and decisions. The board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof. [1967 ex.s. c 26 § 40.]

82.03.120 Journal of final findings and decisions.

The board must maintain at its principal office a copy, electronic or otherwise, of all final orders and decisions until transferred to the state archives in accordance with state agency retention policies and chapter 40.14 RCW. The orders and decisions maintained at the principal office of the board must be available for public inspection at all reasonable times; however, this provision may be satisfied by making the orders and decisions available via a publicly available website. [2018 c 174 § 12; 1988 c 222 § 3; 1967 ex.s. c 26 § 41.]

82.03.130 Appeals to board—Jurisdiction as to types of appeals—Filing. (1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second-class shorelands on navigable lakes by the department of natural resources pursuant to *RCW 79.94.210.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals. [2005 c 253 § 7; 1998 c 54 § 1; 1994 c 123 § 3; 1992 c 206 § 9; 1989

(2022 Ed.)

c 378 § 4; 1982 1st ex.s. c 46 § 6; 1977 ex.s. c 284 § 2; 1967 ex.s. c 26 § 42.]

*Reviser's note: RCW 79.94.210 was recodified as RCW 79.125.450 pursuant to 2005 c 155 § 1008.

Purpose—Intent—1977 ex.s. c 284: See note following RCW 84.48.075.

Additional notes found at www.leg.wa.gov

82.03.140 Appeals to board—Election of formal or informal hearing.

(1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within twenty days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein may be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1)(e), the director of revenue may, within ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

(2) A responding party may file a cross appeal. In the event that appeals are taken by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding. [2018 c 174 § 13; 2000 c 103 § 1; 1988 c 222 § 4; 1982 1st ex.s. c 46 § 8; 1967 ex.s. c 26 § 43.]

82.03.150 Appeals to board—Informal hearings, powers of board or tax referees—Assistance.

In all appeals involving an informal hearing before the board or any of its members or tax referees, the board, any member of the board, and the board's tax referees have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. The board, any member of the board, and the board's tax referees also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b) the board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board or any member thereof may deem necessary or appropriate. [2018 c 174 § 14; 2000 c 103 § 2; 1988 c 222 § 5; 1967 ex.s. c 26 § 44.]

82.03.160 Appeals to board—Formal hearings, powers of board or tax referees—Assistance.

In all appeals involving a formal hearing before the board or any of its members or tax referees, the board, any member of the board, and the board's tax referees have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW; and the board, and each member thereof, or its tax referees, are subject to all duties imposed upon, and have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. The board, any member of the board, and the board's tax referees also have

all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees may be presented only in open hearing. [2018 c 174 § 15; 2000 c 103 § 3; 1989 c 175 § 175; 1988 c 222 § 6; 1967 ex.s. c 26 § 45.]

Additional notes found at www.leg.wa.gov

82.03.170 Rules of practice and procedure. All proceedings, including both formal and informal hearings, before the board or any of its members or tax referees must be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board must publish such rules and arrange for public access to the rules, including through a publicly available website. [2018 c 174 § 16; 1988 c 222 § 7; 1967 ex.s. c 26 § 46.]

82.03.180 Judicial review. Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW 34.05.510 through 34.05.598: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: AND PROVIDED FURTHER, That no review from a decision made pursuant to RCW 82.03.130(1)(a) may be obtained by a taxpayer unless within the petition period provided by RCW 34.05.542 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1)(a) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130(1)(e) shall have the right of review from a decision made pursuant to RCW 82.03.130(1)(e). [2000 c 103 § 4; 1989 c 175 § 176; 1982 1st ex.s. c 46 § 9; 1967 ex.s. c 26 § 47.]

Additional notes found at www.leg.wa.gov

82.03.190 Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure—Notice. (1) Except as provided in subsection (2) of this section, any person having received notice of a denial of a petition or a notice of determination made under RCW 82.32.160, 82.32.170, 82.34.110, or 82.49.060 may appeal by filing in accordance with RCW 1.12.070 a notice of appeal with the board of tax appeals within thirty days after the mailing of the notice of such denial or determination. In the notice of appeal the taxpayer must set forth the amount of the tax which the taxpayer contends should be reduced or refunded and the reasons for such reduction or refund, in accordance with rules of practice and procedure prescribed by the board. However, if the notice of appeal relates to an application made to the department under chapter 82.34 RCW, the tax-

payer must set forth the amount to which the taxpayer claims the credit or exemption should apply, and the grounds for such contention, in accordance with rules of practice and procedure prescribed by the board. The board must transmit a copy of the notice of appeal to the department and all other named parties within thirty days of its receipt by the board. If the taxpayer intends that the hearing before the board be held pursuant to the administrative procedure act (chapter 34.05 RCW), the notice of appeal must also so state. In the event that the notice of appeal does not so state, the department may, within thirty days from the date of its receipt of the notice of appeal, file with the board notice of its intention that the hearing be held pursuant to the administrative procedure act.

(2) No person may file a notice of appeal with the board of tax appeals to contest the amount of spirits taxes assessed or asserted to be due by the department of revenue unless the person has first paid the full amount of the contested spirits taxes. For purposes of this subsection, "spirits taxes" has the same meaning as in RCW 82.08.155. [2012 c 39 § 3; 1998 c 54 § 2; 1989 c 378 § 5; 1983 c 3 § 211; 1979 ex.s. c 209 § 50; 1975 1st ex.s. c 158 § 3; 1967 ex.s. c 26 § 48.]

Construction—Effective date—2012 c 39: See notes following RCW 82.08.155.

Review of disputes as to appraised value of watercraft: RCW 82.49.060.

Additional notes found at www.leg.wa.gov

82.03.200 Appeals from county board of equalization—Evidence submission in advance of hearing. In all appeals taken pursuant to RCW 84.08.130 the assessor or taxpayer shall submit evidence of comparable sales to be used in a hearing to the board and to all parties at least ten business days in advance of such hearing. Failure to comply with the requirements set forth in this section shall be grounds for the board, upon objection, to continue the hearing or refuse to consider evidence not timely submitted. [1994 c 301 § 17.]

Chapter 82.04 RCW BUSINESS AND OCCUPATION TAX

Sections

82.04.010	Introductory.
82.04.020	"Tax year," "taxable year."
82.04.030	"Person," "company."
82.04.035	"Plantation Christmas trees."
82.04.040	"Sale," "casual or isolated sale," "lease or rental," "adoption fee," "animal care and control agency," "animal rescue group," "animal rescue organization."
82.04.050	"Sale at retail," "retail sale."
82.04.051	"Services rendered in respect to"—Taxation of hybrid or subsequent agreements.
82.04.060	"Sale at wholesale," "wholesale sale."
82.04.062	"Sale at wholesale," "sale at retail" excludes sale of precious metal bullion and monetized bullion—Computation of tax.
82.04.065	Telephone, telecommunications, and ancillary services—Definitions.
82.04.066	"Engaging within this state," "engaging within the state."
82.04.067	Substantial nexus—Engaging in business.
82.04.070	"Gross proceeds of sales."
82.04.080	"Gross income of the business."
82.04.090	"Value proceeding or accruing."
82.04.100	"Extractor."
82.04.110	"Manufacturer."
82.04.120	"To manufacture."
82.04.130	"Commercial or industrial use."
82.04.140	"Business."

82.04.150	"Engaging in business."	82.04.331	Exemptions—Wholesale sales to farmers of seed for planting, conditioning seed for planting owned by others.
82.04.160	"Cash discount."	82.04.332	Exemptions—Buying and selling at wholesale unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley.
82.04.170	"Tuition fee."	82.04.333	Exemptions—Small harvesters.
82.04.180	"Successor."	82.04.334	Exemptions—Standing timber.
82.04.190	"Consumer."	82.04.335	Exemptions—Agricultural fairs.
82.04.192	Digital products definitions.	82.04.337	Exemptions—Amounts received by hop growers or dealers for processed hops shipped outside the state.
82.04.200	"In this state," "within this state."	82.04.338	Exemptions—Hop commodity commission or hop commodity board business.
82.04.210	"By-product."	82.04.339	Exemptions—Day care provided by churches.
82.04.212	"Retail store or outlet."	82.04.3395	Exemptions—Child care resource and referral services by nonprofit organizations.
82.04.213	"Agricultural product," "farmer," "cannabis."	82.04.340	Exemptions—Boxing, sparring, or wrestling matches.
82.04.215	"Newspaper."	82.04.350	Exemptions—Racing.
82.04.215	"Computer," "computer software," "custom software," "customization of prewritten computer software," "master copies," "prewritten computer software," "retained rights."	82.04.355	Exemptions—Ride sharing.
82.04.216	Exclusion of steam, electricity, or electrical energy from definition of certain terms.	82.04.360	Exemptions—Employees—Independent contractors—Booth renters.
82.04.217	"Direct service industrial customer," "aluminum smelter."	82.04.363	Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization.
82.04.220	Business and occupation tax imposed.	82.04.3651	Exemptions—Amounts received by nonprofit organizations for fund-raising activities.
82.04.230	Tax upon extractors.	82.04.367	Exemptions—Nonprofit organizations that are guarantee agencies, issue debt, or provide guarantees for student loans.
82.04.240	Tax on manufacturers.	82.04.368	Exemptions—Nonprofit organizations—Credit and debt services.
82.04.2403	Manufacturer tax not applicable to cleaning fish.	82.04.370	Exemptions—Certain fraternal and beneficiary organizations.
82.04.2404	Manufacturers—Processors for hire—Semiconductor materials.	82.04.380	Exemptions—Certain corporations furnishing aid and relief.
82.04.250	Tax on retailers.	82.04.385	Exemptions—Operation of sheltered workshops.
82.04.255	Tax on real estate brokers.	82.04.390	Exemptions—Amounts derived from sale of real estate.
82.04.257	Tax on digital products and services.	82.04.392	Exemptions—Mortgage brokers' third-party provider services trust accounts.
82.04.258	Digital products—Apportionable income.	82.04.399	Exemptions—Sales of academic transcripts.
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors.	82.04.405	Exemptions—Credit unions.
82.04.2602	Tax on commercial airplane activities—Conditions for rate reduction.	82.04.408	Exemptions—Housing finance commission.
82.04.261	Surcharge on timber and wood product manufacturers, extractors, and wholesalers.	82.04.410	Exemptions—Hatching eggs and poultry.
82.04.263	Tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.	82.04.415	Exemptions—Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs.
82.04.270	Tax on wholesalers.	82.04.416	Exemptions—Operation of state route No. 16.
82.04.272	Tax on warehousing and reselling prescription drugs.	82.04.418	Exemptions—Grants by United States government to municipal corporations or political subdivisions.
82.04.280	Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined.	82.04.419	Exemptions—County, city, town, school district, or fire district activity.
82.04.285	Tax on contests of chance.	82.04.4201	Exemptions—Sales/leasebacks by regional transit authorities.
82.04.286	Tax on horse races.	82.04.421	Exemptions—Out-of-state membership sales in discount programs.
82.04.290	Tax on service and other activities.	82.04.422	Exemptions—Wholesale sales of motor vehicles.
82.04.29001	Creation and distribution of custom software—Customization of prewritten computer software—Taxable services.	82.04.423	Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives.
82.04.29002	Additional tax on certain business and service activities.	82.04.425	Exemptions—Accommodation sales.
82.04.29004	Additional tax on financial institutions.	82.04.4251	Exemptions—Convention and tourism promotion.
82.04.29005	Tax on loan interest—2012 2nd sp.s. c 6.	82.04.426	Exemptions—Semiconductor microchips.
82.04.2905	Tax on providing day care.	82.04.4261	Exemptions—Federal small business innovation research program.
82.04.2906	Tax on certain chemical dependency services.	82.04.4262	Exemptions—Federal small business technology transfer program.
82.04.2907	Tax on royalties.	82.04.4263	Exemptions—Income received by the life sciences discovery fund authority.
82.04.2908	Tax on provision of room and domiciliary care to assisted living facility residents.	82.04.4264	Exemptions—Nonprofit assisted living facilities—Room and domiciliary care.
82.04.2909	Tax on aluminum smelters.	82.04.4265	Exemptions—Comprehensive cancer centers.
82.04.293	International investment management services—Definitions.	82.04.4266	Exemptions—Fruit and vegetable businesses.
82.04.294	Tax on manufacturers or wholesalers of solar energy systems.	82.04.4267	Exemptions—Operation of parking/business improvement areas.
82.04.297	Internet access—Definitions.	82.04.4268	Exemptions—Dairy product businesses.
82.04.298	Tax on qualified grocery distribution cooperatives.	82.04.4269	Exemptions—Seafood product businesses.
82.04.299	Workforce education investment surcharge.	82.04.427	Exemptions and credits—Pollution control facilities.
82.04.301	Exemptions—Certain hospitals.	82.04.4271	Deductions—Membership fees and certain service fees by nonprofit youth organization.
82.04.310	Exemptions—Public utilities—Electrical energy—Natural or manufactured gas.	82.04.4272	Deductions—Direct mail delivery charges.
82.04.311	Exemptions—Tobacco settlement authority.	82.04.4274	Deductions—Nonprofit management companies—Personnel performing on-site functions.
82.04.315	Exemptions—International banking facilities.	82.04.4275	Deductions—Child welfare services.
82.04.317	Exemptions—Motor vehicle sales by manufacturers at wholesale auctions to dealers.	82.04.4281	Deductions—Investments, dividends, interest on loans.
82.04.320	Exemptions—Insurance business.	82.04.4282	Deductions—Fees, dues, charges.
82.04.321	Exemptions—Qualified health plan patients.	82.04.4283	Deductions—Cash discount taken by purchaser.
82.04.322	Exemptions—Health maintenance organization, health care service contractor, certified health plan.	82.04.4284	Deductions—Bad debts.
82.04.323	Exemption—Washington health benefit exchange.	82.04.4285	Deductions—Motor vehicle fuel and special fuel taxes.
82.04.324	Exemptions—Qualifying blood, tissue, or blood and tissue banks.	82.04.4286	Deductions—Nontaxable business.
82.04.326	Exemptions—Qualified organ procurement organizations.	82.04.4287	Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used.
82.04.327	Exemptions—Adult family homes.		
82.04.330	Exemptions—Sales of agricultural products.		

- 82.04.4289 Exemption—Compensation for patient services or attendant sales of drugs dispensed pursuant to prescription by certain nonprofit organizations.
- 82.04.4290 Deductions—Mental health services or substance use disorder treatment services.
- 82.04.4291 Deductions—Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290.
- 82.04.4292 Deductions—Interest on investments or loans secured by mortgages or deeds of trust.
- 82.04.4293 Deductions—Interest on obligations of the state, its political subdivisions, and municipal corporations.
- 82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.
- 82.04.4295 Deductions—Manufacturing activities completed outside the United States.
- 82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes.
- 82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception.
- 82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations.
- 82.04.431 "Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined.
- 82.04.4311 Deductions—Compensation received under the federal medicare program by certain hospitals or health centers.
- 82.04.432 Deductions—Municipal sewer service fees or charges.
- 82.04.4327 Deductions—Artistic and cultural organizations.
- 82.04.4328 "Artistic or cultural organization" defined.
- 82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce.
- 82.04.4331 Deductions—Insurance claims for state health care coverage.
- 82.04.4332 Deductions—Tuition fees of foreign degree-granting institutions.
- 82.04.4337 Deductions—Certain amounts received by assisted living facilities.
- 82.04.4339 Deductions—Salmon recovery grants.
- 82.04.43391 Deductions—Commercial aircraft loan interest and fees.
- 82.04.43392 Deductions—Qualified dispute resolution centers.
- 82.04.43393 Deductions—Paymaster services.
- 82.04.43395 Deductions—Accountable community of health.
- 82.04.43396 Deductions—Scan-down allowances.
- 82.04.434 Credit—Public safety standards and testing.
- 82.04.440 Credit—Persons taxable on multiple activities.
- 82.04.4451 Credit against tax due—Maximum credit—Table.
- 82.04.44525 Credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department.
- 82.04.4461 Credit—Preproduction development expenditures.
- 82.04.4463 Credit—Property and leasehold taxes paid on property used for manufacture of commercial airplanes.
- 82.04.447 Credit—Natural or manufactured gas purchased by direct service industrial customers—Reports.
- 82.04.448 Credit—Manufacturing semiconductor materials.
- 82.04.4481 Credit—Property taxes paid by aluminum smelter.
- 82.04.4482 Credit—Sales of electricity or gas to an aluminum smelter.
- 82.04.4486 Credit—Syrup taxes paid by buyer.
- 82.04.4489 Credit—Motion picture competitiveness program.
- 82.04.449 Credit—Washington customized employment training program—Report to the legislature.
- 82.04.4496 Credit—Clean alternative fuel commercial vehicles.
- 82.04.4497 Credit—Sale or exchange of long-term capital assets.
- 82.04.4498 Credit—Businesses that hire veterans.
- 82.04.4499 Credit—Equitable access to credit program.
- 82.04.450 Value of products, how determined.
- 82.04.460 Apportionable income—Taxable in Washington and another state.
- 82.04.462 Apportionable income.
- 82.04.470 Wholesale sale—Reseller permit—Exemption certificates—Burden of proof—Tax liability.
- 82.04.480 Sales in own name—Sales as agent.
- 82.04.500 Tax part of operating overhead.
- 82.04.510 General administrative provisions invoked.
- 82.04.520 Administrative provisions for motor vehicle sales by courtesy dealers.
- 82.04.530 Telecommunications service providers—Calculation of gross proceeds.
- 82.04.535 Gross proceeds of sales calculation for mobile telecommunications service provider.
- 82.04.540 Professional employer organizations—Taxable under RCW 82.04.290(2)—Deduction.
- 82.04.545 Exemptions—Sales of electricity or gas to silicon smelters.
- 82.04.600 Exemptions—Materials printed in county, city, town, school district, educational service district, library or library district.
- 82.04.601 Exemptions—Affixing stamp services for cigarette sales.
- 82.04.610 Exemptions—Import or export commerce.
- 82.04.615 Exemptions—Certain limited purpose public corporations, commissions, and authorities.
- 82.04.620 Exemptions—Certain prescription drugs.
- 82.04.627 Exemptions—Commercial airplane parts.
- 82.04.628 Exemptions—Commercial fertilizer, agricultural crop protection products, and seed.
- 82.04.635 Exemptions—Nonprofits providing legal services to low-income persons.
- 82.04.640 Exemptions—Washington vaccine association—Certain assessments received.
- 82.04.645 Exemptions—Financial institutions—Amounts received from certain affiliated persons.
- 82.04.650 Exemptions—Investment conduits and securitization entities.
- 82.04.655 Exemptions—Joint municipal utility services authorities.
- 82.04.660 Exemptions—Environmental handling charges—Mercury-containing lights.
- 82.04.750 Exemptions—Restaurant employee meals.
- 82.04.755 Exemptions—Grants received by a nonprofit organization for the program established under RCW 70A.200.140(1)(b)(ii).
- 82.04.756 Exemptions—Cannabis cooperatives.
- 82.04.758 Exceptions—Services for farms.
- 82.04.760 Tax preferences—Expiration dates.
- 82.04.765 Exemptions—Receipts attributable to assessment on architectural paint imposed pursuant to chapter 70A.515 RCW.
- 82.04.767 Exemptions—Qualifying grants—National emergency or state of emergency.
- 82.04.770 Deduction of amounts derived from charge collected pursuant to chapter 70A.530 RCW.
- 82.04.775 Application of chapter—Amounts received under chapter 70A.535 RCW.
- 82.04.900 Construction—1961 c 15.

*Admission tax**cities: RCW 35.21.280.**counties: Chapter 36.38 RCW.**Commute trip reduction incentives: Chapter 82.70 RCW.**Housing authorities, tax exemption: Chapter 35.82 RCW.**Public utility districts, privilege taxes: Chapter 54.28 RCW.*

82.04.010 Introductory. Unless the context clearly requires otherwise, the definitions set forth in the sections preceding RCW 82.04.220 apply throughout this chapter. [1996 c 93 § 4; 1961 c 15 § 82.04.010. Prior: 1955 c 389 § 2; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.020 "Tax year," "taxable year." "Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the department of revenue to use a fiscal year in lieu of the calendar year. [1975 1st ex.s. c 278 § 39; 1961 c 15 § 82.04.020. Prior: 1955 c 389 § 3; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5; Rem. Supp. 1949 § 8370-5, part.]

Additional notes found at www.leg.wa.gov

82.04.030 "Person," "company." "Person" or "company", herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington,

corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. [1995 c 318 § 1; 1963 ex.s. c 28 § 1; 1961 c 15 § 82.04.030. Prior: 1955 c 389 § 4; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

International companies investing in Washington—Eligibility for excise tax incentives: RCW 43.330.068.

Additional notes found at www.leg.wa.gov

82.04.035 "Plantation Christmas trees." "Plantation Christmas trees" means Christmas trees which are exempt from the timber excise tax under RCW 84.33.170. [1987 c 23 § 1.]

82.04.040 "Sale," "casual or isolated sale," "lease or rental," "adoption fee," "animal care and control agency," "animal rescue group," "animal rescue organization." (Effective until January 1, 2030.) (1) Except as otherwise provided in this subsection, "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not. The term "sale" does not include the transfer of the ownership of, title to, or possession of:

(a) An animal by an animal rescue organization in exchange for the payment of an adoption fee; or

(b) An abandoned vehicle sold by a registered tow truck operator to a successful bidder at public auction or, if there is no successful bidder, to a licensed vehicle wrecker, hulk hauler, or scrap processor, as provided in RCW 46.55.130. Nothing in this subsection (1)(b) may be construed as providing an exemption from:

(i) The tax imposed by chapter 82.12 RCW on the use of an abandoned vehicle by any consumer; or

(ii) Taxes imposed under this chapter and chapter 82.08 RCW on automobile towing and automobile storage services provided by a registered tow truck operator.

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

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) must be used for sales and use tax purposes regardless if a transaction is character-

(2022 Ed.)

ized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(4)(a) "Adoption fee" means an amount charged by an animal rescue organization to adopt an animal, except that "adoption fee" does not include any separately itemized charge for any incidental inanimate items provided to persons adopting an animal, including food, identification tags, collars, and leashes.

(b) "Animal care and control agency" means the same as in RCW 16.52.011 and also includes any similar entity operating outside of this state.

(c) "Animal rescue group" means a nonprofit organization that:

(i)(A) Is exempt from federal income taxation under 26 U.S.C. Sec. 501(c) of the federal internal revenue code as it exists on July 23, 2017; or

(B) Is registered as a charity with the Washington secretary of state under chapter 19.09 RCW, whether such registration is required by law or voluntary;

(ii) Has as its primary purpose the prevention of abuse, neglect, cruelty, exploitation, or homelessness of animals; and

(iii) Exclusively obtains dogs, cats, or other animals for placement that are:

(A) Stray or abandoned;

(B) Surrendered or relinquished by animal owners or caretakers;

(C) Transferred from other animal rescue organizations; or

(D) Born in the care of such nonprofit organization other than through intentional breeding by the nonprofit organization.

(d) "Animal rescue organization" means an animal care and control agency or an animal rescue group. [2019 c 357 § 2; 2017 c 323 § 201; 2004 c 153 § 402; 2003 c 168 § 103; 1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Tax preference performance statement—2019 c 357: "(1) This section is the tax preference performance statement for the tax preference con-

tained in section 2, chapter 357, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to allow registered tow truck operators to recoup their expenditures associated with removing abandoned vehicles from the roads and highways of Washington.

(4) If a review finds that the average cost of towing, storing, and disposing of an abandoned vehicle exceeds the average revenue of the sale of an abandoned vehicle by an amount greater than the value of the retail sales and use tax authorized in section 2 of this act, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2019 c 357 § 1.]

Expiration date—2019 c 357: "This act expires January 1, 2030." [2019 c 357 § 3.]

Application—2017 c 323 §§ 201 and 202: "Sections 201 and 202 of this act apply both prospectively and retroactively to July 1, 2015." [2017 c 323 § 203.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: "RCW 82.32.805 and 82.32.808 do not apply to any provisions of this act." [2017 c 323 § 1101.]

Additional notes found at www.leg.wa.gov

82.04.040 "Sale," "casual or isolated sale," "lease or rental," "adoption fee," "animal care and control agency," "animal rescue group," "animal rescue organization." (Effective January 1, 2030.) (1) Except as otherwise provided in this subsection, "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not. The term "sale" does not include the transfer of the ownership of, title to, or possession of an animal by an animal rescue organization in exchange for the payment of an adoption fee.

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

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) must be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(4)(a) "Adoption fee" means an amount charged by an animal rescue organization to adopt an animal, except that "adoption fee" does not include any separately itemized charge for any incidental inanimate items provided to persons adopting an animal, including food, identification tags, collars, and leashes.

(b) "Animal care and control agency" means the same as in RCW 16.52.011 and also includes any similar entity operating outside of this state.

(c) "Animal rescue group" means a nonprofit organization that:

(i)(A) Is exempt from federal income taxation under 26 U.S.C. Sec. 501(c) of the federal internal revenue code as it exists on July 23, 2017; or

(B) Is registered as a charity with the Washington secretary of state under chapter 19.09 RCW, whether such registration is required by law or voluntary;

(ii) Has as its primary purpose the prevention of abuse, neglect, cruelty, exploitation, or homelessness of animals; and

(iii) Exclusively obtains dogs, cats, or other animals for placement that are:

(A) Stray or abandoned;

(B) Surrendered or relinquished by animal owners or caretakers;

(C) Transferred from other animal rescue organizations;

or

(D) Born in the care of such nonprofit organization other than through intentional breeding by the nonprofit organization.

(d) "Animal rescue organization" means an animal care and control agency or an animal rescue group. [2017 c 323 § 201; 2004 c 153 § 402; 2003 c 168 § 103; 1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Application—2017 c 323 §§ 201 and 202: "Sections 201 and 202 of this act apply both prospectively and retroactively to July 1, 2015." [2017 c 323 § 203.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: "RCW 82.32.805 and 82.32.808 do not apply to any provisions of this act." [2017 c 323 § 1101.]

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional

services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

- (a) Abstract, title insurance, and escrow services;
- (b) Credit bureau services;
- (c) Automobile parking and storage garage services;
- (d) Landscape maintenance and horticultural services

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

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

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

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

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

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

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

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

(D) Separately stated charges for physical therapy provided by a physical therapist, as those terms are defined in RCW 18.74.010, or occupational therapy provided by an occupational therapy practitioner, as those terms are defined in RCW 18.59.020, when performed pursuant to a referral from an authorized health care practitioner or in consultation with an authorized health care practitioner. For the purposes of this subsection (3)(g)(ii)(D), an authorized health care practitioner means a health care practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.71, or 18.71A RCW, or, until July 1, 2022, chapter 18.57A RCW;

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

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

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

(H) Yoga, chi gong, or martial arts classes, training, or events held at a community center, park, school gymnasium, college or university, hospital or other medical facility, private residence, or any other facility that is not operated within and as part of an athletic or fitness facility.

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

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

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

(B) "Martial arts" means any of the various systems of training for physical combat or self-defense. "Martial arts" includes, but is not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing, kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido, Kendo, tai chi, and mixed martial arts.

(C) "Physical fitness activities" means activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. "Physical fitness activities" includes participating in yoga, chi gong, or martial arts.

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

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

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

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

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

- (i) Custom software; or
- (ii) The customization of prewritten computer software.

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

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

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

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

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

- (i) Sales in which the seller has granted the purchaser the right of permanent use;
- (ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- (iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- (iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

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

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

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

an operator must do more than maintain, inspect, or set up the tangible personal property.

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

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

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

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

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

(15)(a) The term "sale at retail" or "retail sale" includes amounts charged, however labeled, to consumers to engage in any of the activities listed in this subsection (15)(a), including the furnishing of any associated equipment or,

except as otherwise provided in this subsection, providing instruction in such activities, where such charges are not otherwise defined as a "sale at retail" or "retail sale" in this section:

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

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

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

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

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

(v) Batting cage activities;

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

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

(viii) Day trips for sightseeing purposes;

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

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

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

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

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

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

(xv) Indoor or outdoor playground activities, such as inflatable bounce structures and other inflatables; mazes; trampolines; slides; ball pits; games of tag, including laser tag and soft-dart tag; and human gyroscope rides, regardless of whether such activities occur at the seller's place of business, but not including playground activities provided for children by a licensed child day care center or licensed family day care provider as those terms are defined in RCW 43.216.010;

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

(xvii) Paintball and airsoft activities;

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

(xix) Nonmotorized snow sports and activities, such as downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities, whether engaged in outdoors or in an indoor facility with or without snow, but only in respect to discrete charges to the public for the use of land or facilities to engage in nonmotorized snow sports and activities, such as fees, however labeled, for the use of ski lifts and tows and daily or season passes for access to trails or other areas where nonmotorized snow sports and activities are conducted. However, fees for the following are not retail sales under this subsection (15)(a)(xix): (A) Instructional lessons; (B) permits issued by a governmental entity to park a vehicle on or access public lands; and (C) permits or leases granted by an owner of private timberland for recreational access to areas used primarily for growing and harvesting timber; and

(xx) Scuba diving; snorkeling; river rafting; surfing; kiteboarding; flyboarding; water slides; inflatables, such as

water pillows, water trampolines, and water rollers; and similar water sports and activities.

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

(i) Made for admission to, and rides or attractions at, fairs, carnivals, and festivals. For the purposes of this subsection, fairs, carnivals, and festivals are events that do not exceed 21 days and a majority of the amusement rides, if any, are not affixed to real property;

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

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

(iv) Made for day camps offered by a nonprofit organization or state or local governmental entity that provide youth not older than age 18, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities.

(16)(a) The term "sale at retail" or "retail sale" includes the purchase or acquisition of tangible personal property and specified services by a person who receives either a qualifying grant exempt from tax under RCW 82.04.767 or 82.16.320 or a grant deductible under RCW 82.04.4339, except for transactions excluded from the definition of "sale at retail" or "retail sale" by any other provision of this section. Nothing in this subsection (16) may be construed to limit the application of any other provision of this section to purchases by a recipient of either a qualifying grant exempt from tax under RCW 82.04.767 or a grant deductible under RCW 82.04.4339, or by any other person.

(b) For purposes of this subsection (16), "specified services" means:

(i) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation;

(ii) The clearing of land or the moving of earth, whether or not associated with activities described in (b)(i) of this subsection (16);

(iii) The razing or moving of existing buildings or structures; and

(iv) Landscape maintenance and horticultural services. [2021 c 296 § 8; 2021 c 143 § 2; 2021 c 4 § 3; (2020 c 80 § 58 repealed by 2021 c 143 § 4); 2017 3rd sp.s. c 37 § 1201; 2015 3rd sp.s. c 6 § 1105; (2015 3rd sp.s. c 6 § 1104 expired January 1, 2016); 2015 c 169 § 1; 2013 2nd sp.s. c 13 § 802; 2011 c 174 § 202. Prior: 2010 c 112 § 14; 2010 c 111 § 201; 2010 c 106 § 202; prior: 2009 c 563 § 301; 2009 c 535 § 301; prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c

(2022 Ed.)

275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 2021 c 143 § 2 and by 2021 c 296 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Automatic expiration date and tax preference performance statement exemption—Effective date—2021 c 143: See notes following RCW 82.04.4339.

Retroactive application—Automatic expiration date and tax preference performance statement exemption—Effective date—2021 c 4: See notes following RCW 82.04.767.

Intent—2020 c 80: See note following RCW 18.71A.010.

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1201: "RCW 82.32.805 and 82.32.808 do not apply to this part." [2017 3rd sp.s. c 37 § 1202.]

Expiration date—2015 3rd sp.s. c 6 § 1104: "Section 1104 of this act expires January 1, 2016." [2015 3rd sp.s. c 6 § 2304.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—Tax preference intended to be permanent—2015 3rd sp.s. c 6 §§ 1102-1106: See notes following RCW 82.04.330.

Effective date—2015 c 169: "This act takes effect January 1, 2016." [2015 c 169 § 14.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part VIII of this act to provide a sales tax exemption for cover charges to patrons at establishments that provide the opportunity to dance. The intent is to provide tax relief to businesses who have been reporting the income for cover charges under the service and other classification, but not intending to avoid their tax obligation of collecting retail sales tax because of department and taxpayer confusion regarding the appropriate tax treatment of this income. To ensure proper tax reporting in the future by businesses who provide the opportunity to dance, the legislature intends to review the tax preference and its actual fiscal impact on state revenues to determine if the fiscal impact to state revenues reasonably conforms with the fiscal estimate in the fiscal note for this legislation." [2013 2nd sp.s. c 13 § 801.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Purpose—2010 c 111: "The 2009 legislature enacted Engrossed Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act relating to the excise taxation of certain products and services provided or furnished electronically. The bill took effect July 26, 2009.

Engrossed Substitute House Bill No. 2075, at eighty-five pages, was a comprehensive piece of legislation that made major changes to state and local sales and use taxes, as well as the state business and occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was a complex piece of legislation because of the intricate interrelationship between the sales tax and the business and occupation tax and also because the bill affects the taxation of products and services that involve technologies that are changing rapidly.

Because of the complexity and length of Engrossed Substitute House Bill No. 2075, it was the legislature's expectation that, in the course of implementing the bill, ambiguities and unintended consequences would be discov-

ered, which, if not corrected, will unsettle expectations. Thus, the legislature further anticipated that it would need to consider legislation in the 2010 legislative session to address these issues.

Therefore, the purpose of this act is to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the legislature." [2010 c 111 § 101.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

Additional notes found at www.leg.wa.gov

82.04.051 "Services rendered in respect to"—Taxation of hybrid or subsequent agreements. (1) As used in RCW 82.04.050 and including for the purposes of the taxes imposed in chapter 82.08 RCW in addition to the taxes imposed in this chapter, the term "services rendered in respect to" means, in the context of constructing, building, repairing, improving, and decorating buildings or other structures, those services that are directly related to the constructing, building, repairing, improving, and decorating of buildings or other structures and that are performed by a person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. The term does not include services such as engineering, architectural, surveying, flagging, accounting, legal, consulting, land development or management, or administrative services provided to the consumer of, or person responsible for performing, the constructing, building, repairing, improving, or decorating services.

(2) A contract or agreement under which a person is responsible for both services that would otherwise be subject to tax as a service under RCW 82.04.290(2) and also constructing, building, repairing, improving, or decorating activities that would otherwise be subject to tax under another section of this chapter is subject to the tax that applies to the predominant activity under the contract or agreement.

(3) Unless otherwise provided by law, a contract or agreement under which a person is responsible for activities that are subject to tax as a service under RCW 82.04.290(2), and a subsequent contract or agreement under which the same

person is responsible for constructing, building, repairing, improving, or decorating activities subject to tax under another section of this chapter, shall not be combined and taxed as a single activity if at the time of the first contract or agreement it was not contemplated by the parties, as evidenced by the facts, that the same person would be awarded both contracts.

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

(a) "Land development or management" means site identification, zoning, permitting, and other preconstruction regulatory services provided to the consumer of the constructing, building, repairing, improving, or decorating services. This includes, but is not limited to, acting as an owner's representative during any design or construction period, including recommending a contractor, monitoring the budget and schedule, approving invoices, and interacting on the behalf of the consumer with the person who has control over the work itself or responsible for the performance of the work.

(b) "Responsible for the performance" means that the person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work. A person who is financially obligated for the work, such as a bank, but who does not have control over the work itself is not responsible for the performance of the work. [2021 c 145 § 4; 2020 c 109 § 2; 1999 c 212 § 2.]

Finding—Intent—2020 c 109; 1999 c 212: "(1) The legislature finds that the taxation of "services rendered in respect to constructing buildings or other structures" has generally included the entire transaction for construction, including certain services provided directly to the consumer or owner rather than the person engaged in the performance of the constructing activity. Changes in business practices and recent administrative and court decisions have confused the issue. Recognizing the need to remove barriers to the creation of affordable housing, it is the intent of the legislature to clarify which services, if standing alone and not part of the construction agreement, are taxed as retail or wholesale sales, and which services will continue to be taxed as a service.

(2) It is further the intent of the legislature to confirm that the entire price for the construction of a building or other structure for a consumer or owner continues to be a retail sale, even though some of the individual services reflected in the price, if provided alone, would be taxed as services and not as separate retail or wholesale sales.

(3) Therefore, the intent of this act is to maintain the application of the law and not to extend retail treatment to activities not previously treated as retail activities. Services that are otherwise subject to tax as a service under RCW 82.04.290(2), including but not limited to engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services, remain subject to tax as a service under RCW 82.04.290(2), if the person responsible for the performance of those services is not also responsible for the performance of the constructing, building, repairing, improving, or decorating activities. Additionally, unless otherwise provided by law, a person entering into an agreement to be responsible for the performance of services otherwise subject to tax as a service under RCW 82.04.290(2), and subsequently entering into a separate agreement to be responsible for the performance of constructing, building, repairing, improving, or decorating activities, is subject to tax as a service under RCW 82.04.290(2) with respect to the first agreement, and is subject to tax under the appropriate section of chapter 82.04 RCW with respect to the second agreement, if at the time of the first agreement there was no contemplation by the parties, as evidenced by the facts, that the agreements would be awarded to the same person." [2020 c 109 § 1; 1999 c 212 § 1.]

82.04.060 "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

- (a) Tangible personal property;
- (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);
- (c) Activities defined as a retail sale in RCW 82.04.050(15);
- (d) Prewritten computer software;
- (e) Services described in RCW 82.04.050(6)(c);
- (f) Extended warranties as defined in RCW 82.04.050(7);
- (g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or
- (h) Digital goods, digital codes, or digital automated services;

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100; and

(3) The sale of any service for resale, if the sale is excluded from the definition of "sale at retail" and "retail sale" in RCW 82.04.050(14). [2017 c 323 § 512; 2015 c 169 § 2; 2010 c 106 § 203; 2009 c 535 § 403; 2007 c 6 § 1007; 2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Additional notes found at www.leg.wa.gov

82.04.062 "Sale at wholesale," "sale at retail" excludes sale of precious metal bullion and monetized bullion—Computation of tax. (1) For purposes of this chapter, "wholesale sale," "sale at wholesale," "retail sale," and "sale at retail" do not include the sale of precious metal bullion or monetized bullion.

(2) In computing tax under this chapter on the business of making sales of precious metal bullion or monetized bullion, the tax shall be imposed on the amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, but no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

(3) For purposes of this section, "precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its con-

tents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art. [1985 c 471 § 5.]

Additional notes found at www.leg.wa.gov

82.04.065 Telephone, telecommunications, and ancillary services—Definitions. (1) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(2) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(3) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(4) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(5) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(6) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or videoconference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(7) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (7)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier

under an arrangement to serve the customer outside the home service provider's licensed service area.

(8) "Designated database provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic database prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic database; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a database prescribed by 4 U.S.C. Secs. 116 through 126.

(9) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(10) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(11) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(12) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(13) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(14) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(15) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(16) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(17) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(19) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(20) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(21) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that

must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(22) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(24) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(25) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(26) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(27) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services;

(i) Digital products delivered electronically, including but not limited to music, video, reading materials, or ring tones; or

(j) Software delivered electronically.

(28) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(30) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service. [2009 c 535 § 413; 2007 c 6 § 1003; 2007 c 6 § 1002; 2002 c 67 § 2; 1997 c 304 § 5; 1983 2nd ex.s. c 3 § 24.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

***Reviser's note:** 2002 C 67 § 18 was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. That section has been decodified for publication purposes under RCW 1.12.025.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Findings—Severability—Effective date—1997 c 304: See notes following RCW 35.21.717.

License fees or taxes on telephone business by cities: RCW 35.21.712 through 35.21.715.

Sales tax exemption for certain telephone, telecommunications, and ancillary services: RCW 82.08.0289.

Additional notes found at www.leg.wa.gov

82.04.066 "Engaging within this state," "engaging within the state." "Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or selling activity taxable under RCW 82.04.250(1), 82.04.257(1), 82.04.270, or other provision of this chapter means that a person generates gross income of the business from sources

(2022 Ed.)

within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state. [2019 c 8 § 702; 2017 3rd sp.s. c 28 § 301; 2015 3rd sp.s. c 5 § 203; 2010 1st sp.s. c 23 § 103.]

Effective date—2019 c 8 §§ 102, 103, 107, and 701-703: See note following RCW 82.04.067.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.067 Substantial nexus—Engaging in business.

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

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

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

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

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

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

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

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

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

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

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

(b) A person is also physically present in this state for the purposes of subsection (1)(c)(ii) of this section if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associ-

ated with the person's ability to establish or maintain a market for its products in this state.

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

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

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

(c) "Product" has the same meaning as provided in RCW 82.32.023. [2019 c 8 § 102; 2019 c 8 § 101; 2017 3rd sp.s. c 28 § 302; 2016 c 137 § 2; 2015 3rd sp.s. c 5 § 204; 2010 1st sp.s. c 23 § 104.]

Effective date—2019 c 8 §§ 102, 103, 107, and 701-703: "Sections 102, 103, 107, 701, 702, and 703 of this act take effect January 1, 2020." [2019 c 8 § 806.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective date—2016 c 137: "This act takes effect July 1, 2016." [2016 c 137 § 4.]

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.070 "Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, and/or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [2009 c 535 § 404; 1961 c 15 § 82.04.070. Prior: 1955 c 389 § 8; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.080 "Gross income of the business." (1) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(2) Financial institutions must determine gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis. For purposes of this subsection,

a financial institution means a person within the scope of the rule adopted by the department under the authority of RCW 82.04.460(2). [2010 1st sp.s. c 23 § 109; 1961 c 15 § 82.04.080. Prior: 1955 c 389 § 9; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.090 "Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. However, persons operating grain warehouses licensed under chapter 22.09 RCW may elect to report the value proceeding or accruing from grain warehouse operations on either a cash receipts or accrual basis. The department of revenue may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due. [2001 c 20 § 1; 1975 1st ex.s. c 278 § 40; 1961 c 15 § 82.04.090. Prior: 1955 c 389 § 10; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Additional notes found at www.leg.wa.gov

82.04.100 "Extractor." "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; persons meeting the definition of farmer under RCW 82.04.213; or persons producing cannabis. [2022 c 16 § 138; 2014 c 140 § 1; 2001 c 118 § 1; 1987 c 23 § 3; 1985 c 148 § 2; 1965 ex.s. c 173 § 2; 1961 c 15 § 82.04.100. Prior: 1955 c 389 § 11; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Withdrawal of gas from underground reservoir not deemed taking or producing under RCW 82.04.100: RCW 80.40.010.

Additional notes found at www.leg.wa.gov

82.04.110 "Manufacturer." (1) Except as otherwise provided in this section, "manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or

for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities.

(2)(a) When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability.

(b) A person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer. For the purposes of this subsection (2)(b), "aluminum master alloy" means an alloy registered with the aluminum association as a grain refiner or a hardener alloy using the American national standards institute designating system H35.3.

(3) A nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state.

(4) The owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

(5) For purposes of this section, the terms "articles," "substances," "materials," "ingredients," and "commodities" do not include digital goods. [2009 c 535 § 405; 1997 c 453 § 1; 1971 ex.s. c 186 § 1; 1961 c 15 § 82.04.110. Prior: 1955 c 389 § 12; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.04.120 "To manufacture." (1) "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and includes:

(a) The production or fabrication of special made or custom made articles;

(b) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(c) Cutting, delimiting, and measuring of felled, cut, or taken trees;

(d) Crushing and/or blending of rock, sand, stone, gravel, or ore;

(e) The production of compressed natural gas or liquefied natural gas for use as a transportation fuel as defined in RCW 82.16.310; and

(f) The production or processing of renewable natural gas.

(2) "To manufacture" does not include:

(a) Conditioning of seed for use in planting; cubing hay or alfalfa;

(2022 Ed.)

(b) Activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state;

(c) The growing, harvesting, or producing of agricultural products;

(d) Packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage;

(e) The production of digital goods;

(f) The production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser; and

(g) Except as provided in subsection (1)(e) of this section, any activity that is integral to any public service business as defined in RCW 82.16.010 and with respect to which the gross income associated with such activity: (i) Is subject to tax under chapter 82.16 RCW; or (ii) would be subject to tax under chapter 82.16 RCW if such activity were conducted in this state or if not for an exemption or deduction.

(3) With respect to wastewater treatment facilities:

(a) "To manufacture" does not include the treatment of wastewater, the production of reclaimed water, and the production of class B biosolids; and

(b) "To manufacture" does include the production of class A or exceptional quality biosolids, but only with respect to the processing activities that occur after the biosolids have reached class B standards. [2019 c 202 § 3; 2014 c 216 § 303; 2011 c 23 § 3; 2009 c 535 § 406; 2003 c 168 § 604; 1999 sp.s. c 9 § 1; 1999 c 211 § 2; 1998 c 168 § 1; 1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Automatic expiration date and tax preference performance statement exemption—2019 c 202: See note following RCW 82.16.310.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Findings—Application—2011 c 23: See notes following RCW 82.08.02565.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1999 sp.s. c 9: "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." [1999 sp.s. c 9 § 4.]

Intent—1999 c 211 §§ 2 and 3: "The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation." [1999 c 211 § 4.]

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Finding—Purpose—1989 c 302: "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of *Part I of this act is to recognize the effect of

that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in *Part II of this act.

(2) The purpose of *Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the Washington Water Power decision." [1989 c 302 § 1.]

*Reviser's note: For "Part" division see 1989 c 302.

Additional notes found at www.leg.wa.gov

82.04.130 "Commercial or industrial use." "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

(1) Any use as a consumer; and

(2) The manufacturing of articles, substances or commodities. [1967 ex.s. c 149 § 5; 1961 c 15 § 82.04.130. Prior: 1955 c 389 § 14; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.140 "Business." "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. [1961 c 15 § 82.04.140. Prior: 1955 c 389 § 15; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.150 "Engaging in business." "Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. [1961 c 15 § 82.04.150. Prior: 1955 c 389 § 16; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.160 "Cash discount." "Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date. [1961 c 15 § 82.04.160. Prior: 1955 c 389 § 17; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.170 "Tuition fee." "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by the internal revenue code Sec. 501(c)(3), if such educational institution grants col-

lege credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions. [1993 sp.s. c 18 § 37; 1993 c 181 § 13; 1992 c 206 § 1; 1985 c 135 § 1; 1961 c 15 § 82.04.170. Prior: 1955 c 389 § 18; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 1993 c 181 § 13 and by 1993 sp.s. c 18 § 37, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

82.04.180 "Successor." (1) "Successor" means:

(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer; or

(b) A surviving corporation of a statutory merger.

(2) Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor. [2003 1st sp.s. c 13 § 11; 1985 c 414 § 6; 1961 c 15 § 82.04.180. Prior: 1955 c 389 § 19; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Additional notes found at www.leg.wa.gov

82.04.190 "Consumer." "Consumer" means the following:

(1) Except as provided otherwise in this section, any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose of:

(a) Resale as tangible personal property in the regular course of business;

(b) Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

(c) Consuming such property in producing for sale as a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary pur-

pose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

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

(e) Satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who makes a purchase meeting the definition of "sale at retail" and "retail sale" under RCW 82.04.050(15), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(c) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county

and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition may be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(c) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(c) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(c);

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates;

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section;

(13) Any person who purchases, acquires, owns, holds, or uses chemical sprays or washes for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, or who purchases feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials, is not a consumer of such items, but only to the extent that the items:

(a) Are used in relation to the person's participation in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(b) Are for use by a farmer for the purpose of producing for sale any agricultural product; or

(c) Are for use by a farmer to produce or improve wildlife habitat on land the farmer owns or leases while acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under

26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife;

(14) A regional transit authority is not a consumer with respect to labor, services, or tangible personal property purchased pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a transit agency, as defined in RCW 81.104.015, performs the labor or services; and

(15) The term "consumer" does not include:

(a) An animal rescue organization with respect to animals under its care and control; and

(b) Any person with respect to an animal adopted by that person from an animal rescue organization. [2017 c 323 § 513; 2017 c 323 § 202; 2015 c 169 § 3; 2014 c 97 § 302. Prior: 2010 c 111 § 202; 2010 c 106 § 204; 2009 c 535 § 302; 2007 c 6 § 1008; 2005 c 514 § 103; prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 2017 c 323 § 202 and by 2017 c 323 § 513, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2017 c 323 §§ 201 and 202: See note following RCW 82.04.040.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Purpose—Retrospective application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Findings—Intent—1996 c 173: See note following RCW 82.08.02565.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.04.192 Digital products definitions. (1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audiovisual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments. For purposes of this subsection (3)(b)(ii), "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

(iii) Dispensing cash or other physical items from a machine;

(iv) Payment processing services;

(v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW;

(vi) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(vii) The internet and internet access as those terms are defined in RCW 82.04.297;

(viii) The service described in RCW 82.04.050(6)(c);

(ix) Online educational programs provided by a:

(A) Public or private elementary or secondary school; or

(B) An institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of this subsection (3)(b)(ix)(B), an online educational program must be encompassed within the institution's accreditation;

(x) Live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment, which allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;

(xi) Travel agent services, including online travel services, and automated systems used by travel agents to book reservations;

(xii)(A) A service that allows the person receiving the service to make online sales of products or services, digital or otherwise, using either: (I) The service provider's website; or (II) the service recipient's website, but only when the service provider's technology is used in creating or hosting the service recipient's website or is used in processing orders from customers using the service recipient's website.

(B) The service described in this subsection (3)(b)(xii) does not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service;

(xiii) Advertising services. For purposes of this subsection (3)(b)(xiii), "advertising services" means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration;

(xiv) The mere storage of digital products, digital codes, computer software, or master copies of software. This exclusion from the definition of digital automated services includes providing space on a server for web hosting or the backing up of data or other information;

(xv) Data processing services. For purposes of this subsection (3)(b)(xv), "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include the service described in RCW 82.04.050(6)(c); and

(xvi) Digital goods.

(4) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(5) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including email or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(6)(a) "Digital goods," except as provided in (b) of this subsection (6), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) The internet and internet access as those terms are defined in RCW 82.04.297;

(iv)(A) Except as provided in (b)(iv)(B) of this subsection (6), the representation of a personal or professional service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service.

(B) The exclusion in (b)(iv)(A) of this subsection (6) does not apply to photographers in respect to amounts received for the taking of photographs that are transferred electronically to the customer, but only if the customer is an end user, as defined in RCW 82.04.190(11), of the photographs. Such amounts are considered to be for the sale of digital goods; and

(v) Services and activities excluded from the definition of digital automated services in subsection (3)(b)(i) through

(xv) of this section and not otherwise described in (b)(i) through (iv) of this subsection (6).

(7) "Digital products" means digital goods and digital automated services.

(8) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(9) "Specified digital products" means electronically transferred digital audiovisual works, digital audio works, and digital books.

(10) "Subscription radio services" means the sale of audio programming by a radio broadcaster as defined in RCW 82.08.0208, except as otherwise provided in this subsection. "Subscription radio services" does not include audio programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(11) "Subscription television services" means the sale of video programming by a television broadcaster as defined in RCW 82.08.0208, except as otherwise provided in this subsection. "Subscription television services" does not include video programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service, but only if the seller is not subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale. [2020 c 139 § 4; 2017 c 323 § 514; 2010 c 111 § 203; 2009 c 535 § 201.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—2009 c 535: "(1) In 2007, the legislature directed the department of revenue (department) to conduct a study of the taxation of electronically delivered products (digital products). In conducting the study, the department was assisted by a committee comprised of legislators, academics, and individuals representing different segments of government and industry (the "study committee").

(2) At the conclusion of the study, the department issued its final report December 5, 2008. The final report noted that any recommendations to the legislature should promote the following goals: (a) Simplicity and fairness; (b) conformity with the streamlined sales and use tax agreement; (c) neutrality regardless of industry, content, and delivery method while taking the purchaser's underlying property rights into account; (d) consideration given to the revenue impact of potential changes to the tax base; (e) consideration given to the impact caused by the pyramiding of business inputs; (f) maintaining or enhancing the competitiveness of businesses located in Washington; and (g) maintaining certainty, consistency, durability, and equity despite changes in technology and business models.

(3) While the department's final report did not contain recommendations for the legislature, the report's conclusion notes that the study committee found that legislation implementing digital products tax policy is necessary in 2009 to: (a) Protect the sales and use tax base; (b) establish certainty in our tax code; (c) maintain conformity with the streamlined sales and use tax agreement; and (d) encourage economic development.

(4) This act is the outgrowth of the work of the department and the study committee. The purpose of this act is to implement those findings of the study committee noted in subsection (3) of this section. This act also takes into account the goals noted in subsection (2) of this section. Moreover, this act contains specific provisions to: (a) Provide protections for taxpayers who failed to pay or collect tax on digital products for periods before July 26, 2009; and (b) promote the location of server farms and data centers in this state by preventing the department from considering a person's ownership of,

or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has nexus with this state for purposes of the taxes imposed in Title 82 RCW." [2009 c 535 § 101.]

Additional notes found at www.leg.wa.gov

82.04.200 "In this state," "within this state." "In this state" or "within this state" includes all federal areas lying within the exterior boundaries of the state. [1961 c 15 § 82.04.200. Prior: 1955 c 389 § 21; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.210 "By-product." "By-product" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities. [1961 c 15 § 82.04.210. Prior: 1955 c 389 § 22; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.212 "Retail store or outlet." "Retail store or outlet" does not mean a device or apparatus through which sales are activated by coin deposits but the phrase shall include automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus. [1961 c 15 § 82.04.212. Prior: 1959 c 232 § 1.]

82.04.213 "Agricultural product," "farmer," "cannabis." (1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal including honey bee products. "Agricultural product" does not include cannabis, useable cannabis, or cannabis-infused products, or animals defined as pet animals under RCW 16.70.020.

(2) "Cannabis," "useable cannabis," and "cannabis-infused products" have the same meaning as in RCW 69.50.101.

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

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

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

(4) The terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include or relate to cannabis, useable cannabis, or cannabis-infused products unless the applicable term is explicitly defined to include cannabis, useable cannabis, or cannabis-infused products. [2022 c 16 § 139; 2015 3rd sp.s. c 6 § 1102; 2014 c 140 § 2. Prior: 2001 c 118 § 2; 2001 c 97 § 3; 1993 sp.s. c 25 § 302.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—Tax preference intended to be permanent—2015 3rd sp.s. c 6 §§ 1102-1106: See notes following RCW 82.04.330.

Additional notes found at www.leg.wa.gov

82.04.214 "Newspaper." (1) "Newspaper" means:

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

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

(i) Shares content with the printed newspaper; and

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

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

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

(b) Circulated or distributed:

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

or

(ii) Separate and apart from the printed newspaper so long as the distribution is within the general circulation area of the newspaper. [2012 2nd sp.s. c 6 § 601; 2008 c 273 § 1; 1994 c 22 § 1; 1993 sp.s. c 25 § 304.]

Reviser's note: The effective date of section 603, chapter 6, Laws of 2015 3rd sp.s., that amended section 704, chapter 6, Laws of 2012 2nd sp.s. and removed the expiration date of section 601, chapter 6, Laws of 2012 2nd sp.s., takes effect September 1, 2015. See also effective date note following RCW 82.04.4266 for chapter 6, Laws of 2015 3rd sp.s.

Findings—Intent—Tax preference performance statement: See note following RCW 82.04.260 for section 602, chapter 6, Laws of 2015 3rd sp.s.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.04.215 "Computer," "computer software," "custom software," "customization of prewritten computer software," "master copies," "prewritten computer software," "retained rights." (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means software created for a single person.

(4) "Customization of prewritten computer software" means any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor. [2003 c 168 § 601; 1998 c 332 § 3.]

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Additional notes found at www.leg.wa.gov

[Title 82 RCW—page 33]

82.04.216 Exclusion of steam, electricity, or electrical energy from definition of certain terms. Consistent with RCW 82.02.220, when the terms "tangible personal property," "ingredient," "component part," "incorporated into," "goods," "products," "by-products," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this chapter, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 702.]

Additional notes found at www.leg.wa.gov

82.04.217 "Direct service industrial customer," "aluminum smelter." (1) "Direct service industrial customer" means the same as in RCW 82.16.0495.

(2) "Aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. [2004 c 24 § 2.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

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

(2)(a) A person who establishes or reestablishes a substantial nexus with this state after the first day of the current calendar year under the provisions of RCW 82.04.067 is subject to the tax imposed under this chapter for the current calendar year only on business activity occurring on and after the date that the person established or reestablished a substantial nexus with this state in the current calendar year.

(b) The provisions of (a) of this subsection do not apply to a person who met any of the criteria in RCW 82.04.067(1) (a) through (c) during the immediately preceding calendar year, and such person is taxable under this chapter for the current calendar year in its entirety. [2021 c 145 § 5; 2019 c 8 § 103; 2017 3rd sp.s. c 28 § 303; 2011 1st sp.s. c 20 § 101; 2010 1st sp.s. c 23 § 102; 1961 c 15 § 82.04.220. Prior: 1955 c 389 § 42; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—2019 c 8 §§ 102, 103, 107, and 701-703: See note following RCW 82.04.067.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Intent—2010 1st sp.s. c 23: "In order to preserve funding for education, public safety, health care, environmental protection, and safety net services for children, elderly, disabled, and vulnerable people, it is the intent of the legislature to close obsolete tax preferences, clarify the legislature's intent regarding existing tax policy, and to ensure balanced tax policy while bolstering emerging industries." [2010 1st sp.s. c 23 § 1.]

Findings—Intent—2010 1st sp.s. c 23: "(1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial

process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income for state business and occupation tax purposes.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280(1) (b), (d), (f), and (g), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

(d) Nothing in this part is intended to modify the nexus and apportionment requirements for local gross receipts business and occupation taxes." [2011 c 174 § 208; 2010 1st sp.s. c 23 § 101.]

Additional notes found at www.leg.wa.gov

82.04.230 Tax upon extractors. Upon every person engaging within this state in business as an extractor, except persons taxable as an extractor under any other provision in this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted for sale or for commercial or industrial use, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2006 c 300 § 5; 1993 sp.s. c 25 § 101; 1971 ex.s. c 281 § 2; 1969 ex.s. c 262 § 33; 1967 ex.s. c 149 § 7; 1961 c 15 § 82.04.230. Prior: 1955 c 389 § 43; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Additional notes found at www.leg.wa.gov

82.04.240 Tax on manufacturers. (Contingent expiration date.) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including by-products, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2004 c 24 § 4; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 §

1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Additional notes found at www.leg.wa.gov

82.04.240 Tax on manufacturers. (Contingent effective date; contingent expiration date.) (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business is equal to the value of the products, including by-products, manufactured, multiplied by the rate of 0.484 percent.

(2)(a) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips.

(b) A person reporting under the tax rate provided in this subsection (2) must file a complete annual tax performance report with the department under RCW 82.32.534.

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

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 518; (2017 3rd sp.s. c 37 § 517 expired January 1, 2018); 2017 c 135 § 9; 2010 c 114 § 104; 2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Additional notes found at www.leg.wa.gov

82.04.2403 Manufacturer tax not applicable to cleaning fish. The tax imposed by RCW 82.04.240 does not apply to cleaning fish. "Cleaning fish" means the removal of the head, fins, or viscera from fresh fish without further processing, other than freezing. [1994 c 167 § 1.]

Additional notes found at www.leg.wa.gov

82.04.2404 Manufacturers—Processors for hire—Semiconductor materials. (Expires December 1, 2028.) (1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

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

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if the number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed.

(5) This section expires December 1, 2028. [2021 c 145 § 6; 2017 3rd sp.s. c 37 § 503; (2017 3rd sp.s. c 37 § 502 expired January 1, 2018); 2017 c 135 § 10; 2010 c 114 § 105; 2006 c 84 § 2.]

Effective date—2017 3rd sp.s. c 37 §§ 102-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: "Sections 201, 203, 204, 205, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, and 707 of this act and parts I and VIII of this act take effect January 1, 2018." [2017 3rd sp.s. c 37 § 1404.]

Tax preference performance statement—2020 c 139; 2017 3rd sp.s. c 37 §§ 502 and 503: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 502 and 503, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create or retain jobs, as indicated in RCW 82.32.808(2) (a) through (c).

(3) It is the legislature's specific public policy objective to maintain and expand business in the semiconductor cluster. It is the legislature's intent to extend by ten years the preferential tax rates for manufacturers and processors for hire of semiconductor materials in order to maintain and grow jobs in the semiconductor cluster.

(4) If a review finds that: (a) Since October 19, 2017, at least one project in the semiconductor cluster has located in Clark county, and that this project generates at least two thousand five hundred high-wage jobs, all of which pay twenty dollars per hour or more and at least eighty percent of which pay thirty-five dollars per hour or more; and (b) the number of jobs in the semiconductor cluster in Washington has increased since October 19, 2017, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to data from the department of revenue's annual survey for tax years ending before January 1, 2020, and annual tax performance report for subsequent tax years." [2020 c 139 § 1; 2017 3rd sp.s. c 37 § 501.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: "Sections 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525 of this act expire January 1, 2018." [2017 3rd sp.s. c 37 § 1405.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Intent—2006 c 84: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. Washington state has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. In 2003 the legislature enacted comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. These tax incentives are contingent on the investment of at least one billion dollars in a new semiconductor microchip fabrication facility in this state, which has not occurred. This investment criteria failed to recognize the significance of potential investment in the advanced semiconductor materials sector. Therefore, the legislature intends to complement existing comprehensive tax incentives for the semiconductor cluster to address activities of the advanced semiconductor materials product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing businesses and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2006 c 84 § 1.]

Additional notes found at www.leg.wa.gov

82.04.250 Tax on retailers. (1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3)(a) Until July 1, 2040, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.534. [2014 c 97 § 402; (2014 c 97 § 401 expired July 9, 2014); 2013 3rd sp.s. c 2 § 7; 2010 1st sp.s. c 23 § 509; (2010 1st sp.s. c 23 § 508 expired July 1, 2011); (2010 1st sp.s. c 23 § 507 expired July 13, 2010); 2010 1st sp.s. c 11 § 1; (2010 c 114 § 106 expired July 1, 2011); 2008 c 81 § 5; (2007 c 54 § 5 repealed by 2010 1st sp.s. c 11 § 7); 2006 c 177 § 5; 2003 2nd sp.s. c 1 § 2; (2003 1st sp.s. c 2 § 1 expired July 1, 2006). Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior:

1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Contingent expiration date—2014 c 97 §§ 401 and 403: "Sections 401 and 403 of this act expire on the date that sections 402 and 404 of this act take effect." [2014 c 97 § 605.]

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.04.255 Tax on real estate brokers. (1) Upon every person engaging within the state in the business of providing real estate brokerage services; as to such persons, the amount of the tax with respect to such business is equal to the gross income of the business, multiplied by the rate of 1.5 percent.

(2) The measure of the tax on real estate commissions earned by the real estate firm is the gross commission earned by the particular real estate firm including that portion of the commission paid to brokers, including designated and managing brokers, in the same firm on a particular transaction. However, when a real estate commission on a particular transaction is divided among real estate firms at the closing of the transaction, including a firm located out of state, each firm must pay the tax only upon its respective shares of said commission. Moreover, when the real estate firm has paid the tax as provided herein, brokers, including designated and managing brokers, within the same real estate firm may not be required to pay a similar tax upon the same transaction. If any firm located out of state receives a share of commission on a particular transaction, that company or broker must pay the tax based on the requirements of this section and RCW 82.04.067.

(3) For the purposes of this section, "broker," "designated broker," "managing broker," and "real estate firm" have the same meaning as provided in RCW 18.85.011. [2011 c 322 § 2; 1997 c 7 § 1; 1996 c 1 § 1; 1993 sp.s. c 25 § 202; 1985 c 32 § 2; 1983 2nd ex.s. c 3 § 1; 1983 c 9 § 1; 1970 ex.s. c 65 § 3.]

Intent—2011 c 322: "The legislature intends to clarify existing law that the basis for determining the business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a real estate transaction. In clarifying existing law, the legislature intends to preserve the historic method of calculating business and occupation tax for real estate firms." [2011 c 322 § 1.]

Reviser's note: (1) "Sections 42 through 50 and 52" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.49.010, 88.02.020, 88.02.030, 88.02.050, and 88.02.110 and the enactment of RCW 43.51.400, 82.49.020, 82.49.070, 88.02.070, and 88.02.080. "Section 53" consists of the enactment of a new section which appears as a footnote to RCW 88.02.020, and "sections 65 and 66" consist of the enactment of new sections which appear as footnotes to RCW 82.04.255 above.

(2) "Sections 1 through 4" consist of the 1983 2nd ex.s. c 3 §§ 1-4 amendments to RCW 82.04.255, 82.04.290, 82.04.2904, and 82.04.2901, respectively.

(3) "Sections 21, 22, and 51" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.48.010, 82.48.030, and 84.36.080, respectively.

(4) "Section 63" consists of the 1983 2nd ex.s. c 3 amendment to RCW 82.32.045.

(5) "Sections 61 and 62" consist of the 1983 2nd ex.s. c 3 §§ 61 and 62 amendments to RCW 82.04.2901 and 82.08.020, respectively. For the effective date of sections 61 and 62, see *Bond v. Burrows*, 103 Wn.2d 153 (1984).

Additional notes found at www.leg.wa.gov

82.04.257 Tax on digital products and services. (1)

Except as provided in subsection (2) of this section, upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) Persons providing subscription television services or subscription radio services are subject to tax under RCW 82.04.290(2) on the gross income of the business received from providing such services.

(3) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) A person subject to tax under this section is subject to the mandatory electronic filing and payment requirements in RCW 82.32.080. [2017 c 323 § 515; 2010 c 111 § 301; 2009 c 535 § 401.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.258 Digital products—Apportionable income.

(1)(a) Any person subject to tax under RCW 82.04.257 engaging both within and outside this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), must apportion to this state that portion of apportionable income derived from activity performed within this state as provided in subsection (2) of this section.

(b) For purposes of this subsection, a person is considered to be engaging outside this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) if the person makes any sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) that are sourced to a jurisdiction other than Washington under RCW 82.32.730 for sales tax purposes or would have been sourced to a jurisdiction

other than Washington under RCW 82.32.730 if the sale had been a retail sale.

(2) Apportionable income must be apportioned to Washington by multiplying the apportionable income by the sales factor.

(3)(a) The sales factor is a fraction, the numerator of which is the total receipts of the taxpayer from making sales of digital goods, digital codes, digital automated services, and services described in RCW 82.04.050 (2)(g) or (6)(c) in this state during the tax period, and the denominator of which is the total receipts of the taxpayer derived from such activity everywhere during the tax period.

(b) For purposes of computing the sales factor, sales are considered in this state if the sale was sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) For purposes of this section, "apportionable income" means the gross income of the business taxable under RCW 82.04.257, including income received from activities outside this state if the income would be taxable under RCW 82.04.257 if received from activities in this state. [2017 c 323 § 516; 2009 c 535 § 402.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (1) Upon every person engaging within this state in the business of manufacturing:

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

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

(c)(i) Except as provided otherwise in (c)(iii) of this subsection, from July 1, 2025, until January 1, 2036, dairy products; or selling dairy products that the person has manufac-

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

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

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

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

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

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

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

(e) Wood biomass fuel; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent. For the purposes of this section, "wood biomass fuel" means a liquid or gaseous fuel that is produced from lignocellulosic feedstocks, including wood, forest, or field residue and dedicated energy crops, and that does not include wood treated with chemical preservations such as creosote, pentachlorophenol, or copper-chrome-arsenic.

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

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount

of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

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

(5)(a) Upon every person engaging within this state in the business of acting as a travel agent or tour operator and whose annual taxable amount for the prior calendar year from such business was two hundred fifty thousand dollars or less; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(b) Upon every person engaging within this state in the business of acting as a travel agent or tour operator and whose annual taxable amount for the prior calendar year from such business was more than two hundred fifty thousand dollars; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent through June 30, 2019, and 0.9 percent beginning July 1, 2019.

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

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to

plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 70A.380.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 70A.384 RCW, multiplied by the rate of 3.3 percent.

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

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

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

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

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

(ii) 0.2904 percent beginning July 1, 2007, through March 31, 2020; and

(iii) Beginning April 1, 2020, 0.484 percent, subject to any reduction required under (e) of this subsection (11). The tax rate in this subsection (11)(a)(iii) applies to all business activities described in this subsection (11)(a).

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

(i) 0.2904 percent through March 31, 2020; and

(ii) Beginning April 1, 2020, the following rates, which are subject to any reduction required under (e) of this subsection (11):

(A) The rate under RCW 82.04.250(1) on the business of making retail sales of tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes; and

(B) 0.484 percent on all other business activities described in this subsection (11)(b).

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

(d)(i) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual tax performance report with the department under RCW 82.32.534. However, this requirement does not apply to persons reporting under the tax rate in (a)(iii) of this subsection (11), so long as that rate remains 0.484 percent, or under any of the tax rates in (b)(ii)(A) and (B) of this subsection (11), so long as those tax rates remain the rate imposed pursuant to RCW 82.04.250(1) and 0.484 percent, respectively.

(ii) Nothing in (d)(i) of this subsection (11) may be construed as affecting the obligation of a person reporting under a tax rate provided in this subsection (11) to file a complete annual tax performance report with the department under RCW 82.32.534: (A) Pursuant to another provision of this title as a result of claiming a tax credit or exemption; or (B) pursuant to (d)(i) of this subsection (11) as a result of claiming the tax rates in (a)(ii) or (b)(i) of this subsection (11) for periods ending before April 1, 2020.

(e)(i) After March 31, 2021, the tax rates under (a)(iii) and (b)(ii) of this subsection (11) must be reduced to 0.357 percent provided the conditions in RCW 82.04.2602 are met. The effective date of the rates authorized under this subsection (11)(e) must occur on the first day of the next calendar quarter that is at least sixty days after the department receives the last of the two written notices pursuant to RCW 82.04.2602 (3) and (4).

(ii) Both a significant commercial airplane manufacturer separately and the rest of the aerospace industry as a whole, receiving the rate of 0.357 percent under this subsection (11)(e) are subject to the aerospace apprenticeship utilization rates required under RCW 49.04.220 by April 1, 2026, or five years after the effective date of the 0.357 percent rate authorized under this subsection (11)(e), whichever is later, as determined by the department of labor and industries.

(iii) The provisions of RCW 82.32.805 and 82.32.808 do not apply to this subsection (11)(e).

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

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

planes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850. This subsection (11)(f)(ii) continues to apply during the time that a person is subject to the tax rate in (a)(iii) of this subsection (11).

(g) For the purposes of this subsection, "a significant commercial airplane manufacturer" means a manufacturer of commercial airplanes with at least fifty thousand full-time employees in Washington as of January 1, 2021.

(12)(a) Until July 1, 2045, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(b) Until July 1, 2045, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; (ii) timber products into other timber products or wood products; or (iii) products defined in RCW 19.27.570(1); as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(c) Until July 1, 2045, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; (iii) wood products manufactured by that person from timber or timber products; or (iv) products defined in RCW 19.27.570(1) manufactured by that person; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, wood products, or products defined in RCW 19.27.570(1) multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(d) Until July 1, 2045, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

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

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

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

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

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

(v) "Timber products" means:

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

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

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

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

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual tax performance report with the department under RCW 82.32.534.

(g) Nothing in this subsection (12) may be construed to affect the taxation of any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c), defined as a wholesale sale in RCW 82.04.060(2), or taxed under RCW 82.04.280(1)(g).

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

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.35 percent until July 1, 2024, and 0.484 percent thereafter.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual tax performance report with the department under RCW 82.32.534. [2022 c 16 § 140; 2021 c 145 § 7; 2020 c 165 § 3. Prior: 2019 c 425 § 1; 2019 c 336 § 4; 2018 c 164 § 3; 2017 c 135 § 11; prior:

2015 3rd sp.s. c 6 § 602; 2015 3rd sp.s. c 6 § 205; prior: 2014 c 140 § 6; (2014 c 140 § 5 expired July 1, 2015); 2014 c 140 § 4; (2014 c 140 § 3 expired July 1, 2015); 2013 3rd sp.s. c 2 § 6; (2013 3rd sp.s. c 2 § 5 expired July 1, 2015); 2013 2nd sp.s. c 13 § 203; (2013 2nd sp.s. c 13 § 202 expired July 1, 2015); prior: (2012 2nd sp.s. c 6 § 602 expired July 1, 2015); 2012 2nd sp.s. c 6 § 204; 2011 c 2 § 203 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 506; (2010 1st sp.s. c 23 § 505 expired June 10, 2010); 2010 c 114 § 107; prior: 2009 c 479 § 64; 2009 c 461 § 1; 2009 c 162 § 34; prior: 2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4; prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Findings—Intent—Effective date—2020 c 165: See notes following RCW 82.04.2602.

Effective date—2019 c 425: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 425 § 2.]

Findings—Intent—2019 c 336: See notes following RCW 82.04.261.

Tax preference performance statement—Effective date—2018 c 164: See notes following RCW 82.08.900.

Effective date—2017 c 135: See note following RCW 82.32.534.

Expiration date—2015 3rd sp.s. c 6; 2012 2nd sp.s. c 6 § 602: "Section 602 of this act expires July 1, 2015." [2015 3rd sp.s. c 6 § 603; 2012 2nd sp.s. c 6 § 704.]

Findings—Intent—Tax preference performance statement—2015 3rd sp.s. c 6 § 602: "(1) The legislature finds that over the last fifteen years, technological transformation and other developments have radically changed the newspaper industry business model, which remains in transition. The legislature further finds that the economic hardship wrought by this digital transformation has been substantial. The legislature finds that a strong and vibrant newspaper industry in Washington is beneficial to the state's citizens and to the conduct of good government at every level. The legislature further finds that advertising revenue of all United States newspapers fell from 63.5 billion dollars in 2000 to about twenty-three billion dollars in 2013, and is still falling. The legislature further finds that traditional news organizations' ability to support high quality news gathering and reporting relied primarily on a model in which advertisers paid to reach mass audiences attracted by newspapers. The legislature further finds that advertisers found it advantageous to pay to reach a mass audience because other advertising mediums were limited and less effective. The digital era has greatly fractured traditional spending by advertisers and turned this model on its head such that newspapers continue to require time to adapt so they may continue their public service mission. The legislature also finds that the business and occupation tax rate for the newspaper industry was pegged to the general manufacturing and wholesaling rate from 1937 until 2009, when the legislature extended tax relief to the industry due to this shift. It is the legislature's

intent to extend this tax relief to the industry until its revenues and business model have stabilized. It is the legislature's further intent to provide a uniform tax rate for the industry to minimize the burden of reporting state business and occupation taxes for different types of revenue, which oftentimes are impossible to account for separately by the taxpayer.

(2)(a) This subsection is the tax preference performance statement for the newspaper tax preferences in section 602 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to provide temporary tax relief as described in RCW 82.32.808(2)(e).

(c) It is the legislature's specific public policy objective to provide business and occupation tax relief to the newspaper industry as it continues to adjust to significant revenue shifts and technological changes. As a secondary public policy objective, it is the legislature's intent to provide a permanent uniform rate for the industry.

(d) To measure the effectiveness of the preference provided in this act in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate year-to-year changes in gross revenue derived from all sources for newspaper firms claiming the preferential tax rate under RCW 82.04.260(14). If the average year-to-year change in gross revenue is positive, including the last three years included in the tax preference review by the joint legislative audit and review committee, it is the legislature's intent to allow the tax preference to expire and to reinstate the traditional rate of 0.484 percent.

(e)(i) The information provided in the annual tax preference accountability report submitted by taxpayers as required by the department of revenue and taxpayer data provided by the department of revenue is intended to provide the informational basis for the evaluation under (d) of this subsection.

(ii) In addition to the data source described under (e)(i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection." [2015 3rd sp.s. c 6 § 601.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: See note following RCW 82.04.4266.

Contingent effective date—2014 c 140 § 6: "Section 6 of this act takes effect July 1, 2015, subject to the contingency stated in section 2, chapter 2, Laws of 2013 3rd sp. sess." [2014 c 140 § 39.]

Contingent expiration date—2014 c 140 § 5: "Section 5 of this act expires July 1, 2015, subject to the contingency stated in section 2, chapter 2, Laws of 2013 3rd sp. sess." [2014 c 140 § 38.]

Effective date—2014 c 140 § 4: "Section 4 of this act takes effect July 1, 2015." [2014 c 140 § 37.]

Expiration date—2014 c 140 § 3: "Section 3 of this act expires July 1, 2015." [2014 c 140 § 36.]

Effective date—2013 3rd sp.s. c 2 § 6: "Subject to section 2 of this act, section 6 of this act takes effect July 1, 2015." [2013 3rd sp.s. c 2 § 16.]

Expiration date—2013 3rd sp.s. c 2 § 5: "Subject to section 2 of this act, section 5 of this act expires July 1, 2015." [2013 3rd sp.s. c 2 § 15.]

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Effective date—2013 2nd sp.s. c 13 § 203: "Section 203 of this act takes effect July 1, 2015." [2013 2nd sp.s. c 13 § 1902.]

Expiration date—2013 2nd sp.s. c 13 § 202: "Section 202 of this act expires July 1, 2015." [2013 2nd sp.s. c 13 § 1901.]

Intent—2013 2nd sp.s. c 13: "The intent of part II of this act is to incentivize the creation of additional jobs in Washington in the dairy industry and related industries that manufacture dairy-based products. More specifically, it is the intent of part II of this act to encourage infant formula producers to locate new facilities in Washington or expand existing facilities in Washington through an extension of a preferential business and occupation tax rate for dairy producers. It is the further intent of the legislature to provide this tax incentive in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note." [2013 2nd sp.s. c 13 § 201.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or by-products of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.04.2602 Tax on commercial airplane activities—Conditions for rate reduction. The rate of 0.357 percent authorized pursuant to RCW 82.04.260(11)(e) may be imposed only if the following conditions are met:

(1) The department of commerce verifies with the United States trade representative that the United States and the European Union have entered into a written agreement that resolves any world trade organization disputes involving large civil aircraft.

(2) Such agreement expressly allows a business and occupation tax rate reduction for commercial airplane manufacturers to 0.357 percent or less.

(3) The department of commerce notifies the department in writing that the conditions of subsections (1) and (2) of this section are met and provides a copy of the agreement between the United States and the European Union or other document providing for the business and occupation tax rate reduction to the department.

(4) The department of labor and industries notifies the department in writing that a significant commercial airplane manufacturer has at least a three-tenths of one percent aerospace apprenticeship utilization rate of its qualified apprenticeable workforce in Washington, as defined in RCW 49.04.220.

(5) Within thirty days of receiving the last of the written notices described in subsections (3) and (4) of this section, the department must provide written notice to the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department, that the tax rates in RCW 82.04.260(11)(e) are reduced to 0.357 percent and the effective date of the rate reduction.

(6) Any rate reduction to 0.357 percent pursuant to this section and RCW 82.04.260(11)(e) must occur on the first

day of the next calendar quarter that is at least sixty days after the department receives the last of the written notices described in subsections (3) and (4) of this section.

(7) For the purpose of this section, "world trade organization disputes involving large civil airplanes" means any disputes filed by the United States or the European Union prior to March 25, 2020, that involve either allegations of subsidies to large civil airplanes, or allegations of taxes imposed by Washington on commercial airplanes, or both. [2020 c 165 § 2.]

Findings—Intent—2020 c 165: "(1) Over the past two decades, the legislature has taken significant action to promote a positive business environment for Washington's aerospace industry. The legislature finds that the industry plays a significant role not only in the health of Washington's economy, but also in the health of the United States economy. Moreover, the domestic aerospace industry has faced significant challenges with the large subsidies provided to international competitors.

(2) The legislature finds that a commitment to the elimination of trade barriers for aerospace as well as several other vital Washington exports is important. The legislature also wishes to help bring the United States into full compliance with a recent world trade organization ruling asserting Washington's business and occupation tax rate of 0.2904 percent violates world trade organization rules. The legislature hopes this action to help bring the United States into compliance will end the threat of retaliatory tariffs against many of Washington's industries, including agricultural products, fish, wine, and intellectual property.

(3) The legislature appreciates the state aerospace industry's commitment to complying with the world trade organization ruling by advocating for the repeal of the preferential business and occupation tax. The legislature hopes that the repeal of this Washington aerospace preference will ensure continued economic success and competitiveness for the industry as well as many other industries. The legislature further hopes that the repeal of the 0.2904 business and occupation tax will allow for the complete resolution of all trade disputes surrounding large civil aircraft.

(4) The legislature further finds that the people of Washington benefit from the presence of the aerospace industry in Washington state. The industry provides good wages and benefits for thousands of engineers, technicians, mechanics, and support staff working across the state. Furthermore, the legislature has a goal of preserving and growing employment in Washington state. The legislature intends that the future consideration of all tax measures will work to achieve this goal in a manner compliant with the world trade organization." [2020 c 165 § 1.]

Effective date—2020 c 165: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2020]." [2020 c 165 § 6.]

82.04.261 Surcharge on timber and wood product manufacturers, extractors, and wholesalers. (Expires July 1, 2045.) (1) In addition to the taxes imposed under RCW 82.04.260(12), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260(12) (a), (b), (c), and (d).

(2) All receipts from the surcharge imposed under this section must be deposited into the forest and fish support account created in RCW 76.09.405, with any receipts above eight million dollars per biennium specifically used as additional funding for tribal participation grants.

(3)(a) The surcharge imposed under this section is suspended if:

(i) Before July 1, 2024, receipts from the surcharge total at least eight million five hundred thousand dollars during any fiscal biennium;

(ii) Between July 1, 2024, through June 30, 2029, receipts from the surcharge total at least nine million dollars during any fiscal biennium; and

(iii) After June 30, 2029, the receipts from the surcharge total at least nine million five hundred thousand dollars during any fiscal biennium.

(b) The suspension of the surcharge under this subsection (3) takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total the values specified in this subsection (3) during the fiscal biennium. The surcharge is imposed again at the beginning of the following fiscal biennium.

(4) This section expires July 1, 2045. [2021 c 145 § 8; 2019 c 336 § 5; 2017 c 323 § 501; 2010 1st sp.s. c 23 § 510. Prior: 2007 c 54 § 7; 2007 c 48 § 4; 2006 c 300 § 2.]

Finding—Intent—2019 c 336: "The legislature finds that while many parts of the state are thriving economically, some rural and distressed communities have struggled to keep pace. These communities represent significant opportunity for economic growth and innovation. However, businesses and entrepreneurs often find it difficult to obtain the capital they need to expand and grow in these areas. Therefore, it is the intent of the legislature to study the creation of a program to incentivize private investments and job creation in rural and distressed communities while ensuring no loss of revenue to the state." [2019 c 336 § 1.]

Findings—2019 c 336: "(1) The legislature finds that the Washington state forest practices habitat conservation plan was approved in 2006 by the United States fish and wildlife service and the national oceanic and atmospheric administration's marine fisheries service. The legislature further finds that the conservation plan protects habitat of aquatic species, supports economically viable and healthy forests, and creates regulatory stability for landowners. The legislature further finds that funding for the adaptive management program and participation grants are required to implement the forest and fish agreement and meet the goals of the conservation plan. The legislature further finds that the surcharge on the timber products business and occupation tax rate was agreed to by the forest products industry, tribal leaders, and stakeholders as a way to provide funding and safeguard the future of the conservation plan. The legislature further finds that the forestry industry assumed significant financial obligation with the enactment of this conservation plan, in exchange for operational certainty under the endangered species act. Therefore, the legislature concludes that the timber products business and occupation tax rate and the surcharge should continue until the expiration date of the forest and fish agreement, in 2056.

(2) The legislature finds that Washington has one of the strongest economies in the country. However, the local economies in some rural counties continue to struggle. The legislature further finds that the economic prosperity of our state must be shared by all of our communities. The legislature further finds that forest product sectors provide family-wage jobs in economically struggling areas of the state. The legislature further finds that in 2017 the Washington forest products industry, directly and indirectly, employed one hundred one thousand workers, earning 5.5 billion dollars in wages. Therefore, the legislature concludes that the forest products industries support our local rural economies and contribute towards the effort to lower unemployment rates across the state, especially in rural areas." [2019 c 336 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

*Reviser's note: See RCW 82.32.790.

Additional notes found at www.leg.wa.gov

82.04.263 Tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development. (1) Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and

other by-products of weapons production and nuclear research and development; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business multiplied by the rate of 0.471 percent.

(2) For the purposes of this chapter, "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" means:

(a) The activities of handling, storing, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(b) Spent nuclear fuel conditioning;

(c) Removal of contamination in soils and groundwater;

(d) Decontamination and decommissioning of facilities; and

(e) Services supporting the performance of cleanup. For the purposes of this subsection (2)(e), a service supports the performance of cleanup if it:

(i) Is within the scope of work under a clean-up contract with the United States department of energy; or

(ii) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States department of energy and a prime contractor.

(3) A service does not assist in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy if the same services are routinely provided to businesses not engaged in clean-up activities, except that the following services are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy:

(a) Information technology and computer support services;

(b) Services rendered in respect to infrastructure; and

(c) Security, safety, and health services.

(4) The legislature intends that the examples provided in this subsection be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities" as that phrase is used in subsection (3) of this section.

(a) The radioactive waste clean-up classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(b) The radioactive waste clean-up classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against a workers' compensation claim arising from a worksite injury do not qualify for the radioactive waste clean-up classification. But, legal services related to the resolution of a contractual dispute between the parties to a clean-up contract between the United States department of energy and a prime contractor do qualify.

(c) General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify. [2009 c 469 § 202; 1996 c 112 § 3.]

Finding—Intent—2009 c 469: "(1) The legislature finds that the cleaning up of radioactive waste at the Hanford site is crucial to the environment in this state. The legislature intends to include services supporting the cleanup within the radioactive waste clean-up business and occupation tax classification, but it is not the legislature's intent to extend the radioactive waste clean-up classification to all business activities conducted at the Hanford site or performed for persons engaged in the performance of cleanup.

(2) It is the legislature's intent in enacting this legislation to ensure that the radioactive waste clean-up business and occupation tax classification applies to all services contributing to the performance of a clean-up project at the Hanford site other than services that are routinely provided to any business, including businesses that are not engaged in clean-up activities." [2009 c 469 § 201.]

Additional notes found at www.leg.wa.gov

82.04.270 Tax on wholesalers. Upon every person engaging within this state in the business of making sales at wholesale, except persons taxable as wholesalers under other provisions of this chapter; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent. [2004 c 24 § 5; 2003 2nd sp.s. c 1 § 5; 2001 1st sp.s. c 9 § 3; (2001 1st sp.s. c 9 § 2 expired July 1, 2001); 1999 c 358 § 2. Prior: 1999 c 358 § 1; 1998 c 343 § 2; 1998 c 329 § 1; 1998 c 312 § 6; 1994 c 124 § 2; 1993 sp.s. c 25 § 105; 1981 c 172 § 4; 1971 ex.s. c 281 § 6; 1971 ex.s. c 186 § 4; 1969 ex.s. c 262 § 37; 1967 ex.s. c 149 § 11; 1961 c 15 § 82.04.270; prior: 1959 ex.s. c 5 § 3; 1955 c 389 § 47; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.04.272 Tax on warehousing and reselling prescription drugs. (1) Upon every person engaging within this state in the business of warehousing and reselling drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription" and "drug" have the same meaning as in RCW 82.08.0281; and

(b) "Warehousing and reselling drugs for human use pursuant to a prescription" means the buying of drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the pharmacy quality assurance commission. [2013 c 19 § 127; 2003 c 168 § 401; 1998 c 343 § 1.]

Additional notes found at www.leg.wa.gov

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. (1) Upon every person engaging within this state in the business of: (a) Printing materials other than newspapers, and of publishing periodicals or magazines; (b) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (c) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (d) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (e) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW; (f) radio and television broadcasting, but excluding revenues from network, national, and regional advertising computed either: (i) As a standard deduction that the department must publish by rule by September 30, 2020, and by September 30th of every fifth year thereafter, based on the national average thereof as reported by the United States census bureau's economic census; or (ii) in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any; (g) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

(c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2019 c 449 § 1; 2017 c 323 § 508. Prior: (2010 c 106 § 206 repealed by 2017 c 323 § 510); 2010 c 106 § 205; (2009 c 461 § 3 repealed by 2017 c 323 § 510); 2009 c 461 § 2; (2006 c 300 § 7 repealed by 2017 c 323 § 510); 2006 c 300 § 6; 2004 c 24 § 6; (2003 c 149 § 4 repealed by 2017 c 323 § 510); 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2; prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

***Reviser's note:** See RCW 82.32.790.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Additional notes found at www.leg.wa.gov

82.04.285 Tax on contests of chance. (1) Upon every person engaging within this state in the business of operating contests of chance; as to such persons, the amount of tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 1.5 percent.

(2) An additional tax is imposed on those persons subject to tax in subsection (1) of this section. The amount of the additional tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this subsection (2) shall be deposited in the problem gambling account created in *RCW 43.20A.892. This subsection does not apply to businesses operating contests of chance when the gross income from the operation of contests of chance is less than fifty thousand dollars per year.

(3)(a) For the purpose of this section, "contests of chance" means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill

(2022 Ed.)

of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punch-board games, and pull-tabs as defined in chapter 9.46 RCW.

(b) The term does not include: (i) Race meet for the conduct of which a license must be secured from the Washington horse racing commission, (ii) "amusement game" as defined in RCW 9.46.0201, or (iii) any activity that is not subject to regulation by the gambling commission.

(4) "Gross income of the business" does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes. [2014 c 97 § 303; 2005 c 369 § 5.]

***Reviser's note:** RCW 43.20A.892 was recodified as RCW 41.05.751 pursuant to 2018 c 201 § 11003.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 41.05.750.

82.04.286 Tax on horse races. (1) Upon every person engaging within this state in the business of conducting race meets for the conduct of which a license must be secured from the Washington horse racing commission; as to such persons, the amount of tax with respect to the business of parimutuel wagering is equal to the gross income of the business derived from parimutuel wagering multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this section shall be deposited in the problem gambling account created in *RCW 43.20A.892.

(2) For purposes of this section, "gross income of the business" does not include amounts paid to players for winning wagers, or taxes imposed or other distributions required under chapter 67.16 RCW.

(3) The tax imposed under this section is in addition to any tax imposed under chapter 67.16 RCW. [2005 c 369 § 6.]

***Reviser's note:** RCW 43.20A.892 was recodified as RCW 41.05.751 pursuant to 2018 c 201 § 11003.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 41.05.750.

82.04.290 Tax on service and other activities. (1) Upon every person engaging within this state in the business of providing qualifying international investment management services, as to such persons, the amount of tax with respect to such business is equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities is equal to the gross income of the business multiplied by the rate of:

(i) 1.75 percent; or

(ii) 1.5 percent for:

(A) Any person subject to the surcharge imposed under RCW 82.04.299;

(B) Any person whose gross income of the business subject to the tax imposed under this subsection (2), for the immediately preceding calendar year, was less than one mil-

lion dollars, unless (I) the person is affiliated with one or more other persons, and (II) the aggregate gross income of the business subject to the tax imposed under this subsection (2) for all affiliated persons was greater than or equal to one million dollars for the immediately preceding calendar year; and

(C) Hospitals as defined in RCW 70.41.020, including any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW. This subsection (2)(a)(ii)(C) must not be construed as modifying RCW 82.04.260(10).

(b) This subsection (2) includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his or her principal or supplier to be used for informational, educational, and promotional purposes is not considered a part of the agent's remuneration or commission and is not subject to taxation under this section.

(c) 14.3 percent of the revenues collected under (a)(i) of this subsection (2) must be deposited into the workforce education investment account created in RCW 43.79.195.

(d)(i) To aid in the effective administration of this subsection (2), the department may require a person claiming to be subject to the 1.5 percent tax rate under (a)(ii)(B) of this subsection (2) to identify all of the person's affiliates, including their department tax registration number or unified business identifier number, as may be applicable, or to certify that the person is not affiliated with any other person. Requests under this subsection (2)(d)(i) must be in writing and may be made electronically.

(ii) If the department establishes, by clear, cogent, and convincing evidence, that a person, with intent to evade the additional taxes due under the 1.75 percent tax rate in (a)(i) of this subsection (2), failed to provide the department with complete and accurate information in response to a written request under (d)(i) of this subsection (2) within thirty days of such request, the person is ineligible for the 1.5 percent tax rate in (a)(ii) of this subsection (2) for the entire current calendar year and the following four calendar years. However, the department must waive the provisions of this subsection (2)(d)(ii) for any tax reporting period that the person is otherwise eligible for the 1.5 percent tax rate in (a)(ii) of this subsection (2) if (A) the department has not previously determined that the person failed to fully comply with (d)(i) of this subsection (2), and (B) within thirty days of the notice of additional tax due as a result of the person's failure to fully comply with (d)(i) of this subsection (2) the department determines that the person has come into full compliance with (d)(i) of this subsection (2). This subsection (2)(d) applies only with respect to persons claiming entitlement to the 1.5 percent tax rate solely by reason of (a)(ii)(B) of this subsection (2).

(e) For the purposes of (a)(ii)(B) of this subsection (2), if a taxpayer is subject to the reconciliation provisions of RCW 82.04.462(4), and calculates gross income of the business subject to the tax imposed under this subsection (2) for the

immediately preceding calendar year, or aggregate gross income of the business subject to the tax imposed under this subsection (2) for the immediately preceding calendar year for all affiliated persons, based on incomplete information, the taxpayer must correct the reporting for the current calendar year when complete information for the immediately preceding calendar year is available.

(f) For purposes of this subsection (2), the definitions in this subsection (2)(f) apply:

(i) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; and

(ii) "Control" means the possession, directly or indirectly, of more than eighty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(3)(a) Until July 1, 2040, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business is equal to the gross income of the business multiplied by a rate of 0.9 percent.

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

(c) "Aerospace product development" has the meaning as provided in RCW 82.04.4461. [2020 c 2 § 3; 2019 c 426 § 2; 2014 c 97 § 404; (2014 c 97 § 403 expired July 9, 2014); 2013 3rd sp.s. c 2 § 8; 2013 c 23 § 314; 2011 c 174 § 101; 2008 c 81 § 6; 2005 c 369 § 8; 2004 c 174 § 2; 2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Application—2020 c 2 § 3: "Section 3 of this act applies beginning with gross income of the business, as defined in RCW 82.04.080, received or accrued by taxpayers, on or after April 1, 2020." [2020 c 2 § 9.]

Tax preference performance statement exemption—Automatic expiration date exemption—2020 c 2: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2020 c 2 § 6.]

Effective dates—2020 c 2: "(1) Except as otherwise provided in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 10, 2020].

(2) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2020." [2020 c 2 § 7.]

Findings—Intent—2019 c 426 §§ 2 and 3: "In 1995, the legislature enacted a business and occupation tax rate for persons providing international investment management services. The legislature finds that the original intent of this tax rate was to reduce a competitive disadvantage for a limited number of firms providing international investment management services. The fiscal note for the bill stated that "only a very limited taxpayer group would benefit from the reduced rate." The legislature further finds that as a result of the adoption of economic nexus; a single factor, market-based

apportionment methodology; and significant ambiguity in the statute governing the qualifications for the tax rate; a much larger number of businesses are claiming the tax rate than was contemplated in 1995. Therefore, the legislature intends in sections 2 and 3 of this act to clarify the scope of activities and persons eligible for the tax rate to more closely align with the legislature's original intent." [2019 c 426 § 1.]

Automatic expiration date and tax preference performance statement exemption—2019 c 426 §§ 2 and 3: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to sections 2 and 3 of this act." [2019 c 426 § 9.]

Effective date—2019 c 426 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019." [2019 c 426 § 10.]

Contingent expiration date—2014 c 97 §§ 401 and 403: See note following RCW 82.04.250.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 41.05.750.

Additional notes found at www.leg.wa.gov

82.04.29001 Creation and distribution of custom software—Customization of prewritten computer software—Taxable services. (1) The creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of prewritten computer software is a service taxable under RCW 82.04.290(2). [2003 c 168 § 602; 1998 c 332 § 4.]

Findings—Intent—1998 c 332: "The legislature finds that the creation and customization of software is an area not fully addressed in our excise tax statutes, and that certainty of tax treatment is essential to the industry and consumers. Therefore, the intent of this act is to make the tax treatment of software clear and certain for developers, programmers, and consumers." [1998 c 332 § 1.]

Additional notes found at www.leg.wa.gov

82.04.29002 Additional tax on certain business and service activities. (1) Beginning May 1, 2010, through June 30, 2013, an additional rate of tax of 0.30 percent is added to the rate provided for in RCW 82.04.255, 82.04.285, and 82.04.290(2)(a).

(2)(a) The additional rate in subsection (1) of this section does not apply to persons engaging within this state in business as a hospital. "Hospital" has the meaning provided in chapter 70.41 RCW but also includes any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW.

(b) The additional rate in subsection (1) of this section does not apply to amounts received from performing scientific research and development services including but not limited to research and development in the physical, engineering, and life sciences (such as agriculture, bacteriological, biotechnology, chemical, life sciences, and physical science research and development laboratories or services). [2010 1st sp.s. c 23 § 1101.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

(2022 Ed.)

Additional notes found at www.leg.wa.gov

82.04.29004 Additional tax on financial institutions.

(1) Beginning January 1, 2020, in addition to any other taxes imposed under this chapter, an additional tax is imposed on specified financial institutions. The additional tax is equal to the gross income of the business taxable under RCW 82.04.290(2) multiplied by the rate of 1.2 percent.

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

(a) "Affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection (2)(a), "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Consolidated financial institution group" means all financial institutions that are affiliated with each other.

(c) "Consolidated financial statement" means a consolidated financial institution group's consolidated reports of condition and income filed with the federal financial institutions examination council, or successor agency.

(d) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30A, 30B, 31, 32, and 33 RCW, or registered under the federal bank holding company act of 1956, as amended, or registered as a savings and loan holding company under the federal national housing act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the national bank act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the federal deposit insurance act, 12 U.S.C. Sec. 1813(b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Sec. 611 through 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) A production credit association organized under the federal farm credit act of 1933, all of whose stock held by the federal production credit corporation has been retired;

(viii) Any corporation or other business entity who receives gross income taxable under RCW 82.04.290, and whose voting interests are more than fifty percent owned, directly or indirectly, by any person or business entity described in (d)(i) through (vii) of this subsection other than an insurance company liable for the insurance premiums tax under RCW 48.14.020 or any other company taxable under chapter 48.14 RCW;

(ix)(A) A corporation or other business entity that receives more than fifty percent of its total gross income for federal income tax purposes from finance leases. For purposes of this subsection, a "finance lease" means a lease that meets two requirements:

(I) It is the type of lease permitted to be made by national banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the

currency regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June 20, 1991, effective July 22, 1991), and regulation Y of the federal reserve system 12 C.F.R. Part 225.25, as amended); and

(II) It is the economic equivalent of an extension of credit, i.e., the lease is treated by the lessor as a loan for federal income tax purposes. In no event does a lease qualify as an extension of credit where the lessor takes depreciation on such property for federal income tax purposes.

(B) For this classification to apply, the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement;

(x) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(1)(e), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290(2), that receives more than fifty percent of its gross receipts from activities that a person described in (d)(ii) through (vii) and (ix) of this subsection is authorized to transact.

(e)(i) "Specified financial institution" means a financial institution that is a member of a consolidated financial institution group that reported on its consolidated financial statement for the previous calendar year annual net income of at least one billion dollars, not including net income attributable to noncontrolling interests, as the terms "net income" and "noncontrolling interest" are used in the consolidated financial statement.

(ii) If financial institutions are no longer required to file consolidated financial statements, "specified financial institution" means any person that was subject to the additional tax in this section in at least two of the previous four calendar years.

(3) The department must notify the fiscal committees of the legislature if financial institutions are no longer required to file consolidated financial statements.

(4) To aid in the effective administration of the additional tax imposed in this section, the department may require a person believed to be a specified financial institution to disclose whether it is a member of a consolidated financial institution group and, if so, to identify all other members of its consolidated financial institution group. A person failing to comply with this subsection is deemed to have intended to evade tax payable under this section and is subject to the penalty in RCW 82.32.090(7) on any tax due under this section by the person and any financial institution affiliated with the person.

(5) Taxes collected under this section must be deposited into the general fund. [2019 c 420 § 2.]

Finding—2019 c 420: "The legislature finds that in the decade since the great recession, some economic sectors have rebounded, stronger than ever, while many Washington families struggle to afford basic necessities, all while also carrying the burden of funding schools and essential services. The wealth disparity in the country between the wealthy few and the lowest income families is wider than in any other developed nation and continues to grow. Additionally, Washington's tax system disproportionately impacts those with the least ability to pay. As a percentage of household income, middle-income families in Washington pay two to four times the amount of taxes as compared to top earners in the state. Low-income Washington families pay six times more in taxes than the wealthiest residents. The legislature

concludes that those wealthy few who have profited the most from the recent economic expansion can contribute to the essential services and programs all Washington families need." [2019 c 420 § 1.]

82.04.29005 Tax on loan interest—2012 2nd sp.s. c 6.

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

(2) For the purposes of this subsection [section], a person is located in a state if:

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

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

(3) For purposes of this section:

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

(b) "Interest" has the same meaning as in RCW 82.04.4292 and also includes servicing fees described in RCW 82.04.4292(4). [2012 2nd sp.s. c 6 § 101.]

Existing rights, liabilities, or obligations—2012 2nd sp.s. c 6: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2012 2nd sp.s. c 6 § 701.]

Effective dates—Contingent effective date—2012 2nd sp.s. c 6: "(1) Parts I, II, and V through VII of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2012.

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

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

(4) Parts III and IV of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 2, 2012]." [2012 2nd sp.s. c 6 § 703.]

82.04.2905 Tax on providing day care. Upon every person engaging within this state in the business of providing child care for periods of less than twenty-four hours; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.484 percent. [1998 c 312 § 7.]

Additional notes found at www.leg.wa.gov

82.04.2906 Tax on certain chemical dependency services. (1) Upon every person engaging within this state in the business of providing intensive inpatient or recovery house residential treatment services for chemical dependency, certified by the department of social and health services, for which payment from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof is received as compensation for or to support those services; as to such persons

the amount of tax with respect to such business shall be equal to the gross income from such services multiplied by the rate of 0.484 percent.

(2) If the persons described in subsection (1) of this section receive income from sources other than those described in subsection (1) of this section or provide services other than those named in subsection (1) of this section, that income and those services are subject to tax as otherwise provided in this chapter. [2003 c 343 § 1.]

82.04.2907 Tax on royalties. (1) Upon every person engaging within this state in the business of receiving income from royalties, the amount of tax with respect to the business is equal to the gross income from royalties multiplied by the rate of 1.5 percent.

(2) For the purposes of this section, "gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. "Gross income from royalties" does not include compensation for any natural resource, the licensing of pre-written computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11). [2021 c 145 § 9; 2015 3rd sp.s. c 5 § 101; 2010 1st sp.s. c 23 § 107; (2010 1st sp.s. c 23 § 106 expired July 1, 2010); 2010 c 111 § 302; 2009 c 535 § 407; 2001 c 320 § 3; 1998 c 331 § 1.]

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.04.2908 Tax on provision of room and domiciliary care to assisted living facility residents. (1) Upon every person engaging within this state in the business of providing room and domiciliary care to residents of an assisted living facility licensed under chapter 18.20 RCW, the amount of tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section, "domiciliary care" has the meaning provided in RCW 18.20.020. [2012 c 10 § 70; 2005 c 514 § 302; 2004 c 174 § 1.]

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

82.04.2909 Tax on aluminum smelters. (Expires January 1, 2027.) (1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case

of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

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

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

(4) This section expires January 1, 2027. [2017 c 135 § 12; 2015 3rd sp.s. c 6 § 502; 2011 c 174 § 301. Prior: 2010 1st sp.s. c 2 § 1; 2010 c 114 § 108; 2006 c 182 § 1; 2004 c 24 § 3.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: "(1) The legislature finds that the aluminum industry in Washington employs over one thousand people. The legislature further finds that average annual wages and benefits for these employment positions exceed one hundred thousand dollars and that each of these employment positions indirectly generates an additional two to three jobs within the state. The legislature further finds that the aluminum industry generates substantial taxes for local jurisdictions. The legislature further finds that the aluminum industry was severely impacted by the global economic recession. The legislature further finds that the London metal exchange, where aluminum is traded as a commodity, is extremely volatile and substantially impacts the profitability of the aluminum industry. The legislature further finds that for the aforementioned reasons, the industry continues to struggle with profitability, putting the continued employment of its Washington workforce in jeopardy.

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

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

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

(d) To measure the effectiveness of the exemption provided in this Part V in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate the changes in the number of statewide employment positions for the aluminum industry in Washington." [2015 3rd sp.s. c 6 § 501.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—2004 c 24: "The legislature recognizes that the loss of domestic manufacturing jobs has become a national concern. Washington state has lost one out of every six manufacturing jobs since July 2000. The aluminum industry has long been an important component of Washington state's manufacturing base, providing family-wage jobs often in rural communities where unemployment rates are very high. The aluminum industry is electricity intensive and was greatly affected by the dramatic increase in electricity prices which began in 2000 and which continues to affect the Washington economy. Before the energy crisis, aluminum smelters provided about 5,000 direct jobs. Today they provide fewer than 1,000 direct jobs. For every job lost in that industry, almost three additional jobs are estimated to be lost elsewhere in the state's economy. It is the legislature's intent to preserve and restore family-wage jobs by providing tax relief to the state's aluminum industry.

The electric loads of aluminum smelters provide a unique benefit to the infrastructure of the electric power system. Under the transmission tariff of the Bonneville Power Administration, aluminum smelter loads, whether served with federal or nonfederal power, are subject to short-term interruptions that allow a higher import capability on the transmission interconnection between the northwest and California. These stability reserves allow

more power to be imported in winter months, reducing the need for additional generation in the northwest, and would be used to prevent a widespread transmission collapse and blackout if there were a failure in the transmission interconnection between California and the northwest. It is the legislature's intent to retain these benefits for the people of the state." [2004 c 24 § 1.]

Additional notes found at www.leg.wa.gov

82.04.293 International investment management services—Definitions. For purposes of RCW 82.04.290:

(1) A person is engaged in the business of providing qualifying international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services;

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following:

(i) Collective investment funds commercially domiciled, as defined in RCW 82.56.010, outside the United States; or

(ii) Collective investment funds with at least ten percent of their investments located outside the United States;

(c) More than twenty-five percent of such person's employees are located in this state; and

(d) Such person is a member of an affiliated group that collectively has:

(i) Ten or more offices located in at least eight foreign countries;

(ii) At least five hundred full-time employees worldwide;

(iii) Worldwide gross revenue of more than four hundred million dollars during the entire current or immediately preceding calendar year; and

(iv) Average assets under management of more than two hundred billion dollars during the entire current or immediately preceding calendar year.

(2) An affiliate of a person engaged in the business of providing qualifying international investment management services is deemed to also be engaged in the business of providing qualifying international investment management services if the affiliate:

(a) Is primarily engaged in providing portfolio management, fund administration, fund distribution, or transfer agent services, or any combination of these activities, to, either directly or indirectly through such affiliate's affiliated group, any of the following:

(i) Collective investment funds commercially domiciled, as defined in RCW 82.56.010, outside the United States; or

(ii) Collective investment funds with at least ten percent of their investments located outside the United States; and

(b) Satisfies the requirement under subsection (1)(c) of this section.

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

(a)(i) "Affiliate" and "affiliated" mean a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(ii) For purposes of this subsection (3)(a), "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Affiliated group" means any group of two or more persons that are all affiliated with each other.

(c) "Collective investment fund" includes:

(i) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(ii) An "investment company," as that term is used in section 3(a) of the investment company act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c) (1) or (11);

(iii) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(iv) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(v) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(vi) Collective investment funds similar to those described in (c)(i) through (v) of this subsection (3) created under the laws of a foreign jurisdiction.

(d) "Investment management services" means managing the collective assets of a collective investment fund by engaging, either directly or indirectly through such person's affiliated group, in all of the following activities: (i) Portfolio management; (ii) fund administration; (iii) fund distribution; and (iv) transfer agent services.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States.

(5) If a person engaged in the business of providing international investment management services no longer meets the Washington state employment eligibility requirements under subsection (1)(c) of this section, then an amount equal to the entire economic benefit accruing to the person in the current and immediately prior nine consecutive calendar years, or the consecutive years since July 1, 2019, whichever is less, as a result of the preferential tax rate under RCW 82.04.290(1) is immediately due and payable.

(6) The department must assess interest, but not penalties, on the amounts due under this section. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW and accrue until the taxes for which a tax preference has been used are repaid. [2019 c 426 § 3; 1997 c 7 § 3; 1995 c 229 § 1.]

Findings—Intent—Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 426 §§ 2 and 3: See notes following RCW 82.04.290.

Additional notes found at www.leg.wa.gov

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires July 1, 2032.) (1) Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirring converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirring converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirring converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Silicon solar wafers, silicon solar cells, thin film solar devices, solar grade silicon, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

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

(6) This section expires July 1, 2032. [2022 c 172 § 2; 2017 3rd sp.s. c 37 § 403; 2017 3rd sp.s. c 37 § 402; 2013 2nd sp.s. c 13 § 902; 2011 c 179 § 1; 2010 c 114 § 109; 2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Tax preference performance statement—2022 c 172 § 2: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 172, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to improve industry competitiveness and to create and retain jobs as indicated in RCW 82.32.808(2) (b) and (c).

(3) It is the legislature's specific public policy objective to maintain and grow jobs in the solar silicon industry. Trade disputes currently threaten employment in this sector. It is the legislature's intent to extend by five years the preferential tax rates for manufacturers and wholesalers of specific solar energy material and parts in order to maintain and grow jobs in the solar silicon industry.

(4) If a review finds that the number of people employed by the solar silicon industry in Washington is the same or more than in 2019, and that at least 60 percent of employees earn \$60,000 a year or more, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's annual survey data." [2022 c 172 § 3.]

Effective date—2022 c 172: "This act takes effect July 1, 2022." [2022 c 172 § 4.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 402 and 403: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 402 and 403, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to maintain and grow jobs in the solar silicon industry. Trade disputes currently threaten employment in this sector. It is the legislature's intent to extend by ten years the preferential tax rates for manufacturers and wholesalers of specific solar energy material and parts in order to maintain and grow jobs in the solar silicon industry.

(4) If a review finds that the number of people employed by the solar silicon industry in Washington is the same or more than in 2015, and that at least sixty percent of employees earn sixty thousand dollars a year or more, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's annual survey data." [2017 3rd sp.s. c 37 § 401.]

Effective date—2017 3rd sp.s. c 37 §§ 401 and 402: "Sections 401 and 402 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2017." [2017 3rd sp.s. c 37 § 1403.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that to attract and maintain clean energy technology manufacturing businesses, a competitive business climate is crucial. The legislature further finds that specific tax preferences can facilitate a positive business climate in Washington. The legislature further finds that businesses in the solar silicon industry have had to reduce employment due to global conditions. Therefore, the legislature intends to extend a preferential business and occupation tax rate to manufacturers and wholesalers of specific solar energy material and parts to maintain and grow jobs in the solar silicon industry.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must assess the actual fiscal impact of this tax preference in relation to the fiscal estimate for the tax preference and assess

changes in employment for firms claiming the preferential tax rate." [2013 2nd sp.s. c 13 § 901.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Additional notes found at www.leg.wa.gov

82.04.297 Internet access—Definitions. (1) The provision of internet access is subject to tax under RCW 82.04.290(2).

(2)(a) Except as provided in (b) of this subsection, "internet" and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.

(b) "Internet access" does not include telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold: (i) To provide such service; or (ii) to otherwise enable users to access content, information, or other services offered over the internet.

(3) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter. [2010 c 111 § 303; 2009 c 535 § 408; 2000 c 103 § 5; 1997 c 304 § 4.]

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Severability—Effective date—1997 c 304: See notes following RCW 35.21.717.

82.04.298 Tax on qualified grocery distribution cooperatives. (1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under RCW 82.04.260(4), to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under RCW 82.04.260(4), to customer-owners of the gro-

cery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

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

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale, within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.

(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise. [2011 c 2 § 204 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 511; 2008 c 49 § 1; 2001 1st sp.s. c 9 § 1.]

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.299 Workforce education investment surcharge. (1)(a) Beginning with business activities occurring on or after April 1, 2020, in addition to the taxes imposed under RCW 82.04.290(2), a workforce education investment surcharge is imposed on select advanced computing businesses. The surcharge is equal to the gross income of the business subject to the tax under RCW 82.04.290(2), multiplied by the rate of 1.22 percent.

(b) Except as provided in (e) of this subsection (1), in no case will the combined surcharge imposed under this subsection (1) paid by all members of an affiliated group be more than nine million dollars annually.

(c) For persons subject to the surcharge imposed under this subsection (1) that report under one or more tax classifi-

cations, the surcharge applies only to business activities taxed under RCW 82.04.290(2).

(d) The surcharge imposed under this subsection (1) must be reported and paid on a quarterly basis in a manner as required by the department. Returns and amounts payable under this subsection (1) are due by the last day of the month immediately following the end of the reporting period covered by the return. All other taxes must be reported and paid as required under RCW 82.32.045.

(e)(i) To aid in the effective administration of the surcharge in this subsection (1), the department may require persons believed to be engaging in advanced computing or affiliated with a person believed to be engaging in advanced computing to disclose whether they are a member of an affiliated group and, if so, to identify all other members of the affiliated group subject to the surcharge.

(ii) If the department establishes, by clear, cogent, and convincing evidence, that one or more members of an affiliated group, with intent to evade the surcharge under this subsection (1), failed to fully comply with this subsection (1)(e), the department must assess against that person, or those persons collectively, a penalty equal to fifty percent of the amount of the total surcharge payable by all members of that affiliated group for the calendar year during which the person or persons failed to fully comply with this subsection (1)(e). The penalty under this subsection (1)(e) is in lieu of and not in addition to the evasion penalty under RCW 82.32.090(7).

(f) For the purposes of this subsection (1) the following definitions apply:

(i) "Advanced computing" means designing or developing computer software or computer hardware, whether directly or contracting with another person, including: Modifications to computer software or computer hardware; cloud computing services; or operating as a marketplace facilitator as defined by RCW 82.08.0531, an online search engine, or online social networking platform;

(ii) "Affiliate" and "affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

(iii) "Affiliated group" means a group of two or more persons that are affiliated with each other;

(iv) "Cloud computing services" means on-demand delivery of computing resources, such as networks, servers, storage, applications, and services, over the internet;

(v) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise; and

(vi) "Select advanced computing business" means a person who is a member of an affiliated group with at least one member of the affiliated group engaging in the business of advanced computing, and the affiliated group has worldwide gross revenue of more than twenty-five billion dollars during the immediately preceding calendar year. A person who is primarily engaged within this state in the provision of commercial mobile service, as that term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered a select advanced computing business. A person who is primarily engaged in this state in the operation and provision of access to transmis-

sion facilities and infrastructure that the person owns or leases for the transmission of voice, data, text, sound, and video using wired telecommunications networks shall not be considered a select advanced computing business. A person that is primarily engaged in business as a "financial institution" as defined in RCW 82.04.29004, as that section existed on January 1, 2020, shall not be considered a select advanced computing business. For purposes of this subsection (1)(f)(vi), "primarily" is determined based on gross income of the business.

(2)(a) The workforce education investment surcharge under this section does not apply to:

(i) Any hospital as defined in RCW 70.41.020, including any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW; or

(ii) A provider clinic offering primary care, multispecialty and surgical services, including behavioral health services, and any affiliate of the provider clinic if the affiliate is an organization that offers health care services or provides administrative support for a provider clinic, or is an independent practice association or accountable care organization.

(b) The exemptions under this subsection (2) do not apply to amounts received by any member of an affiliated group other than the businesses described in (a) of this subsection.

(c) For purposes of the exemption in (a)(ii) of this subsection:

(i) "Health care services" means services offered by health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(ii) "Primary care" means wellness and prevention services and the diagnosis and treatment of health conditions.

(3) Revenues from the surcharge under this section must be deposited directly into the workforce education investment account established in RCW 43.79.195.

(4) The department has the authority to determine through an audit or other investigation whether a person is subject to the surcharge imposed in this section. [2022 c 170 § 1; 2022 c 56 § 4; 2020 c 2 § 4; 2019 c 406 § 74.]

Reviser's note: This section was amended by 2022 c 56 § 4 and by 2022 c 170 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Tax preference performance statement exemption—Automatic expiration date exemption—2022 c 170: "RCW 82.32.805 and 82.32.808 do apply to this act." [2022 c 170 § 2.]

Effective date—2022 c 170: "This act takes effect July 1, 2022." [2022 c 170 § 3.]

Retroactive application—2022 c 56 § 4: "Section 4 of this act applies retroactively to January 1, 2020." [2022 c 56 § 14.]

Retroactive application—2020 c 2 § 4: "Section 4 of this act applies both prospectively and retroactively to January 1, 2020." [2020 c 2 § 8.]

Tax preference performance statement exemption—Automatic expiration date exemption—Effective dates—2020 c 2: See notes following RCW 82.04.290.

Effective date—2019 c 406 § 74: "Section 74 of this act takes effect January 1, 2020." [2019 c 406 § 77.]

Findings—Intent—2019 c 406: See note following RCW 43.79.195.

Findings—Short title—2019 c 406: See notes following RCW 28B.92.200.

Findings—2019 c 406: See note following RCW 28B.94.020.

Findings—Intent—2019 c 406: See note following RCW 28C.30.050.

Findings—Intent—2019 c 406: See note following RCW 43.216.135.

82.04.301 Exemptions—Certain hospitals. (*Expires January 1, 2030.*) (1) This chapter does not apply to any person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is owned by a county with a population greater than two million and that is managed by a state university.

(2) This section expires January 1, 2030. [2019 c 451 § 2.]

Tax preference performance statement—2019 c 451: "This section is the tax preference performance statement for the tax preference contained in section 2, chapter 451, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(2) The joint legislative audit and review committee is directed to evaluate the role eligible hospitals play as safety net providers, using metrics including but not limited to:

(a) The monetary value of the following services provided by each eligible hospital:

(i) Uncompensated care, by category of health care services; and

(ii) Medicaid and medicare funded treatment, by category of health care services;

(b) Percentage and count of all clients served by each eligible hospital, by category of health care services, who:

(i) Receive uncompensated care; and

(ii) Use medicare or medicaid to pay for treatment; and

(c) Percentage and count of all clients served in all hospitals in Washington who:

(i) Receive uncompensated care from an eligible hospital, by category of health care services;

(ii) Use medicare and medicaid to pay for treatment from an eligible hospital, by category of health care services; and

(iii) Receive uncompensated trauma care from an eligible hospital.

(3) For the purposes of this section, "eligible hospital" means a taxpayer claiming the tax preference provided in section 2, chapter 451, Laws of 2019.

(4) In order to obtain the data necessary to perform the review in this section, the joint legislative audit and review committee may refer to data from the health care authority and the department of health, as well as any other available data sources." [2019 c 451 § 1.]

Effective date—2019 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 451 § 3.]

82.04.310 Exemptions—Public utilities—Electrical energy—Natural or manufactured gas. (1) This chapter does not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from activities for which a deduction is allowed under RCW 82.16.050. The exemption in this subsection does not apply to sales of natural gas, including compressed natural gas and liquefied natural gas used or sold to manufacture transportation fuel, and renewable natural gas, by a gas distribution business, if such sales are exempt from the tax imposed under chapter 82.16 RCW as provided in RCW 82.16.310.

(2) This chapter does not apply to amounts received by any person for the sale of electrical energy for resale within or outside the state.

(3)(a) This chapter does not apply to amounts received by any person for the sale of natural or manufactured gas in a

calendar year if that person sells within the United States a total amount of natural or manufactured gas in that calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year.

(b) For purposes of determining whether a person has sold within the United States a total amount of natural or manufactured gas in a calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year, the following transfers of gas are not considered to be the sale of natural or manufactured gas:

(i) The transfer of any natural or manufactured gas as a result of the acquisition of another business, through merger or otherwise; or

(ii) The transfer of any natural or manufactured gas accomplished solely to comply with federal regulatory requirements imposed on the pipeline transportation of such gas when it is shipped by a third-party manager of a person's pipeline transportation.

(4) Until January 1, 2031, this chapter does not apply to amounts received by any person in the form of credits against power contracts with the Bonneville power administration, or funds provided by the Bonneville power administration, for the purpose of implementing energy conservation programs or demand-side management programs, so long as the amount that would otherwise be owed under this chapter is used for purposes of low-income ratepayer assistance or weatherization. The funds generated for low-income ratepayer assistance and weatherization under this subsection must be additive to and not supplant any existing funds used by the utility for low-income ratepayer assistance and weatherization. [2021 c 226 § 2; 2019 c 202 § 2; 2014 c 216 § 302; (2010 c 295 § 1 expired June 30, 2015); 2007 c 58 § 1; 2000 c 245 § 2; 1989 c 302 § 202; 1961 c 15 § 82.04.310. Prior: 1959 c 197 § 15; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Tax preference performance statement—2021 c 226: "This section is the tax preference performance statement for the tax preference contained in section 2, chapter 226, Laws of 2021. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a), and also to create low-income ratepayer tax and utility rate relief under RCW 82.32.808(2)(e).

(2) The legislature's specific public policy objectives are to:

(a) Increase investment in energy efficiency and conservation programs;

(b) Support efforts by utilities to acquire all cost-effective energy conservation and noncarbon-emitting energy resources as required under state law; and

(c) Increase funds dedicated to low-income ratepayer assistance and weatherization in Washington.

(3) To support the objectives in subsection (2) of this section, it is the legislature's intent to make permanent the exemption from business and occupation tax amounts received by utilities in the form of credits against power contracts or received from the Bonneville power administration for energy conservation purposes, if the tax savings are used by utilities for low-income ratepayer assistance or weatherization programs. This exemption will induce utilities to invest funds in energy conservation and efficiency programs, thereby reducing the amount of electric energy that such utilities must either generate or purchase, thereby reducing energy costs to utilities and customers. Further, state laws mandating utilities to acquire energy

through both energy conservation and noncarbon-emitting resources can increase the cost of energy to ratepayers. Therefore, it is the legislature's intent that this exemption from the business and occupation tax apply only to the extent the tax amounts that would otherwise be owed on credits or refunds from the Bonneville power administration are used by a utility for low-income ratepayer assistance or weatherization, and that the funds generated for low-income ratepayer assistance or weatherization be additive to any existing funds used by the utility for those purposes.

(4) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must, at a minimum:

(a) Evaluate the average annual investment in energy conservation projects by Washington state utilities that have power contracts with the Bonneville power administration; and

(b) Evaluate the average additional funds from the tax savings resulting from this act that are dedicated to low-income ratepayer assistance and weatherization by Washington state utilities that have power contracts with the Bonneville power administration." [2021 c 226 § 1.]

Effective date—2021 c 226: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021." [2021 c 226 § 3.]

Automatic expiration date and tax preference performance statement exemption—2019 c 202: See note following RCW 82.16.310.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.04.311 Exemptions—Tobacco settlement authority. This chapter does not apply to income received by the tobacco settlement authority under chapter 43.340 RCW. [2002 c 365 § 14.]

Additional notes found at www.leg.wa.gov

82.04.315 Exemptions—International banking facilities. This chapter shall not apply to the gross receipts of an international banking facility.

As used in this section, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 C.F.R. Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D). [1982 c 95 § 7.]

Additional notes found at www.leg.wa.gov

82.04.317 Exemptions—Motor vehicle sales by manufacturers at wholesale auctions to dealers. This chapter does not apply to amounts received by a motor vehicle manufacturer, as defined in RCW 19.118.021, or by a financing subsidiary of such motor vehicle manufacturer which subsidiary is at least fifty percent owned by the manufacturer, from

(2022 Ed.)

the sale of motor vehicles at wholesale auctions to dealers licensed under chapter 46.70 RCW or dealers licensed by any other state. [1997 c 4 § 1.]

Additional notes found at www.leg.wa.gov

82.04.320 Exemptions—Insurance business. (1) Except as otherwise provided in this section, this chapter does not apply to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state.

(2) The provisions of this section do not exempt any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies.

(3) The provisions of this section do not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

(4) For purposes of this section, for periods preceding May 12, 2021, eligible captive insurers as defined in RCW 48.201.020 are deemed, in respect to their insurance business, to have paid a tax on gross premiums to the state.

(5) Eligible captive insurers affiliated with a public institution of higher education that are exempt from paying a premium tax under RCW 48.201.040 are exempt from the tax imposed by this chapter in respect to their insurance business. For purposes of this subsection (5), the definitions in RCW 48.201.020 apply. [2021 c 281 § 10; 1961 c 15 § 82.04.320. Prior: 1959 c 197 § 16; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Application—2021 c 281 §§ 8-11: See note following RCW 48.14.095.

Effective date—2021 c 281: See note following RCW 48.201.010.

82.04.321 Exemptions—Qualified health plan patients. This chapter does not apply to amounts received by a health care provider for services performed on patients covered by a qualified health plan offered under RCW 41.05.410, including reimbursement from the qualified health plan and any amounts collected from the patient as part of his or her cost-sharing obligation. [2019 c 364 § 9.]

Reviser's note: The tax preference enacted in section 9, chapter 364, Laws of 2019 expires January 1, 2032, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

82.04.322 Exemptions—Health maintenance organization, health care service contractor, certified health plan. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. [1993 c 492 § 303.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.04.323 Exemption—Washington health benefit exchange. The taxes imposed by this chapter do not apply to amounts received by the Washington health benefit exchange established under chapter 43.71 RCW. [2022 c 73 § 1; 2013 2nd sp.s. c 6 § 8.]

Retroactive application—2013 2nd sp.s. c 6 § 8: "Section 8 of this act applies both prospectively and retroactively." [2013 2nd sp.s. c 6 § 10.]

82.04.324 Exemptions—Qualifying blood, tissue, or blood and tissue banks. (1) This chapter does not apply to amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section:

(a) "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(b) "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(c) "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 607 and part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute. [2004 c 82 § 1; (2013 2nd sp.s. c 13 § 1202 repealed by 2013 2nd sp.s. c 13 § 1907); 1995 2nd sp.s. c 9 § 3.]

Intent—2013 2nd sp.s. c 13: "Part XII of this act is intended to allow flexibility for nonprofit organizations where qualifying activities will be provided by more than one organization. It is not the legislature's intent to expand the lines of nontaxable activity. Therefore, the legislature further intends to reassess the changes made in part XII of this act to ensure the actual fiscal impact reasonably conforms with the fiscal estimate provided in the fiscal note for the legislation." [2013 2nd sp.s. c 13 § 1201.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Additional notes found at www.leg.wa.gov

82.04.326 Exemptions—Qualified organ procurement organizations. This chapter does not apply to amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax. [2002 c 113 § 1.]

Additional notes found at www.leg.wa.gov

82.04.327 Exemptions—Adult family homes. This chapter does not apply to adult family homes which are

licensed as such, or which are specifically exempt from licensing, under rules of the department of social and health services. [1987 1st ex.s. c 4 § 1.]

82.04.330 Exemptions—Sales of agricultural products. (1) This chapter does not apply to any farmer in respect to the sale of any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption does not apply to any person selling such products at retail or to any person selling manufactured substances or articles. This chapter does not apply to bee pollination services provided to a farmer by an eligible apiarist.

(2) This chapter also does not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program. [2015 3rd sp.s. c 6 § 1103; 2014 c 140 § 7; 2001 c 118 § 3; 1993 sp.s. c 25 § 305; 1988 c 253 § 2; 1987 c 23 § 4. Prior: 1985 c 414 § 10; 1985 c 148 § 1; 1965 ex.s. c 173 § 7; 1961 c 15 § 82.04.330; prior: 1959 c 197 § 17; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 1102-1106: "This section is the tax preference performance statement for the tax preference contained in this Part XI. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

It is the legislature's specific public policy objective to support the honey bee industry and provide tax relief to eligible apiarists. Honey bees pollinate eighty percent of the nation's flowering crops, which include agricultural crops. They are vitally important to agriculture and an integral part of food production. Therefore, the legislature intends to permanently include eligible apiarists within the definition of farmer and define honey bee products as agricultural products so that they may receive the same tax relief as that provided to other sectors of agriculture. Because the legislature intends for the changes in this Part XI to be permanent, they are exempt from the ten-year expiration provision in RCW 82.32.805." [2015 3rd sp.s. c 6 § 1101.]

Tax preference intended to be permanent—2015 3rd sp.s. c 6 §§ 1102-1106: "The legislature intends for the amendments in this act to be permanent. Therefore, the amendments in Part XI of this act are exempt from the provision in RCW 82.32.805 and 82.32.808." [2015 3rd sp.s. c 6 § 1108.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used: RCW 82.04.4287.

Additional notes found at www.leg.wa.gov

82.04.331 Exemptions—Wholesale sales to farmers of seed for planting, conditioning seed for planting owned by others. (1) This chapter does not apply to amounts received by a person engaging within this state in the business of: (a) Making wholesale sales to farmers of seed conditioned for use in planting and not packaged for retail sale; or (b) conditioning seed for planting owned by others.

(2) For the purposes of this section, "seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011. "Seed" does not include "flower seeds" or "vegetable seeds" as defined in RCW 15.49.011, or any other seeds or propagative portions of plants used to grow cannabis, ornamental flowers, or any type of bush, moss, fern, shrub, or tree. [2022 c 16 § 141; 2014 c 140 § 8; 1998 c 170 § 2.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Additional notes found at www.leg.wa.gov

82.04.332 Exemptions—Buying and selling at wholesale unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley. This chapter does not apply to amounts received from buying unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley, but not including any manufactured products thereof, and selling the same at wholesale. [2007 c 131 § 1; 1998 c 312 § 2.]

Additional notes found at www.leg.wa.gov

82.04.333 Exemptions—Small harvesters. In computing tax under this chapter, a person who is a small harvester as defined in RCW 84.33.035 may deduct an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested by that person. A deduction under this section may not reduce the amount of tax due to less than zero. [2011 c 101 § 4; 2007 c 48 § 5; 1990 c 141 § 1.]

Additional notes found at www.leg.wa.gov

82.04.334 Exemptions—Standing timber. This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260(12) apply to this section. [2017 c 323 § 502; 2010 1st sp.s. c 23 § 512; 2007 c 48 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.335 Exemptions—Agricultural fairs. This chapter shall not apply to any business of any bona fide agricultural fair, if no part of the net earnings therefrom inures to the benefit of any stockholder or member of the association conducting the same: PROVIDED, That any amount paid for admission to any exhibit, grandstand, entertainment, or other feature conducted within the fairgrounds by others shall be taxable under the provisions of this chapter, except as otherwise provided by law. [1965 ex.s. c 145 § 1.]

82.04.337 Exemptions—Amounts received by hop growers or dealers for processed hops shipped outside the state. This chapter shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. This section does not exempt a processor or warehouse from taxation under this chapter on amounts charged for processing or warehousing. [1987 c 495 § 1.]

82.04.338 Exemptions—Hop commodity commission or hop commodity board business. This chapter does not apply to any nonprofit organization in respect to gross income derived from business activities for a hop commodity commission or hop commodity board created by state statute or created under chapter 15.65 or 15.66 RCW if: (1) The

(2022 Ed.)

activity is approved by a referendum conducted by the commission or board; (2) the person is specified in information distributed by the commission or board for the referendum as a person who is to conduct the activity; and (3) the referendum is conducted in the manner prescribed by the statutes governing the commission or board for approving assessments or expenditures, or otherwise authorizing or approving activities of the commission or board. As used in this section, "nonprofit organization" means an organization that is exempt from federal income tax under 26 U.S.C. [Sec.] 501(c)(5). [1998 c 200 § 1.]

82.04.339 Exemptions—Day care provided by churches. This chapter shall not apply to amounts derived by a church that is exempt from property tax under RCW 84.36.020 from the provision of care for children for periods of less than twenty-four hours. [1992 c 81 § 1.]

82.04.3395 Exemptions—Child care resource and referral services by nonprofit organizations. This chapter does not apply to nonprofit organizations in respect to amounts derived from the provision of child care resource and referral services. [1995 2nd sp.s. c 11 § 3.]

Additional notes found at www.leg.wa.gov

82.04.340 Exemptions—Boxing, sparring, or wrestling matches. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the department of licensing. [2000 c 103 § 6; 1988 c 19 § 4; 1961 c 15 § 82.04.340. Prior: 1959 c 197 § 18; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.350 Exemptions—Racing. Except as provided in RCW 82.04.286(1), this chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the horse racing commission. [2005 c 369 § 7; 1961 c 15 § 82.04.350. Prior: 1959 c 197 § 19; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 41.05.750.

82.04.355 Exemptions—Ride sharing. This chapter does not apply to any funds received in the course of ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. [2021 c 135 § 5; 1999 c 358 § 8; 1979 c 111 § 17.]

Effective date—2021 c 135: See note following RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.04.360 Exemptions—Employees—Independent contractors—Booth renters. (1) This chapter does not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section,

the definition of employee includes those persons that are defined in section 3121(d)(3)(B) of the federal internal revenue code of 1986, as amended through January 1, 1991.

(2) Until July 1, 2010, this chapter does not apply to amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors. Beginning on July 1, 2010, such amounts are taxable under RCW 82.04.290(2).

(3) A booth renter is an independent contractor for purposes of this chapter. For purposes of this section, "booth renter" means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed. [2010 1st sp.s. c 23 § 702; 2010 c 106 § 207. Prior: 1991 c 324 § 19; 1991 c 275 § 2; 1961 c 15 § 82.04.360; prior: 1959 c 197 § 20; prior: 1945 c 249, § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Intent—Findings—2010 1st sp.s. c 23: "(1) In adopting the state's business and occupation tax, the legislature intended to tax virtually all business activities carried on within the state. See *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that the business and occupation tax applies to all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, unless a specific exemption applies.

(2) One of the major business and occupation tax exemptions is provided in RCW 82.04.360 for income earned as an employee or servant as distinguished from income earned as an independent contractor. The legislature's intent in providing this exemption was to exempt employee wages from the business and occupation tax but not to exempt income earned as an independent contractor.

(3) The legislature finds that corporate directors are not employees or servants of the corporation whose board they serve on and therefore are not entitled to a business and occupation tax exemption under RCW 82.04.360. The legislature further finds that there are no business and occupation tax exemptions for compensation received for serving as a member of a corporation's board of directors.

(4) The legislature also finds that there is a widespread misunderstanding among corporate directors that the business and occupation tax does not apply to the compensation they receive for serving as a director of a corporation. It is the legislature's expectation that the department of revenue will take appropriate measures to ensure that corporate directors understand and comply with their business and occupation tax obligations with respect to their director compensation. However, because of the widespread misunderstanding by corporate directors of their liability for business and occupation tax on director compensation, the legislature finds that it is appropriate in this unique situation to provide limited relief against the retroactive assessment of business and occupation taxes on corporate director compensation.

(5) The legislature also reaffirms its intent that all income of all independent contractors is subject to business and occupation tax unless specifically exempt under the Constitution or laws of this state or the United States." [2010 1st sp.s. c 23 § 701.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Finding—Intent—1991 c 275: "(1) The legislature finds:

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and

occupation tax purposes, solely for the unique business of selling life insurance." [1991 c 275 § 1.]

Additional notes found at www.leg.wa.gov

82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization.

This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products, including books and other products that are transferred electronically, that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. [2009 c 535 § 409; 1997 c 388 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.04.3651 Exemptions—Amounts received by nonprofit organizations for fund-raising activities. (1) This chapter does not apply to amounts received from fund-raising activities by nonprofit organizations, as defined in subsection (2) of this section, and libraries as defined in RCW 27.12.010.

(2) As used in this section, a "nonprofit organization" means:

(a) An organization exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));

(b) A nonprofit organization that would qualify under (a) of this subsection except that it is not organized as a nonprofit corporation; or

(c) A nonprofit organization that meets all of the following criteria:

(i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

(3) As used in this section, the term "fund-raising activity" means soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. "Fund-raising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business or the operation of a regular place of business from which services are provided or performed during

regular hours such as the provision of retail, personal, or professional services. The sale of used books, used videos, used sound recordings, or similar used information products in a library, as defined in RCW 27.12.010, is not the operation of a regular place of business for the purposes of this section, if the proceeds of the sales are used to support the library. [2010 c 106 § 208; 1999 c 358 § 3; 1998 c 336 § 2.]

Findings—1998 c 336: "The legislature finds that nonprofit educational, charitable, religious, scientific, and social welfare organizations provide many public benefits to the people of the state of Washington. Therefore, the legislature finds that it is in the best interests of the state of Washington to provide a limited excise tax exemption for fund-raising activities for certain nonprofit organizations." [1998 c 336 § 1.]

Sales tax exemptions: RCW 82.08.02573.

Additional notes found at www.leg.wa.gov

82.04.367 Exemptions—Nonprofit organizations that are guarantee agencies, issue debt, or provide guarantees for student loans. This chapter does not apply to gross income received by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that:

(1) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(2) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program. [1998 c 324 § 1; 1987 c 433 § 1.]

82.04.368 Exemptions—Nonprofit organizations—Credit and debt services. This chapter does not apply to nonprofit organizations in respect to amounts derived from provision of the following services:

(1) Presenting individual and community credit education programs including credit and debt counseling;

(2) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(3) Establishing and administering negotiated repayment programs for debtors; or

(4) Providing advice or assistance to a debtor with regard to subsection (1), (2), or (3) of this section. [1993 c 390 § 1.]

82.04.370 Exemptions—Certain fraternal and beneficiary organizations. This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. Exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations. [1961 c 293 § 4; 1961 c 15 § 82.04.370. Prior: 1959 c 197 § 21; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.380 Exemptions—Certain corporations furnishing aid and relief. This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the congress

of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1961 c 15 § 82.04.380. Prior: 1959 c 197 § 22; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.385 Exemptions—Operation of sheltered workshops. This chapter shall not apply to income received from the department of social and health services for the cost of care, maintenance, support, and training of persons with developmental disabilities at nonprofit group training homes as defined by chapter 71A.22 RCW or to the business activities of nonprofit organizations from the operation of sheltered workshops. For the purposes of this section, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of (1) providing gainful employment or rehabilitation services to persons with disabilities as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for persons with disabilities. [2020 c 274 § 68. Prior: 1988 c 176 § 915; 1988 c 13 § 1; 1972 ex.s. c 134 § 1; 1970 ex.s. c 81 § 3.]

82.04.390 Exemptions—Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This however, shall not be construed to allow a deduction of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. [1961 c 15 § 82.04.390. Prior: 1959 ex.s. c 5 § 8; 1959 c 197 § 23; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.392 Exemptions—Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions. [1998 c 311 § 3; 1997 c 106 § 21.]

Intent—Retroactive application—1998 c 311 §§ 1 and 3: See note following RCW 19.146.050.

Additional notes found at www.leg.wa.gov

82.04.399 Exemptions—Sales of academic transcripts. This chapter does not apply to amounts received from sales of academic transcripts by educational institutions. [1996 c 272 § 1.]

Additional notes found at www.leg.wa.gov

82.04.405 Exemptions—Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States. [1998 c 311 § 4; 1970 ex.s. c 101 § 3.]

Additional notes found at www.leg.wa.gov

82.04.408 Exemptions—Housing finance commission. This chapter does not apply to income received by the state housing finance commission under chapter 43.180 RCW. [1983 c 161 § 25.]

Additional notes found at www.leg.wa.gov

82.04.410 Exemptions—Hatching eggs and poultry. This chapter shall not apply to amounts derived by persons engaged in the production and sale of hatching eggs or poultry for use in the production for sale of poultry or poultry products. [1967 ex.s. c 149 § 15; 1961 c 15 § 82.04.410. Prior: 1959 c 197 § 25; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.415 Exemptions—Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs. This chapter shall not apply to:

(1) The cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel, or rock is either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself; or

(2) The cost of or charges for such labor and services if any such sand, gravel, or rock is sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway.

The exemption provided for in this section shall not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1965 ex.s. c 173 § 10.]

Additional notes found at www.leg.wa.gov

82.04.416 Exemptions—Operation of state route No. 16. This chapter does not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW. [1998 c 179 § 3.]

Finding—1998 c 179: See note following RCW 35.21.718.

82.04.418 Exemptions—Grants by United States government to municipal corporations or political subdivisions. The provisions of this chapter shall not apply to grants received from the state or the United States government by municipal corporations or political subdivisions of the state of Washington. [1983 1st ex.s. c 66 § 2.]

82.04.419 Exemptions—County, city, town, school district, or fire district activity. This chapter shall not apply to any county, city, town, school district, or fire district activ-

ity, regardless of how financed, other than a utility or enterprise activity as defined by the state auditor pursuant to RCW 35.33.111 and 36.40.220 and upon which the tax imposed pursuant to this chapter had previously applied. Nothing contained in this section shall limit the authority of the legislature to authorize the imposition of such tax prospectively upon such activities as the legislature shall specifically designate. [1983 1st ex.s. c 66 § 3.]

82.04.4201 Exemptions—Sales/leasebacks by regional transit authorities. This chapter does not apply to amounts received as lease payments paid by a seller/lessee to a lessor under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property used by the seller/lessee, or to the purchase amount paid by the lessee under an option to purchase at the end of the lease term. [2000 2nd sp.s. c 4 § 24.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

82.04.421 Exemptions—Out-of-state membership sales in discount programs. (1) For the purposes of this section, "qualifying discount program" means a membership program, club, or plan that entitles the member to discounts on services or products sold by others. The term does not include any discount program which in part or in total entitles the member to discounts on services or products sold by the seller of the membership or an affiliate of the seller of the membership. "Affiliate," for the purposes of this section, means any person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the seller.

(2) Persons selling memberships in a qualifying discount program are not subject to tax under this chapter on that portion of the membership sales where the seller delivers the membership materials to the purchaser who receives them at a point outside this state. [1997 c 408 § 1.]

Additional notes found at www.leg.wa.gov

82.04.422 Exemptions—Wholesale sales of motor vehicles. (1) This chapter does not apply to amounts received by a motor vehicle dealer licensed under chapter 46.70 RCW, or a dealer licensed by any other state, for the wholesale sale of used motor vehicles at auctions to licensed dealers.

(2) This chapter does not apply to amounts derived by a new car dealer from wholesale sales of new motor vehicles to other new car dealers making sales of new motor vehicles of the same make. This exemption does not apply to amounts derived by a manufacturer, distributor, or factory branch as defined in chapter 46.70 RCW. [2004 c 81 § 1; 2001 c 258 § 1.]

Additional notes found at www.leg.wa.gov

82.04.423 Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives. (1) Prior to May 1, 2010, this chapter does not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

(a) Does not own or lease real property within this state; and

(b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and

(c) Is not a corporation incorporated under the laws of this state; and

(d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys only consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells at retail, or solicits the sale at retail of, only consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section may be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to August 23, 1983. [2010 1st sp.s. c 23 § 402; 1983 1st ex.s. c 66 § 5.]

Intent—Findings—2010 1st sp.s. c 23: "(1) A business and occupation tax exemption is provided in RCW 82.04.423 for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative. The intent of the legislature in enacting this exemption was to provide a narrow exemption for out-of-state businesses engaged in direct sales of consumer products, typically accomplished through in-home parties or door-to-door selling.

(2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2 (September 10, 2009), the Washington supreme court held that the exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products through its representative in addition to consumer products; and (b) whose consumer products were ultimately sold at retail in permanent retail establishments.

(3) The legislature finds that most out-of-state businesses selling consumer products in this state will either be eligible for the exemption under RCW 82.04.423 or could easily restructure their business operations to qualify for the exemption. As a result, the legislature expects that the broadened interpretation of the direct sellers' exemption will lead to large and devastating revenue losses. This comes at a time when the state's existing budget is facing a two billion six hundred million dollar shortfall, which could grow, while at the same time the demand for state and state-funded services is also growing. Moreover, the legislature further finds that RCW 82.04.423 provides preferential tax treatment for out-of-state businesses over their in-state competitors and now creates a strong incentive for in-state businesses to move their operations outside Washington.

(4) Therefore, the legislature finds that it is necessary to reaffirm the legislature's intent in establishing the direct sellers' exemption and prevent the loss of revenues resulting from the expanded interpretation of the exemption by amending RCW 82.04.423 retroactively to conform the exemption to the original intent of the legislature and by prospectively ending the direct sellers' exemption as of May 1, 2010." [2010 1st sp.s. c 23 § 401.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.04.425 Exemptions—Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his or her vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him or her to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller; nor to sales by a wholly owned subsidiary of a person making sales at retail which are exempt under RCW 82.08.0262 when the parent corporation shall have paid the tax imposed under this chapter. [2013 c 23 § 315; 1980 c 37 § 78; 1965 ex.s. c 173 § 9; 1961 c 15 § 82.04.425. Prior: 1955 c 95 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4251 Exemptions—Convention and tourism promotion. This chapter does not apply to amounts received by a nonprofit corporation organized under chapter 24.03A RCW as payments or contributions from the state or any county, city, town, municipal corporation, quasi-municipal corporation, federally recognized Indian tribe, port district, or public corporation for the promotion of conventions and tourism. [2021 c 176 § 5244; 2006 c 310 § 1.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

82.04.426 Exemptions—Semiconductor microchips. (Contingent effective date; contingent expiration date.) (1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

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

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 524; (2017 3rd sp.s. c 37 § 523 expired January 1, 2018); 2017 c 135 § 13; 2010 c 114 § 110; 2003 c 149 § 2.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Busi-

nesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. However, additional incentives for the semiconductor cluster need to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2003 c 149 § 1.]

82.04.4261 Exemptions—Federal small business innovation research program. This chapter does not apply to amounts received by any person for research and development under the federal small business innovation research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.). [2004 c 2 § 9.]

Additional notes found at www.leg.wa.gov

82.04.4262 Exemptions—Federal small business technology transfer program. This chapter does not apply to amounts received by any person for research and development under the federal small business technology transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.). [2004 c 2 § 10.]

Additional notes found at www.leg.wa.gov

82.04.4263 Exemptions—Income received by the life sciences discovery fund authority. This chapter does not apply to income received by the life sciences discovery fund authority under *chapter 43.350 RCW. [2005 c 424 § 11.]

*Reviser's note: Chapter 43.350 RCW was repealed and/or recodified by 2019 c 83 §§ 5 and 6.

82.04.4264 Exemptions—Nonprofit assisted living facilities—Room and domiciliary care. (1) This chapter does not apply to amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility.

(2) As used in this section:

(a) "Domiciliary care" has the meaning provided in RCW 18.20.020.

(b) "Nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under chapter 24.03A RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district. [2021 c 176 § 5245; 2012 c 10 § 71; 2005 c 514 § 301.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

82.04.4265 Exemptions—Comprehensive cancer centers. (1) This chapter does not apply to amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the national cancer institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501(c)(3) as existing on July 1, 2006. [2005 c 514 § 401.]

Additional notes found at www.leg.wa.gov

82.04.4266 Exemptions—Fruit and vegetable businesses. (Expires July 1, 2025.) (1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

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

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

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

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

(4) This section expires July 1, 2025. [2022 c 16 § 142; 2020 c 139 § 5; 2015 3rd sp.s. c 6 § 202; 2014 c 140 § 9; 2012 2nd sp.s. c 6 § 201; 2011 c 2 § 202 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 504; (2010 1st sp.s. c 23 § 503 expired June 10, 2010); 2010 c 114 § 111; 2006 c 354 § 3; 2005 c 513 § 1.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective dates—2020 c 272; 2017 c 323; 2015 3rd sp.s. c 6: "(1) Except as provided otherwise in this part, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

(2) Parts IV, VI, VIII, and XIX of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2015.

(3) Part X of this act takes effect October 1, 2016.

(4) Section 1105 of this act takes effect January 1, 2016.

(5) Except for section 2004 of this act, Part XX of this act takes effect January 1, 2019." [2020 c 272 § 5; 2017 c 323 § 301; 2015 3rd sp.s. c 6 § 2301.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: "This section is the tax preference performance statement for the agricultural processor tax exemptions in sections 202 through 205 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

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

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

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

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

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

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

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

(5) In addition to the data sources described under subsection (4) of this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under subsection (3) of this section." [2015 3rd sp.s. c 6 § 201.]

*Reviser's note: RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.04.4267 Exemptions—Operation of parking/business improvement areas. This chapter does not apply to amounts received by a chamber of commerce or other similar business association for administering the operation of a parking and business improvement area as defined in RCW 35.87A.110. [2005 c 476 § 1.]

82.04.4268 Exemptions—Dairy product businesses. (Expires July 1, 2025.) (1) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

(a) Manufacturing dairy products; or

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

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

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

(4) This section expires July 1, 2025. [2020 c 139 § 6; 2015 3rd sp.s. c 6 § 203; 2013 2nd sp.s. c 13 § 204; 2012 2nd sp.s. c 6 § 202; 2010 c 114 § 112; 2006 c 354 § 1.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

(2022 Ed.)

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: See note following RCW 82.04.4266.

Intent—2013 2nd sp.s. c 13: See note following RCW 82.04.260.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.04.4269 Exemptions—Seafood product businesses. (Expires July 1, 2025.) (1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

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

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

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

(3) This section expires July 1, 2025. [2020 c 139 § 7; 2015 3rd sp.s. c 6 § 204; 2012 2nd sp.s. c 6 § 203; 2010 c 114 § 113; 2006 c 354 § 2.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: See note following RCW 82.04.4266.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.04.427 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.04.4271 Deductions—Membership fees and certain service fees by nonprofit youth organization. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a nonprofit youth organization:

(1) As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or

(2) From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

For purposes of this section: "Nonprofit youth organization" means a nonprofit organization engaged in character

building of youth which is exempt from property tax under RCW 84.36.030. [1981 c 74 § 1.]

82.04.4272 Deductions—Direct mail delivery charges. (1) In computing tax there may be deducted from the measure of tax, amounts derived from delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 114.]

Additional notes found at www.leg.wa.gov

82.04.4274 Deductions—Nonprofit management companies—Personnel performing on-site functions. (1) In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by:

(a) A nonprofit property management company from the owner of property for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions;

(b) A property management company from a housing authority for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions; or

(c) A property management company from a limited liability company or limited partnership of which the sole managing member or sole general partner is a housing authority for gross wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions.

(2) The definitions in this subsection apply to this section.

(a) "Personnel performing on-site functions" means a person who meets all of the following conditions:

(i) The person works at the owner's property or centrally performs on-site functions for the property;

(ii) The person's duties include leasing property units, maintaining the property, preparing tenant income certification paperwork or other compliance documents required to lease the unit, collecting rents, recording rents, or performing similar activities; and

(iii) The property management company, for whom the personnel performing on-site functions works, operates under a written property management agreement.

(b) "Nonprofit property management company" means a property management company that:

(i) Is exempt from the tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, as it exists on January 1, 2010, but only when such organization is providing property management services for low-income housing that has qualified for the property tax exemption under RCW 84.36.560; or

(ii) Is a public corporation established under RCW 35.21.730.

(c) "Housing authority" means a housing authority created pursuant to chapter 35.82 RCW. [2011 1st sp.s. c 26 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4275 Deductions—Child welfare services. (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing child welfare services under a government-funded program.

(2) A person may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) The following definitions apply to this section:

(a) "Child welfare services" has the same meaning as provided in RCW 74.13.020; and

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431. [2011 c 163 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4281 Deductions—Investments, dividends, interest on loans. (1) In computing tax there may be deducted from the measure of tax:

(a) Amounts derived from investments;

(b) Amounts derived as dividends or distributions from the capital account by a parent from its subsidiary entities; and

(c) Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually.

(2) The following are not deductible under subsection (1)(a) of this section:

(a) Amounts received from loans, except as provided in subsection (1)(c) of this section, or the extension of credit to another, revolving credit arrangements, installment sales, the acceptance of payment over time for goods or services, or any of the foregoing that have been transferred by the originator of the same to an affiliate of the transferor; or

(b) Amounts received by a banking, lending, or security business.

(3) The definitions in this subsection apply only to this section.

(a) "Banking business" means a person engaging in business as a national or state-chartered bank, a mutual savings bank, a savings and loan association, a trust company, an alien bank, a foreign bank, a credit union, a stock savings bank, or a similar entity that is chartered under Title *30, 31, 32, or 33 RCW, or organized under Title 12 U.S.C.

(b) "Lending business" means a person engaged in the business of making secured or unsecured loans of money, or extending credit, and (i) more than one-half of the person's gross income is earned from such activities and (ii) more than one-half of the person's total expenditures are incurred in support of such activities.

(c) The terms "loan" and "extension of credit" do not include ownership of or trading in publicly traded debt instruments, or substantially equivalent instruments offered in a private placement.

(d) "Security business" means a person, other than an issuer, who is engaged in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as those terms are defined in the securities act of Washington, chapter 21.20 RCW, or the federal securities act of 1933. "Security business" does not include any company excluded from the definition of broker or dealer under the federal investment company act of 1940 or any entity that is not an investment company by reason of sections 3(c)(1) and 3(c)(3)

through 3(c)(14) thereof. [2007 c 54 § 9; 2002 c 150 § 2; 1980 c 37 § 2. Formerly RCW 82.04.430(1).]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Findings—Intent—2002 c 150: "The legislature finds that the application of the business and occupation tax deductions provided in RCW 82.04.4281 for investment income of persons deemed to be "other financial businesses" has been the subject of uncertainty, and therefore, disagreement and litigation between taxpayers and the state. The legislature further finds that the decision of the state supreme court in *Simpson Investment Co. v. Department of Revenue* could lead to a restrictive, narrow interpretation of the deductibility of investment income for business and occupation tax purposes. As a result, the legislature directed the department of revenue to work with affected businesses to develop a revision of the statute that would provide certainty and stability for taxpayers and the state. The legislature intends, by adopting this recommended revision of the statute, to provide a positive environment for capital investment in this state, while continuing to treat similarly situated taxpayers fairly." [2002 c 150 § 1.]

Finding—Intent on application of deduction—2001 c 320: "The legislature finds that the application of the business and occupation tax deduction provided in RCW 82.04.4281 for investment income of persons other than those engaging in banking, loan, security, or other financial businesses has been the subject of disagreement between taxpayers and the state. Decisions of the supreme court have provided some broad guidelines and principles for interpretation of the deduction provided in RCW 82.04.4281, but these decisions have not provided the certainty and clarity that is desired by taxpayers and the state. Therefore, it is the intent of the legislature to delay change in the manner or extent of taxation of the investment income until definitions or standards can be developed and enacted by the legislature." [2001 c 320 § 18.]

Reviser's note: 2001 c 320 § 19, which was vetoed May 15, 2001, would have implemented the intent in this section.

Intent—1980 c 37: "The separation of sales tax exemption, use tax exemption, and business and occupation deduction sections into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the exemptions or deductions involved." [1980 c 37 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4282 Deductions—Fees, dues, charges. In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section. [2009 c 535 § 410; 1994 c 124 § 3; 1989 c 392 § 1; 1980 c 37 § 3. Formerly RCW 82.04.430(2).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

(2022 Ed.)

82.04.4283 Deductions—Cash discount taken by purchaser. In computing tax there may be deducted from the measure of tax the amount of cash discount actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extractive or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the provisions of RCW 82.04.450. [1980 c 37 § 4. Formerly RCW 82.04.430(3).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4284 Deductions—Bad debts. (1) In computing tax there may be deducted from the measure of tax bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid.

(2) For purposes of this section, "bad debts" do not include:

- (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (b) Expenses incurred in attempting to collect debt;
- (c) Sales or use taxes payable to a seller; and
- (d) Repossessed property.

(3) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt must be applied under RCW 82.08.037(4) and 82.12.037, according to such rules as the department may prescribe. [2004 c 153 § 307; 1980 c 37 § 5. Formerly RCW 82.04.430(4).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4285 Deductions—Motor vehicle fuel and special fuel taxes. In computing tax there may be deducted from the measure of tax so much of the sale price of fuel as constitutes the amount of tax imposed by the state under chapter 82.38 RCW or the United States government, under 26 U.S.C., Subtitle D, chapters 31 and 32, upon the sale thereof. [2013 c 225 § 639; 1998 c 176 § 3; 1980 c 37 § 6. Formerly RCW 82.04.430(5).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4286 Deductions—Nontaxable business. In computing tax there may be deducted from the measure of tax amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 7. Formerly RCW 82.04.430(6).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4287 Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used. In computing tax there may be deducted from the measure of tax amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in

RCW 82.04.330, either as agent or as independent contractor. [1980 c 37 § 8. Formerly RCW 82.04.430(7).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Sales and use tax exemption for materials and supplies used in packing horticultural products: RCW 82.08.0311 and 82.12.0311.

82.04.4289 Exemption—Compensation for patient services or attendant sales of drugs dispensed pursuant to prescription by certain nonprofit organizations. This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by a kidney dialysis facility operated as a nonprofit corporation, a nonprofit hospice agency licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. "Prescription" and "drug" have the same meaning as in RCW 82.08.0281. [2003 c 168 § 402; 1998 c 325 § 1; 1993 c 492 § 305; 1981 c 178 § 2; 1980 c 37 § 10. Formerly RCW 82.04.430(9).]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4290 Deductions—Mental health services or substance use disorder treatment services. (Expires January 1, 2032.) (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing mental health services or substance use disorder treatment services under a government-funded program.

(2) A behavioral health administrative services organization may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

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

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

(a) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

(b) "Health or social welfare organization" has the same meaning as provided in RCW 82.04.431.

(c) "Mental health services" means mental health services as described in chapter 71.24 RCW.

(d) "Substance use disorder treatment services" means substance use disorder treatment services as described in chapter 71.24 RCW.

(5) This section expires January 1, 2032. [2021 c 124 § 3.]

Finding—Intent—2021 c 124: "The legislature finds that COVID-19 has had significant impacts on behavioral health. The legislature previously had a feature of its tax system that exempted government-funded behavioral health services from paying business and occupation tax in order for more tax dollars to be utilized in providing health services. The legislature intends to reenact that preference in light of increased behavioral health needs for the

foreseeable future, and in recognition that treatment reduces costs to the government in other services." [2021 c 124 § 1.]

Tax preference performance statement—2021 c 124: "(1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter 124, Laws of 2021. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to accomplish a general purpose, reducing taxes so more money can go directly to behavioral health services, as indicated in RCW 82.32.808(2)(f).

(3) It is the legislature's specific public policy objective to support behavioral health services that can prevent more serious and costly health issues.

(4) If a review finds that the amount of funding available for behavioral health services by these taxpayers increased, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2021 c 124 § 2.]

Effective date—2021 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2021]." [2021 c 124 § 4.]

82.04.4291 Deductions—Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290. In computing tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290. [1980 c 37 § 11. Formerly RCW 82.04.430(10).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4292 Deductions—Interest on investments or loans secured by mortgages or deeds of trust. (1) In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

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

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

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

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

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

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

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

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

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

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

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

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

(5) The deductions provided in this section do not apply to persons subject to tax under RCW 82.04.29005.

(6) By June 30, 2015, the joint legislative audit and review committee must review the deductions provided in this section in accordance with RCW 43.136.055 and make a recommendation as to whether the deductions should be continued without modification, modified, or terminated immediately. [2012 2nd sp.s. c 6 § 102; 2010 1st sp.s. c 23 § 301; 1980 c 37 § 12. Formerly RCW 82.04.430(11).]

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4293 Deductions—Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political

(2022 Ed.)

subdivisions, and municipal corporations organized pursuant to the laws thereof. [1980 c 37 § 13. Formerly RCW 82.04.430(12).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives. In computing tax there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities. [1980 c 37 § 14. Formerly RCW 82.04.430(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4295 Deductions—Manufacturing activities completed outside the United States. In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if:

(1) Any additional processing of such articles in this state consists of minor final assembly only; and

(2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; and

(3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and

(4) The articles are sold and shipped outside the state. [1980 c 37 § 15. Formerly RCW 82.04.430(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes. In computing tax there may be deducted from the measure of tax that portion of amounts received by any funeral home licensed to do business in this state which is received as reimbursements for expenditures (for goods supplied or services rendered by a person not employed by or affiliated or associated with the funeral home) and advanced by such funeral home as an accommodation to the persons paying for a funeral, so long as such expenditures and advances are billed to the persons paying for the funeral at only the exact cost thereof and are separately itemized in the billing statement delivered to such persons. [1980 c 37 § 16. Formerly RCW 82.04.430(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception. In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization, as

[Title 82 RCW—page 67]

defined in RCW 82.04.431, or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. [2011 1st sp.s. c 19 § 2; 2002 c 314 § 3; 2001 2nd sp.s. c 23 § 2; 1988 c 67 § 1; 1980 c 37 § 17. Formerly RCW 82.04.430(16).]

Findings—Refund of taxes—Effective date—2002 c 314: See notes following RCW 82.04.4311.

Findings—2001 2nd sp.s. c 23: "The legislature finds that the deduction under the business and occupation tax statutes for compensation from public entities for health or social welfare services was intended to provide government with greater purchasing power when government provides financial support for the provision of health or social welfare services to benefited classes of persons. The legislature also finds that both the legislature and the United States congress have in recent years modified government-funded health care programs to encourage participation by beneficiaries in highly regulated managed care programs operated by persons who act as intermediaries between government entities and health or social welfare organizations. The legislature further finds that the objective of these changes is again to extend the purchasing power of scarce government health care resources, but that this objective would be thwarted to a significant degree if the business and occupation tax deduction were lost by health or social welfare organizations solely on account of their participation in managed care for government-funded health programs. In keeping with the original purpose of the health or social welfare deduction, it is desirable to ensure that compensation received from government sources through contractual managed care programs also be deductible." [2001 2nd sp.s. c 23 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

"Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined: RCW 82.04.431.

Additional notes found at www.leg.wa.gov

82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations. (1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

(a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

(b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

(c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

(2) For the purposes of this section "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

(3) To qualify for the deductions under this section:

(a) The salary or compensation paid to officers, managers, or employees must be only for actual services rendered

and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

(b) Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;

(c) Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members. [1980 c 37 § 18. Formerly RCW 82.04.430(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.431 "Health or social welfare organization" defined—Conditions for exemption—"Health or social welfare services" defined. (1) The term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a domestic or foreign nonprofit corporation under chapter 24.03A RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(ii) By a person that does not furnish lodging or related services to the general public. [2021 c 176 § 5246; 2011 1st sp.s. c 19 § 3; 2008 c 137 § 1; 1986 c 261 § 6; 1985 c 431 § 3; 1983 1st ex.s. c 66 § 1; 1980 c 37 § 80; 1979 ex.s. c 196 § 6.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4311 Deductions—Compensation received under the federal medicare program by certain hospitals or health centers. (1) A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

(2) As used in this section, "community health center" means a federally qualified health center as defined in 42 U.S.C. 1396d as existing on August 1, 2005. [2005 c 86 § 1; 2002 c 314 § 2.]

Findings—2002 c 314: "The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government. Further, the tax status of these amounts should not depend on whether the amounts are received

(2022 Ed.)

directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act." [2002 c 314 § 1.]

Additional notes found at www.leg.wa.gov

82.04.432 Deductions—Municipal sewer service fees or charges. In computing the tax imposed by this chapter, municipal sewerage utilities and other public corporations imposing and collecting fees or charges for sewer service may deduct from the measure of the tax, amounts paid to another municipal corporation or governmental agency for sewerage interception, treatment or disposal. [1967 ex.s. c 149 § 17.]

82.04.4327 Deductions—Artistic and cultural organizations. In computing tax under this chapter, an artistic or cultural organization may deduct from the measure of tax:

(1) All amounts received by the artistic or cultural organization; and

(2) The value of articles manufactured by the artistic or cultural organization solely for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public. [2020 c 139 § 8; 1985 c 471 § 6.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

Additional notes found at www.leg.wa.gov

82.04.4328 "Artistic or cultural organization" defined. (1) For the purposes of RCW 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a nonprofit corporation under chapter 24.03A RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4327, 82.08.031, and 82.12.031, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [2021 c 176 § 5247; 2020 c 139 § 9; 1985 c 471 § 7; 1981 c 140 § 6.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Additional notes found at www.leg.wa.gov

82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce. (1) In computing tax there may be deducted from the measure of tax imposed under RCW 82.04.250 and 82.04.270 amounts derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce.

(2) The deduction in subsection (1) of this section does not apply with respect to the tax imposed under RCW 82.04.240, whether the value of the fuel under that tax is measured by the gross proceeds derived from the sale thereof or otherwise under RCW 82.04.450. [2009 c 494 § 2; 1985 c 471 § 16.]

Intent—Finding—2009 c 494: "(1) Through this act the legislature intends to address the taxation of persons manufacturing and/or selling bunker fuel. Bunker fuel is fuel intended for consumption outside the waters of the United States by vessels in foreign commerce. Although the state has historically collected tax from bunker fuel manufacturers, recently questions have arisen whether the manufacture of bunker fuel is subject to business and occupation tax under RCW 82.04.240. Pursuant to this act, the activity is taxable under RCW 82.04.240.

(2) The legislature finds that at the time the deduction allowed under RCW 82.04.433 was enacted in 1985, it was intended to apply only to the wholesaling or retailing of bunker fuel. In 1987 the legislature enacted the multiple activities tax credit in RCW 82.04.440. Enactment of the multiple activities tax credit resulted in changed tax liability for certain taxpayers. In particular, some taxpayers that engaged in activities that had been exempt under the prior multiple activities exemption became subject to tax on manufacturing activities upon enactment of the multiple activities tax credit in its place. The manufacturing of bunker fuel is one such activity." [2009 c 494 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4331 Deductions—Insurance claims for state health care coverage. In computing tax, insurers as defined by RCW 48.01.050, may deduct from the measure of tax amounts paid out for claims incurred before July 1, 1990, for

covered health services under medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 33.]

Additional notes found at www.leg.wa.gov

82.04.4332 Deductions—Tuition fees of foreign degree-granting institutions. An approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW is considered an educational institution for the purpose of the deduction of tuition fees provided by RCW 82.04.170 in those instances where it is recognized as an organization exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c). [1993 c 181 § 10.]

82.04.4337 Deductions—Certain amounts received by assisted living facilities. (1) An assisted living facility licensed under chapter 18.20 RCW may deduct from the measure of tax amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients.

(2) For purposes of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009. [2012 c 10 § 72; 2004 c 174 § 7.]

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

82.04.4339 Deductions—Salmon recovery grants. (1) In computing tax there may be deducted from the measure of tax amounts received by a nonprofit organization from the United States or any instrumentality thereof, the state of Washington or any municipal corporation or political subdivision thereof, or an Indian tribe as defined in RCW 43.06.523, as salmon recovery grants.

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

(a) "Nonprofit organization" has the same meaning as in RCW 82.04.3651.

(b) "Salmon recovery grant" means, solely for the purposes of this section, financial assistance provided to primarily benefit the public as a whole by renewing, restoring, or protecting, by human intervention, salmon ecosystems or salmon habitats in this state, whether or not such financial assistance furthers the regulatory activities of the grantor. [2021 c 143 § 1; 2004 c 241 § 1.]

Automatic expiration date and tax preference performance statement exemption—2021 c 143: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2021 c 143 § 6.]

Effective date—2021 c 143: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2021]." [2021 c 143 § 7.]

Additional notes found at www.leg.wa.gov

82.04.43391 Deductions—Commercial aircraft loan interest and fees. (1) In computing tax there may be deducted from the measure of tax interest and fees on loans secured by commercial aircraft primarily used to provide routine air service and owned by:

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

(b) An affiliate of such air carrier; or

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

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

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

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

(b) "Commercial aircraft" means a commercial airplane as defined in RCW 82.32.550. [2019 c 8 § 703; 2017 c 323 § 503; 2010 1st sp.s. c 23 § 112.]

Effective date—2019 c 8 §§ 102, 103, 107, and 701-703: See note following RCW 82.04.067.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.43392 Deductions—Qualified dispute resolution centers. (1) A qualified dispute resolution center may deduct from the measure of tax amounts received as a contribution from federal, state, or local governments and nonprofit organizations for providing dispute resolution services.

(2) A nonprofit organization may deduct from the measure of tax amounts received from federal, state, or local governments for distribution to a qualified dispute resolution center.

(3) A qualified dispute resolution center must:

(a) Be established under chapter 7.75 RCW; and

(b) Provide services either without charge to the participants or for a fee that is based on the participant's ability to pay, as required by RCW 7.75.030.

(4) As used in this section, a "nonprofit organization" has the same meaning as in RCW 82.04.3651(2). [2012 c 249 § 1.]

82.04.43393 Deductions—Paymaster services. (1) In computing tax there may be deducted from the measure of tax, amounts that a qualified employer of record engaged in providing paymaster services receives from an affiliated business to cover employee costs of a qualified employee. However, no exclusion is allowed under this section for any employee costs incurred in connection with a contractual obligation of the taxpayer to provide services, including staffing services as defined in RCW 82.04.540.

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

(a) "Affiliated" has the same meaning as provided in RCW 82.32.655(7).

(b) "Employee costs" are the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, with-

(2022 Ed.)

holding, or other assessments paid to or on behalf of an employee.

(c) "Functional employment relationship" means having control over the work schedule and activities of the employees and control over all employment decisions such as salary, discipline, hiring, or layoffs.

(d) "Paymaster services" means providing payroll and related human resource services.

(e) "Qualified employee" means an employee with whom the affiliated business has a functional employment relationship. Neither the employer of record, nor any other affiliate, may have a functional employment relationship with the employee.

(f) "Qualified employer of record" is a person who:

(i) Has no functional employment relationship with a qualified employee; and

(ii) Has no contractual liability with a qualified employee for the employee costs. A qualified employer of record may have statutory or common law liability to the qualified employees or to third parties for employee costs.

(3) RCW 82.32.805(1) does not apply to the deduction authorized in this section. [2013 2nd sp.s. c 13 § 102.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that the supreme court's decision in *William Rogers v. Tacoma*, while clarifying the taxation of temporary staffing agencies, resulted in differing interpretations of regulatory requirements in order to qualify for a pass-through exclusion from Washington B&O taxes for payroll reimbursements made within an affiliated group.

(2) The legislature passed Second Engrossed Substitute Senate Bill No. 6143 during the 2010 legislative session that directed the department of revenue to conduct a review and provide a report on the state's tax policies with respect to the taxation of intercompany transactions. The report affirms that centralized payroll reporting systems can result in an additional layer of tax for Washington businesses. Exclusions for payroll reimbursements allow businesses to have efficient administrative costs without incurring an additional tax obligation resulting exclusively from streamlining payroll processes. Further, this treatment of allowing for an exclusion of payroll cost reimbursements within a centralized payroll system is consistent with historical tax practices of the department of revenue prior to the *William Rogers* decision.

(3) The department of revenue continues to work with taxpayers to study taxation of transactions within and between affiliated business organizations in order to determine the appropriate policies and to identify areas where statutory and regulatory changes may be necessary.

(4) The legislature finds that the tax policy of allowing exclusions for payroll cost reimbursements within a centralized payroll reporting system is appropriate and should be affirmed. The legislature adopts the historical tax policy of allowing exclusions for payroll cost reimbursements within a centralized payroll reporting system of an affiliated group and requires the implementation of such tax policy from October 1, 2013. In affirming this tax policy, the legislature also intends to monitor these transactions to ensure they are being used appropriately and not for tax avoidance purposes and to monitor the potential impact on state revenue collections. The legislature does not intend for part I of this act to retroactively create a right of refund for taxes paid on payroll cost reimbursements prior to the enactment of this statute." [2013 2nd sp.s. c 13 § 101.]

Effective date—2013 2nd sp.s. c 13: "Except as otherwise provided in this act, this act takes effect October 1, 2013." [2013 2nd sp.s. c 13 § 1904.]

82.04.43395 Deductions—Accountable community of health. (1) An accountable community of health may deduct from the measure of tax delivery system reform incentive payments distributed by the Washington state health care authority, as described in Sec. 1115 medicare demonstration project number 11-W-00304/0, approved by the centers for medicare and medicaid services in accordance with Sec. 1115(a) of the social security act.

(2) A hospital that is owned by a municipal corporation or political subdivision, or a hospital that is affiliated with a state institution, may deduct from the measure of tax either or both of the following:

(a) Incentive payments received through the medicaid quality improvement program established through 42 C.F.R. 438.6(b)(2), as existing on July 28, 2019;

(b) Delivery system reform incentive payments received through the project described in Sec. 1115 medicaid demonstration project number 11-W-00304/0, approved by the centers for medicare and medicaid services in accordance with Sec. 1115(a) of the social security act.

(3) Managed care organizations may deduct from the measure of tax the incentive payments received for achieving quality performance standards established through 42 C.F.R. 438.6(b)(2), as existing on July 28, 2019.

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

(a) "Accountable community of health" means an entity designated by the health care authority as a community of health under *RCW 41.05.800 and any additional accountable communities of health authorized by the health care authority as part of Sec. 1115 medicaid demonstration project number 11-W-00304/0.

(b) "Managed care organization" has the same meaning as provided in RCW 74.60.010. [2019 c 350 § 1; 2018 c 102 § 2.]

***Reviser's note:** RCW 41.05.800 expired July 1, 2020, pursuant to 2014 c 223 § 21.

Application—2019 c 350: "The deductions in section 1 of this act apply only with respect to amounts received on or after July 28, 2019, by a hospital that is owned by a municipal corporation or political subdivision, a hospital that is affiliated with a state institution, or a managed care organization." [2019 c 350 § 2.]

Automatic expiration date and tax preference performance statement exemption—2019 c 350: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 350 § 3.]

Effective date—2018 c 102: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2018]." [2018 c 102 § 5.]

Application—2018 c 102: "The deductions in section 2 of this act apply only with respect to amounts received on or after March 15, 2018, by an accountable community of health or a hospital that is owned by a municipal corporation or political subdivision." [2018 c 102 § 3.]

Tax preference performance statement—2018 c 102: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 102, Laws of 2018. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the tax structure under RCW 82.32.808(2)(d).

(3) The legislature acknowledges the importance of accountable communities of health under *RCW 41.05.800 in aligning actions to achieve healthy communities and populations, improving health care quality, and lowering costs. It is the legislature's intent to remedy inconsistencies in the tax structure by allowing accountable communities of health to deduct certain funds as amounts subject to business and occupation tax in order to ensure accountable communities of health receive tax relief similar to other nonprofit or public-private health care organizations." [2018 c 102 § 1.]

***Reviser's note:** RCW 41.05.800 expired July 1, 2020, pursuant to 2014 c 223 § 21.

Tax preference performance statement requirement and automatic expiration date exemption—2018 c 102: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2018 c 102 § 4.]

82.04.43396 Deductions—Scan-down allowances. (1)

In computing tax under RCW 82.04.290(2), a seller may deduct from the measure of tax the amount of scan-down allowances.

(2) For purposes of this section, a provision that the seller must sell at a certain retail price or a specific price reduction does not constitute either:

(a) A service provided by the seller to the manufacturer or wholesaler; or

(b) A business activity directly or indirectly benefiting the manufacturer or wholesaler.

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

(a) "Product" means:

(i) Food and food ingredients other than prepared food, as those terms are defined in RCW 82.08.0293, whether or not exempt from sales tax under RCW 82.08.0293; and

(ii) Pet food and specialty pet food as defined in RCW 15.53.901.

(b) "Scan-down allowance" means a payment or credit offered to a seller by a manufacturer or wholesaler of products, where:

(i) The amount of the payment or credit is based on the quantity of the product to be sold at retail by the seller within a specified period of time;

(ii) The seller knew the terms of the offer before making the sales that generated the payment or credit from the manufacturer or wholesaler; and

(iii) The seller is not required to provide any services to the manufacturer or wholesaler or engage in any business activities directly or indirectly benefiting the manufacturer or wholesaler, in order to receive the payment or credit from the manufacturer or wholesaler. [2019 c 217 § 1.]

Automatic expiration date and tax preference performance statement exemption—2019 c 217: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 217 § 2.]

82.04.434 Credit—Public safety standards and testing. (1)

There may be credited against the tax imposed by this chapter, the value of services and information relating to setting of standards and testing for public safety provided to the state of Washington, without charge, at the state's request, by a nonprofit corporation that is:

(a) Organized and operated for the purpose of setting standards and testing for public safety; and

(b) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(c) Organized with no direct or indirect industry affiliation.

(2) The value of the services and information requested by the state and provided to the state, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to the amount of tax imposed by this chapter. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of one year. [1991 c 13 § 1.]

82.04.440 Credit—Persons taxable on multiple activities. (1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, is taxable under each provision applicable to those activities.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), (4), (11), or (12) with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, are allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or (12), including those persons who are also taxable under RCW 82.04.261, are allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4), (11), or (12), including those persons who are also taxable under RCW 82.04.261, with respect to extracting or manufacturing products in this state are allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404, 82.04.2909(1), 82.04.260 (1), (2), (4), (11), and (12), and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in busi-

ness as a manufacturer; and (iii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260(12); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

(e) "Business," "manufacturer," "extractor," and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212 [82.04.217], notwithstanding the use of those terms in the context of describing taxes imposed by other states. [2011 c 2 § 205 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 513. Prior: 2006 c 300 § 8; 2006 c 84 § 6; (2007 c 54 § 10 expired July 22, 2007); 2005 c 301 § 3; prior: 2004 c 174 § 5; 2004 c 24 § 7; 2003 2nd sp.s. c 1 § 6; 1998 c 312 § 9; 1994 c 124 § 4; 1987 2nd ex.s. c 3 § 2; 1985 c 190 § 1; 1981 c 172 § 5; 1967 ex.s. c 149 § 16; 1965 ex.s. c 173 § 12; 1961 c 15 § 82.04.440; prior: 1959 c 211 § 3; 1951 1st ex.s. c 9 § 1; 1950 ex.s. c 5 § 2; 1949 c 228 § 2-A; 1943 c 156 § 3; 1941 c 178 § 3; 1939 c 225 § 3; 1937 c 227 § 3; 1935 c 180 § 6; Rem. Supp. 1949 § 8370-6.]

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Findings—Intent—Effective date—2005 c 301: See notes following RCW 82.04.294.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Legislative findings and intent—1987 2nd ex. c 3: "The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends [extend] the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage." [1994 c 124 § 5; 1987 2nd ex.s. c 3 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4451 Credit against tax due—Maximum credit—Table. (1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least 50 percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is \$55 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a

taxpayer that reports at least 50 percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is \$160 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section. [2022 c 295 § 1; 2010 1st sp.s. c 23 § 1102; 1997 c 238 § 2; 1994 sp.s. c 2 § 1.]

Tax preference performance statement exemption—Automatic expiration date exemption—2022 c 295 § 1: "Section 1 of this act is exempt from RCW 82.32.805 and 82.32.808." [2022 c 295 § 4.]

Application—2022 c 295: "This act applies to reporting periods beginning on or after January 1, 2023." [2022 c 295 § 3.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—1997 c 238: "The legislature finds that many businesses have difficulty applying the small business credit under RCW 82.04.4451. Further, the legislature appreciates the valuable time and resources small businesses expend on calculating the amount of credit based upon a statutory formula. For the purpose of tax simplification, it is the intent of this act to direct the department of revenue to create a schedule, in standard increments, to replace required calculations for the small business credit. Each taxpayer can make reference to the taxpayer's tax range on the schedule and find the amount of the taxpayer's small business credit. Further, no taxpayer will owe a greater amount of tax nor will any taxpayer be responsible for a greater amount of taxes otherwise due." [1997 c 238 § 1.]

Additional notes found at www.leg.wa.gov

82.04.44525 Credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department. (1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290 (2) or (3), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet access as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an administrative or legal proceeding, legal drafting, paralegal ser-

vices, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, non-profit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census

(2022 Ed.)

tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section. [2009 c 535 § 1104; 2008 c 81 § 9; 1998 c 313 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Intent—Findings—1998 c 313: "It is the intent of the legislature to attract and retain businesses that provide professional services and insurance services to international customers. To that end, the legislature finds that an incentive measured by a business's growth in jobs is a meaningful method of attracting and retaining such businesses. Therefore, the incentive in this act is specifically targeted at "net new jobs." In addition, to further the impact and benefit of this program, this incentive is limited to those urban areas of the state, both in eastern Washington and western Washington, that are characterized by unemployment and poverty. The legislature finds that providing this targeted incentive will be of benefit to the state as a whole." [1998 c 313 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4461 Credit—Preproduction development expenditures. (Expires July 1, 2040.)

(1)(a)(i) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified aerospace product development. For a person who is a manufacturer or processor for hire of commercial airplanes or components of such airplanes, credit may be earned for expenditures occurring after December 1, 2003. For all other persons, credit may be earned only for expenditures occurring after June 30, 2008.

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

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used

at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified aerospace product development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit must be claimed against taxes due for the same calendar year in which the qualified aerospace product development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year may not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit must file a form prescribed by the department that must include the amount of the credit claimed, an estimate of the anticipated aerospace product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aerospace product" has the meaning given in RCW 82.08.975.

(b) "Aerospace product development" means research, design, and engineering activities performed in relation to the development of an aerospace product or of a product line, model, or model derivative of an aerospace product, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(c) "Qualified aerospace product development" means aerospace product development performed within this state.

(d) "Qualified aerospace product development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified aerospace product development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state and any of its departments and institutions, other than a public educational or research institution to conduct qualified aerospace product development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is

claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(7) Credit may not be claimed for expenditures for which a credit is claimed under *RCW 82.04.4452.

(8) This section expires July 1, 2040. [2017 c 135 § 15; 2013 3rd sp.s. c 2 § 9; 2010 c 114 § 115; 2008 c 81 § 7; 2007 c 54 § 11; 2003 2nd sp.s. c 1 § 7.]

*Reviser's note: RCW 82.04.4452 expired January 1, 2015.

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: "The legislature finds that the people of the state have benefited from the presence of the aerospace industry in Washington state. The aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The suppliers and vendors that support the aerospace industry in turn provide a range of jobs. The legislature declares that it is in the public interest to encourage the continued presence of this industry through the provision of tax incentives. The comprehensive tax incentives in this act address the cost of doing business in Washington state compared to locations in other states." [2003 2nd sp.s. c 1 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4463 Credit—Property and leasehold taxes paid on property used for manufacture of commercial airplanes. (Expires July 1, 2040.) (1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development, manufacturing tooling specifi-

cally designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(11)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(11)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

(A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(11)(a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

(B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

(C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(11) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

(D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

(E) As used in (b)(ii)(C) of this subsection (2), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

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

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person claiming the credit under this section must file a com-

(2022 Ed.)

plete annual tax performance report with the department under RCW 82.32.534.

(6) This section expires July 1, 2040. [2017 c 135 § 16; 2013 3rd sp.s. c 2 § 10; 2010 1st sp.s. c 23 § 515; (2010 1st sp.s. c 23 § 514 expired June 10, 2010); 2010 c 114 § 116; 2008 c 81 § 8; 2006 c 177 § 10; 2005 c 514 § 501; 2003 2nd sp.s. c 1 § 15.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.04.447 Credit—Natural or manufactured gas purchased by direct service industrial customers—Reports. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001, and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter to a direct service industrial customer who purchases natural or manufactured gas from a gas distribution business subject to the public utility tax under chapter 82.16 RCW. The credit is equal to the value of natural or manufactured gas purchased from a gas distribution business and used to generate electricity at the facility multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. This credit may be used each reporting period for sixty months following the first month natural or manufactured gas was purchased from a gas distribution business by a direct service industrial customer who constructs a facility.

(3) Application for credit shall be made by the direct service industrial consumer before the first purchase of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first purchase of natural or manufac-

tured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4) Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of purchase of natural or manufactured gas to generate electricity at a facility is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer will certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first purchase of gas occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) The direct service industrial customer shall begin paying the credit that is disallowed and is to be paid in the sixth calendar year following the calendar year in which the month following the month of first purchase of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delin-

quent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(8) A person claiming this credit shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility. [2001 c 214 § 9.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

82.04.448 Credit—Manufacturing semiconductor materials. (Contingent effective date; contingent expiration date.) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section equals three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes

for which a credit has been claimed is immediately due. The department must assess interest, but not penalties, on the taxes for which the person is not eligible. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, is retroactive to the date the tax credit was taken, and accrues until the taxes for which a credit has been used are repaid.

(5) A person claiming the credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) Credits may be claimed after the expiration date of this section, for those buildings at which commercial production began before the expiration date of this section, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 516; (2017 3rd sp.s. c 37 § 515 expired January 1, 2018); 2017 c 135 § 17; 2010 c 114 § 117; 2003 c 149 § 9.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

***Contingent effective date—2017 c 135; 2010 c 114:** See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.04.4481 Credit—Property taxes paid by aluminum smelter. (1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

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

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

(4) A person claiming the credit provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 18; 2015 3rd sp.s. c 6 § 503; 2011 c 174 § 302. Prior: 2010 1st sp.s. c 2 § 2; 2010 c 114 § 118; 2006 c 182 § 2; 2004 c 24 § 8.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.04.4482 Credit—Sales of electricity or gas to an aluminum smelter. (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural

gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. [2004 c 24 § 9.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.04.4486 Credit—Syrup taxes paid by buyer. (1) In computing the tax imposed under this chapter, a credit is allowed to a buyer of syrup to be used by the buyer in making carbonated beverages that are sold by the buyer if the tax imposed by RCW 82.64.020 has been paid in respect to the syrup. The amount of the credit shall be equal to twenty-five percent from July 1, 2006, through June 30, 2007, fifty percent from July 1, 2007, through June 30, 2008, seventy-five percent from July 1, 2008, through June 30, 2009, and one hundred percent after June 30, 2009, of the taxes imposed under RCW 82.64.020 in respect to the syrup purchased by the buyer.

(2) Credit under this section shall be earned, and claimed against taxes due under this chapter, for the tax reporting period in which the syrup was purchased by the person claiming credit under this section. The credit shall not exceed the tax otherwise due under this chapter for the tax reporting period. Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than twelve months from the end of the tax reporting period in which the credit was earned. No refunds shall be granted for credits under this section.

(3) No credit is available under this section for taxes paid under RCW 82.64.020 before July 1, 2006.

(4) For the purposes of this section, "carbonated beverage," "previously taxed syrup," and "syrup" have the same meanings as provided in RCW 82.64.010. [2006 c 245 § 1.]

Additional notes found at www.leg.wa.gov

82.04.4489 Credit—Motion picture competitiveness program. (1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington motion picture competitiveness program.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than \$1,000,000 of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of \$1,000,000 or an amount equal to one hundred percent of the contributions made by the person to a program during the calendar year.

(4) Except as provided under subsection (5) of this section, a tax credit claimed under this section may not be carried over to another year.

(5) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(6) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed \$15,000,000. If this limitation is reached, the department must notify all Washington motion picture competitiveness programs that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A Washington motion picture competitiveness program must provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(10) The department may not allow any credit under this section before July 1, 2006.

(11) For the purposes of this section, "Washington motion picture competitiveness program" or "program" means an organization established pursuant to chapter 43.365 RCW.

(12) Persons claiming a credit against the tax imposed under this chapter for contributions made to a Washington motion picture competitiveness program and not otherwise receiving funding assistance under RCW 43.365.020 are

exempt from the annual reporting requirements in RCW 82.32.534 and 43.365.040.

(13) No credit may be earned for contributions made on or after July 1, 2030. [2022 c 270 § 5; 2017 3rd sp.s. c 37 § 1102; 2012 c 189 § 4; 2008 c 85 § 3; 2006 c 247 § 5.]

82.04.449 Credit—Washington customized employment training program—Report to the legislature. (1) In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in RCW 28B.67.020. The credit allowed under this section is equal to 50 percent of the value of a participant's payments to the employment training finance account created in RCW 28B.67.030. If a participant in the program does not meet the requirements of RCW 28B.67.020(2)(b)(ii), the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2026.

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

(3) By December 31, 2024, the college board, as defined in RCW 28B.50.030, shall submit to the higher education committees of the legislature a report on:

- (a) Industries supported by the program;
- (b) The geographical location of companies utilizing the program;
- (c) The number of employees trained;
- (d) The types of occupations included in the training;
- (e) The wages of employees trained prior to program entrance and the wage growth one year after training;
- (f) Retention of employees for a period of one year after training; and
- (g) Credential attainment of employees upon completion of the training, if applicable. [2021 c 116 § 3; 2017 c 135 § 20; 2012 c 46 § 3; 2010 c 114 § 121; 2009 c 296 § 3; 2006 c 112 § 5.]

Finding—2021 c 116: "The legislature finds that due to the COVID-19 pandemic, there is new urgency for employer-affordable programs supporting worker training. It is the objective of the legislature to aid in the recruiting, retaining, and expanding of existing small businesses in Washington by extending the expiration of the customized employment training program tax credit to July 1, 2026." [2021 c 116 § 1.]

Tax preference performance statement—2021 c 116: "(1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter 116, Laws of 2021. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to accomplish a general purpose, to provide customized workforce development and skill development training that enhance worker skill sets.

(3) It is the legislature's specific public policy objective to provide customized training assistance that retains and expands existing businesses in Washington.

(4) If a review finds that 75 percent of participating businesses complete the training and repay the customized employment training program loan, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2021 c 116 § 2.]

Effective date—2021 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021." [2021 c 116 § 4.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

82.04.4496 Credit—Clean alternative fuel commercial vehicles. (1)(a)(i) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	75% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	75% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	75% of incremental cost	\$100,000	\$2,000,000

(ii) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter for up to 50 percent of the cost to purchase alternative fuel vehicle infrastructure, tangible personal property that will become a component of alternative fuel vehicle infrastructure, and installation and construction of alternative fuel vehicle infrastructure, but excluding the cost of property acquisition and site improvement related to the installation of alternative fuel vehicle infrastructure. The credit is subject to a maximum annual credit amount of \$2,000,000.

(b) On September 1st of each year, any unused credits from any category identified in (a) of this subsection must be made available to applicants applying for credits under any other category identified in (a) of this subsection, subject to the maximum annual and total credit amounts identified in this subsection. The credit established in this section and RCW 82.16.0496 is subject to a maximum annual credit amount of \$6,000,000, and a maximum total credit amount of \$32,500,000 since the credit became available on July 15, 2015.

(c) The credit provided in (a)(i) of this subsection is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in (a)(i) of this subsection multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per category in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of \$25,000 or 50 percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under subsection (1)(a)(i) of this section may not exceed the lesser of \$250,000 or 25 vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.16 RCW.

(5) Credits are available on a first-in-time basis.

(a) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.16.0496, during any calendar year to exceed \$6,000,000. The department must provide notification on its website monthly on the amount of credits

that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(b) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed beginning July 15, 2015, under this section and RCW 82.16.0496 to exceed \$32,500,000. The department must provide notification on its website monthly on the total amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle, infrastructure, infrastructure components, infrastructure construction, or infrastructure installation;

(iii) The type of alternative fuel to be used by the vehicle or supported by the infrastructure;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) The anticipated delivery date of the vehicle, the anticipated delivery date of the infrastructure or infrastructure components, the anticipated construction completion date of the infrastructure, or the anticipated installation completion date of the infrastructure;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties or the estimated annual fuel to be supplied by the infrastructure;

(vii) The gross weight of each vehicle for vehicle credits;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within 15 days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle or infrastructure-related item, including the total cost for the vehicle or infrastructure-related item;

(ii) The anticipated delivery date of the vehicle or infrastructure or infrastructure component, which must be within one year of acceptance of the credit;

(iii) The anticipated construction or installation completion date of the infrastructure, which must be within two years of acceptance of the credit; and

(iv) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within 30 days of receipt of the vehicle or infrastructure or infrastructure components or of completion of construction or installation of the infrastructure, including:

(i) A copy of the final invoice for the vehicle or infrastructure-related items;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) Attestations signed by both the seller and purchaser of each vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application. A separate application is required for infrastructure-related items, but all infrastructure-related items at a single location may be included in a single application provided the required information for each infrastructure-related item is included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its website monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit and total limit are reached;

(b) Within 15 days of receipt of the application, notify persons applying of the availability of tax credits in the year

in which the vehicles or infrastructure applied for are anticipated to be delivered, constructed, or installed;

(c) Within 15 days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within 15 days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel;

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel; or

(iii) Sales of alternative fuel vehicle infrastructure or infrastructure components, or the cost of construction or installation of alternative fuel vehicle infrastructure.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or infrastructure-related item, the vehicle conversion is complete, or the construction or installation of the infrastructure is complete.

(13) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

(14) The department must conduct outreach to interested parties to obtain input on how best to streamline the application process required for the credit made available in this section and RCW 82.16.0496 to further adoption of alternative fuel technologies in commercial vehicle fleets, and must incorporate the findings resulting from this outreach effort into the rules and practices it adopts to implement and administer this section and RCW 82.16.0496 to the extent permitted under law.

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

(a) "Alternative fuel vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a clean alternative fuel vehicle.

(b) "Auto transportation company" means any corporation or person owning, controlling, operating, or managing any motor propelled vehicle, used in the business of transporting persons for compensation over public highways within the state of Washington, between fixed points or over a regular route. For the purposes of this section, "auto transportation company" also includes the following categories of providers irrespective of whether they provide service between fixed points or over a regular route: "Private, non-profit transportation provider" as defined in RCW 81.66.010, "charter party carrier" as defined in RCW 81.70.020, and paratransit service providers who primarily provide special needs transportation to individuals with disabilities and the elderly.

(c) "Clean alternative fuel" means electricity, dimethyl ether, hydrogen, methane, natural gas, liquefied natural gas, compressed natural gas, or propane.

(d) "Commercial vehicle" means any commercial vehicle that is purchased by a private business and that is used exclusively in the provision of commercial services or the transportation of commodities, merchandise, produce, refuse, freight, animals, or passengers, and that is displaying a Washington state license plate. All commercial vehicles that provide transportation to passengers must be operated by an auto transportation company.

(e) "Gross capitalized cost" means the agreed upon value of the commercial vehicle and including any other items a person pays over the lease term that are included in such cost.

(f) "Lease reduction factor" means the vehicle gross capitalized cost less the residual value, divided by the gross capitalized cost.

(g) "Qualifying used commercial vehicle" means vehicles that:

(i) Have an odometer reading of less than 450,000 miles;

(ii) Are less than 10 years past their original date of manufacture;

(iii) Were modified after the initial purchase with a United States environmental protection agency certified conversion that would allow the propulsion units to be principally powered by a clean alternative fuel; and

(iv) Are being sold for the first time after modification.

(h) "Residual value" means the lease-end value of the vehicle as determined by the lessor, at the end of the lease term included in the lease contract.

(16) Credits may be earned under this section from January 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached, except for credits for leased vehicles, which may be earned from July 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached. [2022 c 182 § 307; 2019 c 287 § 8; 2017 c 116 § 1. Prior: 2016 c 29 § 1; 2015 3rd sp.s. c 44 § 411.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Effective date—2019 c 287 §§ 8 and 13: "Sections 8 and 13 of this act take effect January 1, 2020." [2019 c 287 § 25.]

Tax preference performance statement—2019 c 287 §§ 8-14: "This section is the tax preference performance statement for the tax preferences contained in sections 8 through 14, chapter 287, Laws of 2019. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the use of clean alternative fuel vehicles in Washington. It is the legislature's intent to establish and extend tax incentive programs for alternative fuel vehicles and related infrastructure by: (a) Reinstating the sales and use tax exemption on certain clean alternative fuel vehicles in order to reduce the price charged to customers for clean alternative fuel vehicles; (b) extending the business and occupation and public utility tax credit for clean alternative fuel commercial vehicles and expanding it to include clean alternative fuel infrastructure; (c) extending the sales and use tax exemption for electric vehicle batteries, fuel cells, and infrastructure and expanding it to include the electric battery and fuel cell components of electric buses and zero emissions buses; and (d) extending the leasehold excise tax exemption to tenants of public lands for battery and fuel cell electric vehicle infrastructure.

(3) To measure the effectiveness of the tax preferences in sections 8 through 14, chapter 287, Laws of 2019 in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and

(2022 Ed.)

review committee must evaluate the number of clean alternative fuel vehicles titled in the state.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the department of licensing and the department of revenue must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2019 c 287 § 7.]

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Effective date—2017 c 116: "This act takes effect January 1, 2018." [2017 c 116 § 4.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Short title—Findings—Tax preference performance statement—2015 3rd sp.s. c 44 §§ 411 and 412: "(1) This section and sections 411 and 412 of this act may be known and cited as the clean fuel vehicle incentives act.

(2) The legislature finds that cleaner fuels reduce greenhouse gas emissions in the transportation sector and lead to a more sustainable environment. The legislature further finds that alternative fuel vehicles cost more than comparable models of conventional fuel vehicles, particularly in the commercial market. The legislature further finds the higher cost of alternative fuel vehicles incentivize companies to purchase comparable models of conventional fuel vehicles. The legislature further finds that other states provide various tax credits and exemptions. The legislature further finds incentivizing businesses to purchase cleaner, alternative fuel vehicles is a collaborative step toward meeting the state's climate and environmental goals.

(3)(a) This subsection is the tax preference performance statement for the clean alternative fuel vehicle tax credits provided in section 1, chapter 116, Laws of 2017, sections 1 and 2, chapter 29, Laws of 2016, and sections 411 and 412, chapter 44, Laws of 2015 3rd sp. sess. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers.

(c) It is the legislature's specific public policy objective to provide a credit against business and occupation and public utility taxes to increase sales of commercial vehicles that use clean alternative fuel to ten percent of commercial vehicle sales by 2021.

(d) To measure the effectiveness of the credit provided in section 1, chapter 116, Laws of 2017, sections 1 and 2, chapter 29, Laws of 2016, and sections 411 and 412, chapter 44, Laws of 2015 3rd sp. sess. in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must, at minimum, evaluate the changes in the number of commercial vehicles that are powered by clean alternative fuel that are registered in Washington state.

(e)(i) The department of licensing must provide data needed for the joint legislative audit and review committee's analysis in (d) of this subsection.

(ii) In addition to the data source described under (e)(i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection." [2017 c 116 § 3; 2016 c 29 § 3; 2015 3rd sp.s. c 44 § 410.]

82.04.4497 Credit—Sale or exchange of long-term capital assets. (Contingent expiration date.) (1) To avoid taxing the same sale or exchange under both the business and occupation tax and capital gains tax, a credit is allowed against taxes due under this chapter on a sale or exchange that is also subject to the tax imposed under RCW 82.87.040. The credit is equal to the amount of tax imposed under this chapter on such sale or exchange.

(2) The credit may be used against any tax due under this chapter.

(3) The credit under this section is earned in regards to a sale or exchange, and may be claimed against taxes due under this chapter, for the tax reporting period in which the sale or exchange occurred. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be

carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

(4) The department must apply the credit first to taxes deposited into the general fund. If any remaining credit reduces the amount of taxes deposited into the workforce education investment account established in RCW 43.79.195, the department must notify the state treasurer of such amounts monthly, and the state treasurer must transfer those amounts from the general fund to the workforce education investment account. [2021 c 196 § 16.]

Contingency—2021 c 196 §§ 5 and 16: See note following RCW 82.87.040.

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.04.4498 Credit—Businesses that hire veterans. (Expires July 1, 2023.) (1) A person is allowed a credit against the tax due under this chapter as provided in this section. The credit equals twenty percent of wages and benefits paid to or on behalf of a qualified employee up to a maximum of one thousand five hundred dollars for each qualified employee hired on or after October 1, 2016.

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

(3) Credits are available on a first-in-time basis. The department must keep a running total of all credits allowed under this section and RCW 82.16.0499 during each fiscal year. The department may not allow any credits that would cause the total credits allowed under this section and RCW 82.16.0499 to exceed five hundred thousand dollars in any fiscal year. If all or part of a claim for credit is disallowed under this subsection, the disallowed portion is carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded. Priority must be given to credits carried over from a previous fiscal year. The department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

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

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

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

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

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

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

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

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

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

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

(10) This section expires July 1, 2023. [2015 3rd sp.s. c 6 § 1002.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 1002 and 1003: "This section is the tax preference performance statement for the tax preference contained in RCW 82.04.4498 and 82.16.0499. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(2) It is the legislature's specific public policy objective to provide employment for unemployed veterans. It is the legislature's intent to provide employers a credit against the business and occupation tax or public utility tax for hiring unemployed veterans which would reduce an employer's tax burden thereby inducing employers to hire and create jobs for unemployed veterans. Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the business and occupation tax and public utility tax credit established under RCW 82.04.4498 and 82.16.0499 by December 31, 2022.

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

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee should refer to the veteran unemployment rates available from the employment security department and the bureau of labor statistics." [2015 3rd sp.s. c 6 § 1001.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.04.4499 Credit—Equitable access to credit program. (Expires July 1, 2027.) (1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to the equitable access to credit program created in chapter 43.390 RCW.

(2)(a) The person must make the contribution before claiming a credit authorized under this section. The credit may be used against any tax due under this chapter. The amount of the credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than \$1,000,000 of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(b) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried forward and claimed against a person's tax liability for the next succeeding calendar year; and any credit not used in that next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year, but may not be carried over for any calendar year thereafter.

(3) Credits are available on a first-in-time basis. The department must disallow any credits, or portions thereof, that would cause the total amount of credits claimed under this section for any calendar year to exceed \$8,000,000. If this limitation is reached, the department must notify the department of commerce that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(4) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(6) The equitable access to credit program must provide to the department, upon request, such information as may be needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(7) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of \$1,000,000 or an amount equal to 100 percent of the contributions made by the person to the equitable access to credit program.

(2022 Ed.)

(8) No credit may be earned for contributions made on or after June 30, 2027. Credits may be claimed as provided in subsections (2) through (4) of this section; however, credits may not be claimed prior to January 1, 2023.

(9) For the purposes of this section, "equitable access to credit program" means a program established within the department of commerce pursuant to RCW 43.390.020.

(10) The provisions of chapter 82.32 RCW apply to the administration of this section.

(11) This section expires July 1, 2027. [2022 c 189 § 2.]

Tax preference performance statement—2022 c 189 § 2: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 189, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to create or retain jobs pursuant to RCW 82.32.808(2)(c), as well as encourage community and economic development within communities that have historically lacked access to capital.

(3) It is the legislature's specific public policy objective to create a program that encourages investment in small, underserved businesses to encourage community and economic development in Washington.

(4) The legislature intends to extend the expiration date of this tax preference if a review finds that the equitable access to credit program has had a net positive impact on investment in communities historically underserved by credit and on state and local tax revenues. In conducting its review under this section, the joint legislative audit and review committee should consider, among other data:

(a) The number and aggregate amount of loans and investments originated under the program, including with revolved dollars;

(b) Overall match, including project leverage, invested by grant recipients;

(c) The balance sheet growth of community development financial institutions that received grants from the program;

(d) Whether participants in the program achieved balance sheet growth during the time of their participation in the program;

(e) The percentage of community development financial institutions in Washington that received funding from the program; and

(f) The level of ongoing demand for funding from the program.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.

(6) This section expires July 1, 2027." [2022 c 189 § 5.]

82.04.450 Value of products, how determined. (1) The value of products, including by-products, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller, except:

(a) Where such products, including by-products, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including by-products, are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products: PROVIDED, That the value of a

product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values. [1983 1st ex.s. c 55 § 3; 1975 1st ex.s. c 278 § 42; 1961 c 15 § 82.04.450. Prior: 1949 c 228 § 3; 1941 c 178 § 4; 1935 c 180 § 7; Rem. Supp. 1949 § 8370-7.]

Additional notes found at www.leg.wa.gov

82.04.460 Apportionable income—Taxable in Washington and another state. (1) Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's apportionable income derived from business activities performed within this state.

(2) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under RCW 82.04.290. The rule adopted by the department must, to the extent feasible, be consistent with the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, except that:

(a) The department's rule must provide for a single factor apportionment method based on the receipts factor; and

(b) The definition of "financial institution" contained in appendix A to the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions is advisory only.

(3) The department may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

- (i) RCW 82.04.255;
- (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);
- (iii) RCW 82.04.280(1)(e);
- (iv) RCW 82.04.285;
- (v) RCW 82.04.286;

- (vi) RCW 82.04.290;
- (vii) RCW 82.04.2907;
- (viii) RCW 82.04.2908;
- (ix) RCW 82.04.263, but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (4) if the tax classification in RCW 82.04.263 did not exist; and
- (x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect to advertising.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in RCW 82.04.067(1).

(ii) For purposes of this subsection (4)(b), "business activities tax" and "state" have the same meaning as in RCW 82.04.462. [2014 c 97 § 304; 2011 c 174 § 203; 2010 1st sp.s. c 23 § 108; 2004 c 174 § 6; 1985 c 7 § 154; 1983 2nd ex.s. c 3 § 28; 1975 1st ex.s. c 291 § 9; 1961 c 15 § 82.04.460. Prior: 1941 c 178 § 5; 1939 c 225 § 4; Rem. Supp. 1941 § 8370-8a.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.462 Apportionable income. (1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(4)(a) (i) through (x) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and, for financial institutions, as provided in the rule adopted by the department under the authority of RCW 82.04.460(2).

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property. When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state and if the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) of this subsection (3), gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or (vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have a substantial nexus with that state under the standards in RCW 82.04.067(1) regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a

similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in subsection (4) of this section and the rule adopted by the department under the authority of RCW 82.04.460(2) with respect to apportionable income taxable under RCW 82.04.290. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x) must calculate a separate receipts factor, as provided in this section, for each of the other tax classifications that the financial institution is taxable under.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be computed and assessed as provided in RCW 82.32.050 and accrues until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country. [2014 c 97 § 305; 2010 1st sp.s. c 23 § 105.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.470 Wholesale sale—Reseller permit—Exemption certificates—Burden of proof—Tax liability. (1) The burden of proving that a sale is a wholesale sale rather than a retail sale is on the seller. A seller may meet its burden of proving a sale is a wholesale sale rather than a retail sale by taking from the buyer, at the time of sale or within a reasonable time after the sale as provided by rule of the department, a copy of a reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.

(2)(a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(ii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

(b) Certificates authorized under (a)(i) and (ii) of this subsection (2) must include the reseller permit number issued by the department to the buyer.

(c) A seller who accepts exemption certificates authorized in (a) of this subsection (2) is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. Nothing in this subsection (2)(c) may be construed to modify any of the provisions of RCW 82.08.050.

(3)(a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;

(ii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(iii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

(b) A seller who accepts exemption certificates authorized in (a) of this subsection (3) is not required to verify with the department whether the buyer is not required to be registered with the department under RCW 82.32.030. Nothing in this subsection (3)(b) may be construed to modify any of the provisions of RCW 82.08.050.

(4) In lieu of obtaining the documentation in subsection (1), (2), or (3) of this section, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5) A seller that does not comply with subsection (1), (2), (3), or (4) of this section may meet its burden of proving that a sale is a wholesale sale rather than a retail sale by demonstrating facts and circumstances, according to rules adopted by the department, that show the sale was properly made without payment of retail sales tax.

(6) Notwithstanding anything in this section to the contrary, a seller who maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in subsection (1), (2), (3), or (4) of this section for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that the seller last electronically verified the validity of its customers' reseller permits. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(7) As used in this section "reseller permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783, which is used to substantiate a wholesale sale.

[2010 c 112 § 7. Prior: 2009 c 563 § 205; 2009 c 535 § 411; 2007 c 6 § 1201; 2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470; prior: 1935 c 180 § 9; RRS § 8370-9.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Reseller's permit: RCW 82.08.130 and 82.32.291.

Additional notes found at www.leg.wa.gov

82.04.480 Sales in own name—Sales as agent. (1)

Every consignee, bailee, factor, or auctioneer having either actual or constructive possession of personal property, or having possession of the documents of title thereto, with power to sell such personal property in that person's own name and actually so selling, is deemed the seller of such personal property within the meaning of this chapter. Furthermore, the consignor, bailor, principal, or owner is deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

(2) The burden is on the taxpayer in every case to establish the fact that the taxpayer is not engaged in the business of making retail sales or wholesale sales but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as required by rule by the department.

(3) For purposes of this section, "personal property" means tangible personal property, digital goods, digital codes, and extended warranties. [2009 c 535 § 412; 1975 1st ex.s. c 278 § 44; 1961 c 15 § 82.04.480. Prior: 1935 c 180 § 10; RRS § 8370-10.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.04.500 Tax part of operating overhead. It is not the intention of this chapter that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons. [1961 c 15 § 82.04.500. Prior: 1935 c 180 § 14; RRS § 8370-14.]

82.04.510 General administrative provisions invoked. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. Taxpayers submitting monthly estimates of taxes due under this chapter shall be subject to the provisions of chapter 82.32 RCW if they fail to remit ninety percent of the taxes actually collected or due for the reporting period. [1961 c 15 § 82.04.510. Prior: 1959 c 197 § 28; 1935 c 180 § 15; RRS § 8370-15.]

82.04.520 Administrative provisions for motor vehicle sales by courtesy dealers. (1) In the payment of the tax imposed by this chapter on new motor vehicles sold to Wash-

ington customers that are delivered to the customer through courtesy dealers located in this state, the courtesy dealer is deemed to be the agent for the selling dealer in reporting and paying the tax imposed by this chapter, unless the selling dealer is already registered and reporting and remitting taxes under this chapter. It is the duty of each courtesy dealer to pay the tax imposed by this chapter to the department when the courtesy dealer files its tax return. Each courtesy dealer who acts as the agent for the selling dealer in reporting, paying, and remitting the tax imposed by this chapter must at the time of paying and remitting its own taxes imposed by this chapter pay the tax due on the transaction under this section.

(2) The tax paid by the courtesy dealer on behalf of the selling dealer shall constitute a debt from the selling dealer to the courtesy dealer, and the courtesy dealer is authorized to withhold payment to the selling dealer out of the proceeds of the sale an amount equal to the tax imposed by this chapter. Amounts withheld by the courtesy dealer are deemed to be held in trust by the courtesy dealer until paid to the department, and any courtesy dealer who appropriates or converts the amount withheld to the courtesy dealer's own use or to any use other than the payment of the tax to the extent that the money withheld is not available for payment on the due date is guilty of a gross misdemeanor.

(3) This section is construed as cumulative of other methods prescribed in chapters 82.04 through 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter.

(4) As used in this section, "courtesy dealer" means any licensed new motor vehicle dealer authorized to prepare or deliver a new motor vehicle to a customer in this state. "Selling dealer" means a motor vehicle dealer not licensed to prepare or deliver a new motor vehicle to a customer in this state. [2001 c 258 § 2.]

Additional notes found at www.leg.wa.gov

82.04.530 Telecommunications service providers—Calculation of gross proceeds. For purposes of this chapter, a telecommunications service provider other than a mobile telecommunications service provider must calculate gross proceeds of sales in a manner consistent with the sourcing rules provided in RCW 82.32.520. The department may adopt rules to implement this section, including rules that provide a formulary method of determining gross proceeds that reasonably approximates the taxable activity of a telephone business. [2007 c 54 § 13; 2007 c 6 § 1022; 2004 c 153 § 410; 2002 c 67 § 3.]

Reviser's note: This section was amended by 2007 c 6 § 1022 and by 2007 c 54 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 54: "In July 2000, congress passed the mobile telecommunications sourcing act (P.L. 106-252). The act addresses the problem of determining the situs of a cellular telephone call for tax purposes. In 2002, the legislature passed Senate Bill No. 6539 (chapter 67, Laws of 2002), which addressed the sourcing of mobile telecommunications for state business and occupation tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes. Section 18, chapter 67, Laws of 2002 provided that the act is null and void if the federal mobile telecommunications sourcing act is substantially impaired or limited as a result of a court decision that is no longer subject to appeal. The legislature finds that the contingent null and void clause in section 18, chapter 67, Laws of 2002 has resulted in the necessity of codifying two versions of a number of statutes to incorporate contingent expiration and effective dates. The leg-

(2022 Ed.)

islature recognizes that this adds complexity to the tax code and makes tax administration more difficult. The legislature further finds that there is little or no likelihood that the federal mobile telecommunications sourcing act will be substantially impaired or limited as a result of a court decision. Therefore, the legislature intends in section 2 of this act to simplify Washington's tax code and tax administration by eliminating the contingent null and void clause in section 18, chapter 67, Laws of 2002." [2007 c 54 § 1.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—2002 c 67: "The legislature finds that the United States congress has enacted the mobile telecommunications sourcing act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature desires to adopt implementing legislation governing taxation by the state and by affected local taxing jurisdictions within the state. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral among the states, and that the clarifications required by the federal act are likely in fact to be revenue-neutral at the state level. The legislature also desires to take advantage of a provision of the federal act that allows a state with a generally applicable business and occupation tax, such as this state, to make certain of the uniform sourcing rules elective for such tax." [2002 c 67 § 1.]

Additional notes found at www.leg.wa.gov

82.04.535 Gross proceeds of sales calculation for mobile telecommunications service provider. (1) Unless a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must calculate gross proceeds of sales by reporting all sales to, or sales between carriers for, customers with a place of primary use within this state, regardless of where the mobile telecommunications services originate, are received, or are billed, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126.

(2) A mobile telecommunications service provider may elect to calculate gross proceeds of sales by including all charges for mobile telecommunications services provided to all consumers, whether the consumers are the mobile telecommunications service provider's customers or not, if the services originate from or are received on telecommunications equipment or apparatus in this state and are billed to a person in this state.

(3) If a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must provide written notice of the election before August 1, 2002, or before the beginning date of any tax year thereafter in which it wishes to change its reporting and make this election.

(4) The department may provide, by rule, for formulary reporting as necessary to implement this section. [2002 c 67 § 4.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.04.540 Professional employer organizations—Taxable under RCW 82.04.290(2)—Deduction. (1) The provision of professional employer services by a professional employer organization is taxable under RCW 82.04.290(2).

(2) A professional employer organization is allowed a deduction from the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional

employer organization under a professional employer agreement.

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

(a) "Client" means any person who enters into a professional employer agreement with a professional employer organization. For purposes of this subsection (3)(a), "person" has the same meaning as "buyer" in RCW 82.08.010.

(b) "Coemployer" means either a professional employer organization or a client.

(c) "Coemployment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and applicable state law. In such a coemployment relationship:

(i) The professional employer organization is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer agreement or applicable state law;

(ii) The client is entitled to enforce those rights and obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement and applicable state law; and

(iii) The client is entitled to enforce any right and obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or applicable state law.

(d) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client who meets all of the following criteria: (i) The individual has received written notice of coemployment with the professional employer organization, and (ii) the individual's coemployment relationship is pursuant to a professional employer agreement. Individuals who are officers, directors, shareholders, partners, and managers of the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals would be covered employees and provided such individuals meet the criteria of this subsection and act as operational managers or perform day-to-day operational services for the client.

(e) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides:

(i) For the coemployment of covered employees; and

(ii) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees.

(f) "Professional employer organization" means any person engaged in the business of providing professional employer services. The following shall not be deemed to be professional employer organizations or the providing of professional employer services for purposes of this section:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a com-

monly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; or

(iii) Providing staffing services.

(g) "Professional employer services" means the service of entering into a coemployment relationship with a client in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

(h) "Staffing services" means services consisting of a person:

(i) Recruiting and hiring its own employees;

(ii) Finding other organizations that need the services of those employees;

(iii) Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment. [2006 c 301 § 1.]

Additional notes found at www.leg.wa.gov

82.04.545 Exemptions—Sales of electricity or gas to silicon smelters. (*Contingent expiration date.*) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual tax performance report required by RCW 82.32.534:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual tax performance report; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual tax performance report.

(6) For the purposes of this section, "silicon smelter" has the same meaning as provided in RCW 82.16.315. [2017 3rd sp.s. c 37 § 705; 2017 3rd sp.s. c 37 § 704.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

82.04.600 Exemptions—Materials printed in county, city, town, school district, educational service district, library or library district. This chapter does not apply to any county as defined in Title 36 RCW, any city or town as defined in Title 35 RCW, any school district or educational service district as defined in Title 28A RCW, or any library or library district as defined in Title 27 RCW, in respect to materials printed in the county, city, town, school district, educational district, library or library district facilities when the materials are used solely for county, city, town, school district, educational district, library, or library district purposes. [1979 ex.s. c 266 § 8.]

82.04.601 Exemptions—Affixing stamp services for cigarette sales. This chapter does not apply to compensation allowed under RCW 82.24.295 for wholesalers and retailers for their services in affixing the stamps required under chapter 82.24 RCW. For purposes of this section, "wholesaler," "retailer," and "stamp" have the same meaning as in chapter 82.24 RCW. [2007 c 221 § 5.]

82.04.610 Exemptions—Import or export commerce.

(1) This chapter does not apply to:

- (a) The sale of tangible personal property in export commerce; and
- (b) The wholesale sale of tangible personal property in import commerce, but only when the wholesale sale is:
 - (i) A sale of unroasted coffee beans; or
 - (ii) Between a parent company and its wholly owned subsidiary.

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

- (a) Put to actual use in any state, territory, or possession of the United States for any purpose;
- (b) Resold by the importer or any other person after the property has arrived in this state or any other state, territory, or possession of the United States, regardless of whether the property is in its original unbroken package or container; or
- (c) Processed, handled, or otherwise stopped in transit for a business purpose other than shipping needs, if the processing, handling or other stoppage of transit occurs within

(2022 Ed.)

the United States, including any of its possessions or territories, or the territorial waters of this state or any other state, regardless of whether the processing, handling, or other stoppage of transit occurs within a foreign trade zone.

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

- (i) The buyer at a destination in a foreign country;
- (ii) A carrier consigned to and for transportation to a destination in a foreign country;
- (iii) The buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the property has begun; or
- (iv) The buyer in this state if the property is capable of being transported to a foreign destination under its own power, the seller files a shipper's export declaration with respect to the property listing the seller as the exporter, and the buyer immediately transports the property directly to a destination in a foreign country. This subsection (3)(a)(iv) does not apply to sales of motor vehicles as defined in RCW 46.04.320.

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

(4) Persons claiming an exemption under this section must keep and maintain records for the period required by RCW 82.32.070 establishing their right to the exemption. [2019 c 8 § 501; 2007 c 477 § 2.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Intent—Purpose—2007 c 477: "Because of the uncertainty regarding the constitutional limitations on the taxation of import and export sales of tangible personal property, the legislature recognizes the need to provide clarity in the taxation of imports and exports. It is the legislature's intent to provide a statutory tax exemption for the sale of tangible personal property in import or export commerce, which is not dependent on future interpretation of the constitutional limitations on the taxation of imports and exports by the courts. The sole purpose of the legislature in enacting RCW 82.04.610 and 82.08.990 is to codify current department practice in the taxation of import and export sales of tangible personal property consistent with WAC 458-20-193C. It is not the intent of the legislature in enacting RCW 82.04.610 and 82.08.990 to eliminate, narrow, or expand existing exemptions under WAC 458-20-193C." [2007 c 477 § 1.]

82.04.615 Exemptions—Certain limited purpose public corporations, commissions, and authorities. This chapter does not apply to public corporations, commissions, or authorities created under RCW 35.21.660 or 35.21.730 for amounts derived from sales of tangible personal property and services to:

- (1) A limited liability company in which the corporation, commission, or authority is the managing member;

(2) A limited partnership in which the corporation, commission, or authority is the general partner; or

(3) A single asset entity required under any federal, state, or local governmental housing assistance program, which is controlled directly or indirectly by the corporation, commission, or authority. [2007 c 381 § 1.]

82.04.620 Exemptions—Certain prescription drugs.

In computing tax there may be deducted from the measure of tax imposed by RCW 82.04.290(2) amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription, but only if the amounts: (1) Are separately stated on invoices or other billing statements; (2) do not exceed the then current federal rate; and (3) are covered or required under a health care service program subsidized by the federal or state government. The federal rate means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, part B, drugs average sales price information resource as published by the United States department of health and human services, or any successor index thereto. [2007 c 447 § 1.]

Additional notes found at www.leg.wa.gov

82.04.627 Exemptions—Commercial airplane parts.

(1) Except as provided in subsection (2) of this section, for purposes of the taxes imposed under this chapter on the sale of parts to the manufacturer of a commercial airplane, the sale is deemed to take place at the site of the final testing or inspection under federal aviation regulation part 21, subpart F or G.

(2) This section does not apply to:

(a) Sales of a standard part, such as a nut or bolt, manufactured in compliance with a government or established industry specification;

(b) Sales of a product produced under a technical standard order authorization or letter of technical standard order design approval pursuant to federal aviation regulation part 21, subpart O; or

(c) Sales of parts in respect to which final testing or inspection under federal aviation regulation part 21, subpart F or G takes place in this state.

(3) "Commercial airplane" has the same meaning given in RCW 82.32.550. [2015 c 86 § 301; 2008 c 81 § 15.]

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

82.04.628 Exemptions—Commercial fertilizer, agricultural crop protection products, and seed. (1) This chapter does not apply to wholesale sales of commercial fertilizer, agricultural crop protection products, and seed, by an eligible distributor to an eligible retailer.

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

(a) "Affiliated persons" means persons who have any ownership interest, whether direct or indirect, in each other, or where any ownership interest, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated with respect to each other.

(b) "Agricultural crop protection products" has the same meaning as provided in RCW 82.21.040.

(c) "Commercial fertilizer" has the same meaning as provided in RCW 15.54.270.

(d) "Seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011 and conditioned for use in planting.

(e) "Eligible distributor" means a wholesaler who purchases commercial fertilizer, agricultural crop protection products, and seed from the manufacturer and resells those products only to eligible retailers who are not affiliated persons and who have an ownership interest in an entity that has at least a fifty percent ownership interest in the wholesaler.

(f) "Eligible retailer" means a person engaged in the business of making retail sales of commercial fertilizer, agricultural crop protection products, and seed, that also holds at least a five percent ownership interest in an entity that holds at least a fifty percent ownership interest in an eligible distributor.

(3) This section is exempt from the provisions of RCW 82.32.805 and 82.32.808. [2017 3rd sp.s. c 37 § 302.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 302:

"(1) This section is the tax preference performance statement for the tax preferences contained in section 302, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to reduce structural inefficiencies, as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to provide tax relief to certain distributors of commercial fertilizer, agricultural crop protection products, and seeds. If a review finds that the number of wholesalers of agricultural crop protection products, seed, and fertilizer qualifying for the exemption has increased or stayed the same, then the legislature intends to extend the expiration date of the tax preferences.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to the department of revenue's data." [2017 3rd sp.s. c 37 § 301.]

Effective date—2017 3rd sp.s. c 37 §§ 301, 302, and 1001-1003:

"Parts III and X of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2017." [2017 3rd sp.s. c 37 § 1402.]

82.04.635 Exemptions—Nonprofits providing legal services to low-income persons. This chapter does not apply to nonprofit organizations primarily engaged in the provision of legal services to low-income individuals from whom no charge for services is collected. For the purpose of this section, "nonprofit" means an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c) of the federal internal revenue code. [2009 c 508 § 1.]

82.04.640 Exemptions—Washington vaccine association—Certain assessments received. This chapter does not apply to assessments described in RCW 70.290.030 and 70.290.040 received by a nonprofit corporation established under RCW 70.290.020. [2010 c 174 § 16.]

Additional notes found at www.leg.wa.gov

82.04.645 Exemptions—Financial institutions—Amounts received from certain affiliated persons. (1) This chapter does not apply to amounts received by a financial institution from an affiliated person if the amounts are received from transactions that are required to be at arm's

length under sections 23A or 23B of the federal reserve act as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. For purposes of this subsection, "financial institution" has the same meaning as in RCW 82.04.080.

(2) As used in this section, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. [2011 c 174 § 102; 2010 1st sp.s. c 23 § 110.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.650 Exemptions—Investment conduits and securitization entities. (1) This chapter does not apply to amounts received by investment conduits or securitization entities from cash and securities.

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

(a) "Investment conduit" means an entity formed by a financial institution as defined in RCW 82.04.080 for the express purpose of holding or owning cash or securities if the entity formed:

- (i) Has no employees;
- (ii) Has no direct profit-making motive;
- (iii) Owns no tangible assets, other than cash or securities;
- (iv) Holds or owns cash or securities solely as a conduit, allocating its income to holders of its ownership interests; and

(v) Has, within twelve months of its organization or initial capitalization date, issued ownership interests to other than affiliated persons, equal to or greater than twenty-five percent of its total issued ownership interests.

(b) "Securities" has the same meaning as in section 2 of the securities act of 1933 and includes eligible assets as defined by Rule 3a-7 of the investment company act, as the law and rule exist on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(c) "Securitization entity" means an entity created by a bank holding company if the entity created:

- (i) Has no employees;
- (ii) Has no direct profit-making motive;
- (iii) Owns no tangible assets, other than cash, fixed or revolving discrete pools of credit or charge card receivables originated by a financial institution, or securities;
- (iv) Acts solely as a conduit, allocating its income to holders of its ownership interests; and

(v) Has as its sole business activities the:

(A) Acquisition of such discrete pools of credit or charge card receivables; and

(B) Issuance or causing the issuance of securities primarily to persons not affiliated with the entity.

(d) "Bank holding company" has the same meaning as provided in the bank holding company act of 1956, as existing on June 1, 2010, or such subsequent date as may be pro-

(2022 Ed.)

vided by the department by rule, consistent with the purposes of this section.

(e) "No direct profit-making motive" means that all of an entity's income, less a reasonable servicing fee, is paid to holders of its ownership interests.

(f) "Ownership interest" means interests categorized as debt or equity for purposes of federal tax or generally accepted accounting principles.

(g) "Affiliated" has the same meaning as in RCW 82.04.645. [2010 1st sp.s. c 23 § 111.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.04.655 Exemptions—Joint municipal utility services authorities. This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.106 RCW and any of its members. [2011 c 258 § 11.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.04.660 Exemptions—Environmental handling charges—Mercury-containing lights. (1) An exemption from the taxes imposed in this chapter is provided for:

(a) Producers, with respect to environmental handling charges added to the purchase price of mercury-containing lights either by the producer or a retailer pursuant to an agreement with the producer;

(b) Retailers, with respect to environmental handling charges added to the purchase price of mercury-containing lights sold at retail, including the portion of environmental handling charges retained as reimbursement for any costs associated with the collection and remittance of the charges; and

(c) Stewardship organizations, with respect to environmental handling charges received from producers and retailers.

(2) This section is not subject to the requirements of RCW 82.32.805 and 82.32.808.

(3) For purposes of this section, the definitions in RCW 70A.505.020 apply. [2020 c 20 § 1469; 2015 c 185 § 2.]

Finding—Intent—2015 c 185: "The legislature finds that Engrossed Substitute House Bill No. 2246, enacted in 2014, created an environmental handling charge. However, the 2014 legislature did not intend for business and occupation taxes to be imposed on top of such charge. Therefore, the legislature intends to clarify that environmental handling charges are not subject to business and occupation taxation." [2015 c 185 § 1.]

82.04.750 Exemptions—Restaurant employee meals. (1) This chapter does not apply in respect to meals provided by a restaurant without specific charge to its employees.

(2) For the purposes of this section, the definitions in RCW 82.08.9995 apply. [2015 c 86 § 302; 2011 c 55 § 1.]

Additional notes found at www.leg.wa.gov

82.04.755 Exemptions—Grants received by a non-profit organization for the program established under RCW 70A.200.140(1)(b)(ii). (1) This chapter does not apply to grants received by a nonprofit organization from the matching fund competitive grant program established in RCW 70A.200.140(1)(b)(ii).

(2) This section is not subject to the requirements of RCW 82.32.805 and 82.32.808, and is not subject to an expiration date. [2020 c 20 § 1470; 2015 c 15 § 7.]

82.04.756 Exemptions—Cannabis cooperatives. (1) This chapter does not apply to any cooperative in respect to growing cannabis, or manufacturing cannabis concentrates, useable cannabis, or cannabis-infused products, as those terms are defined in RCW 69.50.101.

(2) The tax preference authorized in this section is not subject to the provisions of RCW 82.32.805 and 82.32.808. [2022 c 16 § 143; 2015 c 70 § 40.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2015 c 70 §§ 12, 19, 20, 23-26, 31, 35, 40, and 49: See note following RCW 69.50.357.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

82.04.758 Exceptions—Services for farms. (1) This chapter does not apply to any:

(a) Person performing custom farming services for a farmer, when the person performing the custom farming services is: (i) An eligible farmer; or (ii) at least 50 percent owned by an eligible farmer; or

(b) Person performing farm management services, contract labor services, services provided with respect to animals that are agricultural products, or any combination of these services, for a farmer or for a person performing custom farming services, when the person performing the farm management services, contract labor services, services with respect to animals, or any combination of these services, and the farmer or person performing custom farming services are related.

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

(a)(i) "Custom farming services" means the performance of specific farming operations through the use of any farm machinery or equipment, farm implement, or draft animal, together with an operator, when: (A) The specific farming operation consists of activities directly related to the growing, raising, or producing of any agricultural product to be sold or consumed by a farmer; and (B) the performance of the specific farming operation is for, and under a contract with, or the direction or supervision of, a farmer. "Custom farming services" does not include the custom application of fertilizers, chemicals, or biologicals, or any services related to the growing, raising, or producing of marijuana.

(ii) For the purposes of this subsection (2)(a), "specific farming operation" includes specific planting, cultivating, or harvesting activities, or similar specific farming operations. The term does not include veterinary services as defined in RCW 18.92.010; farrier, boarding, training, or appraisal services; artificial insemination or stud services, or agricultural consulting services; packing or processing of agricultural products; or pumping or other waste disposal services.

(b) "Eligible farmer" means a person who is eligible for an exemption certificate under RCW 82.08.855 at the time that the custom farming services are rendered, regardless of whether the person has applied for an exemption certificate under RCW 82.08.855.

(c) "Farm management services" means the consultative decisions made for the operations of the farm including, but not limited to, determining which crops to plant, the choice and timing of application of fertilizers and chemicals, the horticultural practices to apply, the marketing of crops and livestock, and the care and feeding of animals. "Farm management services" does not include any services related to the growing, raising, or producing of marijuana.

(d) "Related" means having any of the relationships specifically described in section 267(b) (1), (2), and (4) through (13) of the internal revenue code, as amended or renumbered as of January 1, 2007. [2022 c 119 § 1.]

Tax preference performance statement—2022 c 119: "(1) This section is the tax preference performance statement for the tax preference contained in sections 1 and 2, chapter 119, Laws of 2022. This performance statement is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the tax structure, as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to provide tax relief to farmers, including those who changed their farm structure in response to federal regulations regarding irrigated water." [2022 c 119 § 3.]

Tax preference automatic expiration date exemption—Tax preference metrics exemption—2022 c 119: "The provisions of RCW 82.32.805 and 82.32.808(4) do not apply to this act." [2022 c 119 § 4.]

Effective date—2022 c 119: "This act takes effect July 1, 2022." [2022 c 119 § 5.]

82.04.760 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1704.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.04.765 Exemptions—Receipts attributable to assessment on architectural paint imposed pursuant to chapter 70A.515 RCW. (1) This chapter does not apply to the receipts attributable to the assessment on architectural paint imposed pursuant to chapter 70A.515 RCW.

(2) This section is not subject to the requirements of RCW 82.32.805 and 82.32.808, and is not subject to an expiration date. [2020 c 20 § 1471; 2019 c 344 § 15.]

82.04.767 Exemptions—Qualifying grants—National emergency or state of emergency. (1) This chapter does not apply to any person with respect to the value proceeding or accruing from a qualifying grant received on or after February 29, 2020.

(2) For purposes of this section, "qualifying grant" means an amount received, or relief from debt or other legal obligation received, that:

(a) Is received under a government-funded program either directly from a government entity, or through a non-governmental third-party entity authorized by a government entity to distribute the program funds, or, in the case of relief from debt or other legal obligation, is received from a private entity under circumstances where, in exchange for providing the relief, the private entity receives some form of direct financial benefit from a government entity;

(b) Is provided to address the impacts of conditions giving rise to an official proclamation of a national emergency

by the president of the United States or an official proclamation of a state of emergency by the governor of this state; and

(c) Is not an amount received:

(i) Under a contract, including a sole source contract, for the acquisition of specific goods or services, or both, by purchase, lease, or barter, that was solicited and established in accordance with procurement laws or regulations; or

(ii) For manufacturing, extracting, or making sales of products, when the amount received is determined based on the quantity of products manufactured, extracted, or sold. For purposes of this subsection (2)(c)(ii), "products" has the same meaning as in RCW 82.32.023.

(3) For purposes of a grant awarded to address the impacts of conditions giving rise to a national emergency or state of emergency, the exemption under this section applies only if the legislation authorizing the grant or the associated legislative history, public records created by the grantor, or the terms of the underlying grant agreement between the grantor and grantee, clearly indicate that the grant was established to address the impacts of conditions giving rise to a national emergency or state of emergency.

(4) For purposes of this section, "government" means any national, tribal, state, or local government. [2021 c 4 § 1.]

Retroactive application—2021 c 4: "This act applies both prospectively and retroactively to February 29, 2020." [2021 c 4 § 7.]

Automatic expiration date and tax preference performance statement exemption—2021 c 4: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2021 c 4 § 8.]

Effective date—2021 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 19, 2021]." [2021 c 4 § 9.]

82.04.770 Deduction of amounts derived from charge collected pursuant to chapter 70A.530 RCW. In computing the tax due under this chapter, there may be deducted any amounts derived from the pass-through charge collected by a taxpayer pursuant to chapter 70A.530 RCW. [2020 c 138 § 8.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

82.04.775 Application of chapter—Amounts received under chapter 70A.535 RCW. (1) This chapter does not apply to amounts received from the generation, purchase, sale, transfer, or retirement of credits under chapter 70A.535 RCW.

(2) The provisions of RCW 82.32.805 and 82.32.808 do not apply to subsection (1) of this section. [2021 c 317 § 16.]

Severability—2021 c 317: See note following RCW 70A.535.005.

82.04.900 Construction—1961 c 15. RCW 82.04.440 shall have retrospective effect to August 1, 1950, as well as have prospective effect. [1961 c 15 § 82.04.900. Prior: 1951 1st ex.s. c 9 § 15.]

Chapter 82.08 RCW RETAIL SALES TAX

Sections

82.08.010 Definitions.

(2022 Ed.)

82.08.011	Retail car rental—Definition.
82.08.015	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
82.08.020	Tax imposed—Retail sales—Retail car rental.
82.08.0201	Rental cars—Estimate of tax revenue.
82.08.0202	Retail sales of linen and uniform supply services.
82.08.0203	Exemptions—Trail grooming services.
82.08.0205	Exemptions—Waste vegetable oil.
82.08.0206	Credits—Working families—Eligible low-income persons—Penalties.
82.08.02061	Exemptions—Working families—Report to legislature.
82.08.0207	Exemptions—Adapted housing—Disabled veterans—Construction.
82.08.0208	Exemptions—Digital codes.
82.08.0209	Exemptions—Qualifying grant.
82.08.0251	Exemptions—Casual and isolated sales.
82.08.0252	Exemptions—Sales by persons taxable under chapter 82.16 RCW.
82.08.02525	Exemptions—Sale of copied public records by state and local agencies.
82.08.0253	Exemptions—Sale and distribution of newspapers.
82.08.02535	Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising.
82.08.02537	Exemptions—Sales of academic transcripts.
82.08.0254	Exemptions—Nontaxable sales.
82.08.0255	Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce.
82.08.0256	Exemptions—Sale of the operating property of a public utility to the state or a political subdivision.
82.08.02565	Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules.
82.08.025651	Exemptions—Sales of machinery and equipment to public research institutions.
82.08.02566	Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.
82.08.025661	Exemptions—Aircraft maintenance repair—Building construction.
82.08.02568	Exemptions—Sales of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.
82.08.02569	Exemptions—Sales of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.
82.08.0257	Exemptions—Auction sales of personal property used in farming.
82.08.02573	Exemptions—Sales by a nonprofit organization for fund-raising activities.
82.08.0258	Exemptions—Sales to federal corporations providing aid and relief.
82.08.0259	Exemptions—Sales of livestock.
82.08.026	Exemptions—Sales of natural or manufactured gas.
82.08.0261	Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce.
82.08.0262	Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state or airplanes sold to United States government—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc.
82.08.0263	Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce.
82.08.0264	Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state.
82.08.0266	Exemptions—Sales of watercraft to nonresidents for use outside the state.
82.08.02665	Exemptions—Sales of watercraft, vessels to residents of foreign countries.
82.08.0267	Exemptions—Sales of poultry for producing poultry and poultry products for sale.
82.08.0268	Exemptions—Sales of machinery and implements, and related parts and labor, for farming to nonresidents for use outside the state.
82.08.0269	Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state.
82.08.0271	Exemptions—Sales to municipal corporations, the state, and political subdivisions of tangible personal property, labor

	and services on watershed protection and flood prevention contracts.		
82.08.0272	Exemptions—Sales of semen for artificial insemination of livestock.	82.08.052	Remote seller—Nexus.
82.08.0273	Exemptions—Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state—Proof of nonresident status—Penalties.	82.08.0531	Marketplace facilitators—When deemed seller agents—Recordkeeping—Liability.
82.08.0274	Exemptions—Sales of form lumber to person engaged in constructing, repairing, etc., structures for consumers.	82.08.054	Computation of tax due.
82.08.02745	Exemptions—Charges for labor and services or sales of tangible personal property related to farmworker housing—Exemption certificate—Rules.	82.08.055	Advertisement of price.
82.08.0275	Exemptions—Sales of and labor and service charges for mining, sorting, crushing, etc., of sand, gravel, and rock from county or city quarry for public road purposes.	82.08.060	Collection of tax—Methods and schedules.
82.08.0277	Exemptions—Sales of pollen.	82.08.064	Tax rate changes.
82.08.0278	Exemptions—Sales between political subdivisions resulting from annexation or incorporation.	82.08.066	Deemed location for mobile telecommunications services.
82.08.0279	Exemptions—Renting or leasing of motor vehicles and trailers to a nonresident for use in the transportation of persons or property across state boundaries.	82.08.080	Vending machine and other sales.
82.08.02795	Exemptions—Sales to free hospitals.	82.08.090	Installment sales and leases.
82.08.02805	Exemptions—Sales to qualifying blood, tissue, or blood and tissue banks.	82.08.100	Cash receipts taxpayers—Bad debts.
82.08.02806	Exemptions—Sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing.	82.08.110	Sales from vehicles.
82.08.02807	Exemptions—Sales to organ procurement organization.	82.08.120	Refunding or rebating of tax by seller prohibited—Penalty.
82.08.0281	Exemptions—Sales of prescription drugs.	82.08.130	Reseller's permit—Purchase and resale—Rules.
82.08.0282	Exemptions—Sales of returnable containers for beverages and foods.	82.08.140	Administration.
82.08.0283	Exemptions—Certain medical items.	82.08.145	Delivery charges.
82.08.0285	Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges.	82.08.150	Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.
82.08.0287	Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles.	82.08.155	Spirits tax—Delinquent in reporting or remitting—Penalties.
82.08.02875	Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center.	82.08.160	Remittance of tax—Liquor excise tax fund created.
82.08.0288	Exemptions—Lease of certain irrigation equipment.	82.08.170	Apportionment and distribution from liquor excise tax fund.
82.08.0289	Exemptions—Telephone, telecommunications, and ancillary services.	82.08.180	Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance.
82.08.0291	Exemptions—Sales of amusement and recreation services or personal services by nonprofit youth organization—Local government physical fitness classes.	82.08.190	Bundled transactions—Definitions.
82.08.02915	Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis.	82.08.195	Bundled transactions—Tax imposed.
82.08.02917	Youth in crisis—Definition—Limited purpose.	82.08.207	Investment data for investment firms.
82.08.0293	Exemptions—Sales of food and food ingredients.	82.08.215	Exemptions—Large private airplanes.
82.08.0294	Exemptions—Sales of feed for cultivating or raising fish for sale.	82.08.225	Taxes on lodging, car rentals, and restaurants—Deposit into statewide tourism marketing account.
82.08.0296	Exemptions—Sales of feed consumed by livestock at a public livestock market.	82.08.700	Exemptions—Vessels sold to nonresidents.
82.08.0297	Exemptions—Sales of food purchased under the supplemental nutrition assistance program.	82.08.701	Exemptions—Grantee's receipt of salmon recovery grants.
82.08.0298	Exemptions—Sales of diesel fuel for use in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.	82.08.798	Exemptions—Sales of feminine hygiene products.
82.08.0299	Exemptions—Emergency lodging for homeless persons—Conditions.	82.08.803	Exemptions—Nebulizers.
82.08.031	Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.	82.08.804	Exemptions—Ostomic items.
82.08.0311	Exemptions—Sales of materials and supplies used in packing horticultural products.	82.08.805	Exemptions—Personal property used at an aluminum smelter.
82.08.0315	Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate.	82.08.806	Exemptions—Sale of computer equipment parts and services to printer or publisher.
82.08.0316	Exemptions—Sales of cigarettes by Indian retailers.	82.08.807	Exemptions—Direct mail delivery charges.
82.08.0317	Exemptions—Sales of motor vehicles to tribes or tribal members.	82.08.808	Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers.
82.08.0318	Exemptions—Sales of vapor products by Indian retailers.	82.08.809	Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers.
82.08.032	Exemption—Sales, rental, or lease of used park model trailers.	82.08.810	Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation.
82.08.033	Exemptions—Sales of used mobile homes or rental or lease of mobile homes.	82.08.811	Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
82.08.034	Exemptions—Sales of used floating homes or rental or lease of used floating homes.	82.08.816	Exemptions—Electric vehicle batteries and fuel cells—Labor and services—Infrastructure.
82.08.035	Exemption for pollution control facilities.	82.08.820	Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.
82.08.036	Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.	82.08.830	Exemptions—Sales at camp or conference center by nonprofit organization.
82.08.037	Credits and refunds for bad debts.	82.08.832	Exemptions—Sales of gun safes.
82.08.040	Consignee, factor, bailee, auctioneer deemed seller.	82.08.833	Exemptions—Sales or transfers of firearms—Unlicensed persons—Background check requirements.
82.08.050	Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties.	82.08.834	Exemptions—Sales/leases by regional transit authorities.
		82.08.850	Exemptions—Conifer seed.
		82.08.855	Exemptions—Replacement parts for qualifying farm machinery and equipment.
		82.08.865	Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.
		82.08.870	Exemptions—Motorcycles for training programs.
		82.08.875	Exemptions—Automotive adaptive equipment.
		82.08.880	Exemptions—Animal pharmaceuticals.
		82.08.890	Exemptions—Qualifying livestock nutrient management equipment and facilities.
		82.08.900	Exemptions—Anaerobic digesters.
		82.08.910	Exemptions—Propane or natural gas to heat chicken structures.
		82.08.920	Exemptions—Chicken bedding materials.
		82.08.925	Exemptions—Dietary supplements.
		82.08.935	Exemptions—Disposable devices used to deliver prescription drugs for human use.
		82.08.940	Exemptions—Over-the-counter drugs for human use.
		82.08.945	Exemptions—Kidney dialysis devices.
		82.08.950	Exemptions—Steam, electricity, electrical energy.
		82.08.956	Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel.

82.08.962	Exemptions—Sales of machinery and equipment used in generating electricity.
82.08.965	Exemptions—Semiconductor materials manufacturing.
82.08.9651	Exemptions—Gases and chemicals used in production of semiconductor materials.
82.08.970	Exemptions—Gases and chemicals used to manufacture semiconductor materials.
82.08.975	Exemptions—Computer parts and software related to the manufacture of commercial airplanes.
82.08.980	Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes.
82.08.983	Exemptions—Wax and ceramic materials.
82.08.985	Exemptions—Insulin.
82.08.986	Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers.
82.08.9861	Exemptions—Eligible server equipment—Eligible power infrastructure in counties with populations over 800,000.
82.08.988	Requirements for computer data centers receiving an exemption—Labor agreements.
82.08.990	Exemptions—Import or export commerce.
82.08.993	Exemptions—Fuel cell electric vehicles—Report to the legislature.
82.08.995	Exemptions—Certain limited purpose public corporations, commissions, and authorities.
82.08.996	Exemptions—Battery-powered electric marine propulsion systems—Qualifying vessels.
82.08.997	Exemptions—Temporary medical housing.
82.08.998	Exemptions—Weatherization of a residence.
82.08.999	Exemptions—Joint municipal utility services authorities.
82.08.9994	Exemptions—Bottled water—Prescription use.
82.08.99941	Exemptions—Bottled water—Primary water source unsafe.
82.08.9995	Exemptions—Restaurant employee meals.
82.08.9996	Exemptions—Vessel deconstruction.
82.08.9997	Exemptions—Retail sale of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by cannabis agreement between state and tribe.
82.08.9998	Exemptions—Cannabis concentrates, useable cannabis, or cannabis-infused products—Products containing low amounts of THC.
82.08.9999	Exemptions—Vehicles using clean alternative fuels and electric vehicles.
82.08.99991	Tax preferences—Expiration dates.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

Direct pay permits: RCW 82.32.087.

Excise tax on real estate transfers: Chapters 82.45 and 82.46 RCW.

Local sales tax: Chapter 82.14 RCW.

82.08.010 Definitions. For the purposes of this chapter:

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

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

use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer, or collected from the consumer pursuant to RCW 35.87A.010(2)(b), that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

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

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

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

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

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

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

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

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

(2)(a)(i) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except as otherwise provided in this subsection (2).

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

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

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

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

responsible for collecting and remitting the tax imposed by this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

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

(F) Taking orders; or

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

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

(A) A person who provides internet advertising services, including listing products for sale, so long as the person does not also engage in the activity described in (a)(ii) of this sub-

section (15) in addition to any of the activities described in (a)(iii) of this subsection (15); or

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

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

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

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

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

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

(17) "Remote seller" means any seller, including a marketplace facilitator, who does not have a physical presence in this state and makes retail sales to purchasers or facilitates retail sales on behalf of marketplace sellers. [2022 c 16 § 144; 2021 c 225 § 3; 2019 c 8 § 105; 2014 c 140 § 11; 2010 c 106 § 210; 2009 c 535 § 303; 2007 c 6 § 1302; (2007 c 6 § 1301 expired July 1, 2008); 2006 c 301 § 2; 2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Retroactive application—Effective date—2021 c 225: See notes following RCW 35.87A.010.

Effective date—2019 c 8 §§ 105, 301, 302, 401, and 704: "Sections 105, 301, 302, 401, and 704 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019." [2019 c 8 § 805.]

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Additional notes found at www.leg.wa.gov

82.08.011 Retail car rental—Definition. For purposes of this chapter, "retail car rental" means renting a rental car, as defined in RCW 46.04.465, to a consumer. [1992 c 194 § 2.]

(2022 Ed.)

Additional notes found at www.leg.wa.gov

82.08.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 189.]

82.08.020 Tax imposed—Retail sales—Retail car rental. (1) There is levied and collected a tax equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of cannabis;

(b) Off-road vehicles as defined in RCW 46.04.365;

(c) Nonhighway vehicles as defined in RCW 46.09.310; and

(d) Snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in

this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [2022 c 16 § 145; (2020 c 1 § 7 (Initiative Measure No. 976, approved November 5, 2019)); 2016 c 1 § 2 (Initiative Measure No. 1366, approved November 3, 2015); 2014 c 140 § 12; 2011 c 171 § 120; 2010 c 106 § 212; (2010 c 106 § 211 expired January 1, 2011); (2009 c 469 § 802 expired January 1, 2011); 2006 c 1 § 3 (Initiative Measure No. 900, approved November 8, 2005); 2003 c 361 § 301; 2000 2nd sp.s. c 4 § 1; 1998 c 321 § 36 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 9; 1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

Reviser's note: (1) This section was previously amended by Initiative Measure No. 976 (chapter 1, Laws of 2020). The Washington state supreme court ruled in *Garfield Cty. Transp. Auth. v. State*, No. 98320-8, 2020 Wash. LEXIS 592 (Oct. 15, 2020) that Initiative Measure No. 976 is in violation of Article II, section 19 of the state Constitution and is therefore void in its entirety. This section is published without the amendment contained in Initiative Measure No. 976.

(2) The Washington state supreme court ruled in *Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016) that Initiative Measure No. 1366 (chapter 1, Laws of 2016) is in violation of the single-subject rule of Article II, section 19 of the state Constitution and is therefore void in its entirety. This section is published without the amendment contained in Initiative Measure No. 1366.

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Contingent effective date—2016 c 1 § 2 (Initiative Measure No. 1366): "(1) Section 2 of this act takes effect April 15, 2016, unless the contingency in subsection (2) of this section occurs.

(2) If the legislature, prior to April 15, 2016, refers to the ballot for a vote a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes as defined by voter-approved Initiatives 960, 1053, and 1185 and section 6 of this act and majority legislative approval for fee increases as required by voter-approved Initiatives 960, 1053, and 1185 and codified in RCW 43.135.055 and further defined by subsection (a) of this section, section 2 of this act expires on April 14, 2016.

(a) [(3)] "Majority legislative approval for fee increases" means only the legislature may set a fee increase's amount and must list it in a bill so it can be subject to the ten-year cost projection and other accountability procedures required by RCW 43.135.031." [2016 c 1 § 3 (Initiative Measure No. 1366, approved November 3, 2015).]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Findings—2003 c 361: See note following RCW 82.38.030.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Legislative intent—1992 c 194: "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional

sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

***Reviser's note:** "Substitute Senate Bill No. 2778" failed to become law.

High capacity transportation systems—Sales and use tax: RCW 81.104.170. Manufacturers, study: 1994 c 66.

Additional notes found at www.leg.wa.gov

82.08.0201 Rental cars—Estimate of tax revenue. Before January 1, 1994, and January 1st of each odd-numbered year thereafter:

The department of licensing, with the assistance of the department of revenue, must provide the office of financial management and the fiscal committees of the legislature with an updated estimate of the amount of revenue attributable to the taxes imposed in RCW 82.08.020(2). [2020 c 139 § 10; 1992 c 194 § 10.]

Additional notes found at www.leg.wa.gov

82.08.0202 Retail sales of linen and uniform supply services. For purposes of this chapter, a retail sale of linen and uniform supply services is deemed to occur at the place of delivery to the customer. "Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and similar items, whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. The term includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses. [2001 c 186 § 2.]

Finding—Purpose—2001 c 186: "The legislature finds that because of the mixed retailing nature of linen and uniform supply services, they have been incorrectly sited for tax purposes. As a result, some companies that perform some activities related to this activity outside the state of Washington have not been required to collect retail sales taxes upon linen and uniform supply services provided to Washington customers. The activity has aspects of both the rental of tangible personal property and retail services related to tangible personal property. This error in tax treatment provides an incentive for businesses to locate some of their functions out of state. In-state businesses cannot compete if their out-of-state competitors are not required to collect sales tax for services provided to the same customers.

The purpose of this act is to clarify the taxable situs and nature of linen and uniform supply services." [2001 c 186 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0203 Exemptions—Trail grooming services. The tax levied by RCW 82.08.020 does not apply to sales of trail grooming services to the state of Washington or non-profit corporations organized under chapter 24.03A RCW. For the purposes of this section, "trail grooming" means the activity of snow compacting, snow redistribution, or snow removal on state-owned or privately owned trails. [2021 c 176 § 5248; 2008 c 260 § 1.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

82.08.0205 Exemptions—Waste vegetable oil. (1) The tax levied by RCW 82.08.020 does not apply to sales of waste vegetable oil that is used by a person in the production of biodiesel for personal use.

(2) This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

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

(a) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food processors; and

(b) "Personal use" means the person does not engage in the business of selling biodiesel at wholesale or retail. [2008 c 237 § 2.]

Additional notes found at www.leg.wa.gov

82.08.0206 Credits—Working families—Eligible low-income persons—Penalties. (1) A working families' tax credit, in the form of a refund of tax due under this chapter and chapter 82.12 RCW, is provided to eligible low-income persons for sales and use taxes paid under this chapter and chapter 82.12 RCW after January 1, 2022.

(2) For purposes of the credit in this section, the following definitions apply:

(a)(i) "Eligible low-income person" means an individual who:

(A) Is eligible for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code; and

(B) Properly files a federal income tax return for the prior federal tax year, and was a Washington resident during the year for which the credit is claimed.

(ii) "Eligible low-income person" also means an individual who:

(A) Meets the requirements provided in (a)(i)(B) of this subsection; and

(B) Would otherwise qualify for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code except for the fact that the individual filed a federal income tax return for the prior federal tax year using a valid individual taxpayer identification number in lieu of a social security number, and the individual's spouse, if any, and all qualifying children, if any, have a valid individual taxpayer identification number or a social security number.

(b) "Income" means earned income as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code.

(c) "Individual" means an individual or an individual and that individual's spouse if they file a federal joint income tax return.

(d) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of June 9, 2022, or such subsequent date as the department may provide by rule consistent with the purpose of this section.

(e) "Maximum qualifying income" means the maximum federally adjusted gross income for the prior federal tax year.

(f) "Qualifying child" means a qualifying child as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code, except the child may have a valid individual taxpayer identification number in lieu of a social security number.

(g) "Washington resident" means an individual who is physically present and residing in this state for at least 183 days. "Washington resident" also includes an individual who is not physically present and residing in this state for at least 183 days but is the spouse of a Washington resident. For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(3)(a) Except as provided in (b) and (c) of this subsection, for calendar year 2023 and thereafter, the working families' tax credit refund amount for the prior calendar year is:

(i) \$300 for eligible persons with no qualifying children;
(ii) \$600 for eligible persons with one qualifying child;
(iii) \$900 for eligible persons with two qualifying children; or

(iv) \$1,200 for eligible persons with three or more qualifying children.

(b) Except as provided in (f) of this subsection, the refund amounts provided in (a) of this subsection will be reduced, rounded to the nearest dollar, as follows:

(i) For eligible persons with no qualifying children, beginning at \$2,500 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(ii) For eligible persons with one qualifying child, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 12 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iii) For eligible persons with two qualifying children, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 15 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iv) For eligible persons with three or more qualifying children, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(c) If the refund for an eligible person as calculated in this section is greater than or equal to one cent, but less than \$50, the refund amount is \$50.

(d) The refund amounts in this section shall be adjusted for inflation every year beginning January 1, 2024, based upon changes in the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. The adjusted refund amounts must be rounded to the nearest \$5.

(e) For purposes of this section, "consumer price index" means, for any 12-month period, the average consumer price index for that 12-month period for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(f) The percentage rate of remittance reductions in (b) of this subsection must be adjusted every year beginning January 1, 2023, based on calculations by the department that result in the minimum credit being received at the maximum qualifying income level.

(4) The working families' tax credit shall be administered as provided in this subsection.

(a) The refund paid under this section will be paid to eligible filers who apply pursuant to this subsection.

(i) Application must be made to the department in a form and manner determined by the department. If the application process is initially done electronically, the department must provide a paper application upon request. The application must include any information and documentation as required by the department.

(ii) Application for the refund under this section must be made in the year following the year for which the federal tax

return was filed, but in no case may any refund be provided for any period before January 1, 2022. The department must use the eligible person's most recent federal tax filing for the tax year for which the refund is being claimed to calculate the refund.

(iii) A person may not claim a credit on behalf of a deceased individual. No individual may claim a credit under this section for any year in a disallowance period under Title 26 U.S.C. Sec. 32(k)(1) of the internal revenue code or for any year for which the individual is ineligible to claim the credit in Title 26 U.S.C. Sec. 32 of the internal revenue code by reason of Title 26 U.S.C. Sec. 32(k)(2) of the internal revenue code.

(b) The department shall protect the privacy and confidentiality of personal data of refund recipients in accordance with chapter 82.32 RCW.

(c) The department shall, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of, and requirements for, the credit provided in this section.

(d) The department must work with the internal revenue service to administer the credit on an automatic basis as soon as practicable.

(5) Receipt of the refund under this section may not be used in eligibility determinations for any state income support programs or in making public charge determinations.

(6) The department may adopt rules necessary to implement this section. This includes establishing a date by which applications will be accepted, with the aim of accepting applications as soon as possible.

(7) The department must review the application and determine eligibility for the working families' tax credit based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through internal revenue service data.

(8) If, upon review of internal revenue service data or other information obtained by the department, it appears that an individual received a refund that the individual was not entitled to, or received a larger refund than the individual was entitled to, the department may assess against the individual the overpaid amount. The department may also assess such overpaid amount against the individual's spouse if the refund in question was based on both spouses filing a joint federal income tax return for the year for which the refund was claimed.

(a) Interest as provided under RCW 82.32.050 applies to assessments authorized under this subsection (8) starting six months after the date the department issued the assessment until the amount due under this subsection (8) is paid in full to the department. Except as otherwise provided in this subsection, penalties may not be assessed on amounts due under this subsection.

(b) If an amount due under this subsection is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess the applicable penalties under RCW 82.32.090. Penalties under this subsection (8)(b) may not be made due until six months after the department's issuance of the assessment.

(c) If the department finds by clear, cogent, and convincing evidence that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent claim for refund under this section, the department must assess a penalty of 50 percent of the overpaid amount. This penalty is in addition to any other applicable penalties assessed in accordance with (b) of this subsection (8).

(9) If, within the period allowed for refunds under RCW 82.32.060, the department finds that an individual received a lesser refund than the individual was entitled to, the department must remit the additional amount due under this section to the individual.

(10) Interest does not apply to refunds provided under this section.

(11) Chapter 82.32 RCW applies to the administration of this section. [2022 c 41 § 1; 2022 c 33 § 1; 2021 c 195 § 2; 2008 c 325 § 2.]

Reviser's note: This section was amended by 2022 c 33 § 1 and by 2022 c 41 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2021 c 195: "(1) Many Washington families do not earn enough annually to keep pace with increasing health care, child care, housing, and other essential expenses.

(2) Amidst rising cost of living across the state, the regressive nature of Washington's tax code puts an additional strain on households already struggling to meet their basic needs. Washington's tax system is the most upside down and regressive in the nation, allowing those who earn the most to pay the least percentage of their income in taxes. As a percentage of household income, low-income Washingtonians, who are disproportionately Black, American Indian and Alaska Native, Latinx, Native Hawaiian and Pacific Islander, and multiracial Washingtonians, pay six times more in taxes than our wealthiest residents.

(3) Eligibility for the working families' tax exemption is based on eligibility for the federal earned income tax credit, a refundable tax credit for working individuals and families whose earnings are below an income threshold. Since its establishment in 1975, the earned income tax credit has increased family income, reduced child poverty, and improved health, educational, and career outcomes for children in low-income families. Taxpayers filing with an individual tax identification number and their families, however, are excluded from receiving the federal credit and its corollary benefits to health and well-being, despite paying local, state, and federal taxes.

(4) Since its establishment in 1975, the earned income tax credit has also had a positive impact on local businesses because it puts more money in the hands of low-income working people who spend the money on immediate needs, such as groceries, transportation, rent, and health care. The credit has been shown to have a multiplier effect to support local businesses, generating an estimated \$1.50 to \$2.00 in local economic activity for every dollar received by beneficiaries.

(5) Therefore, it is the public policy objective of the legislature to stimulate local economic activity, advance racial equity, and promote economic stability and well-being for lower-income working people, including individual tax identification number filers, by updating and simplifying the structure of the working families' tax exemption." [2021 c 195 § 1.]

Automatic expiration date exemption—2021 c 195: "The provisions of RCW 82.32.805 do not apply to this act." [2021 c 195 § 3.]

Tax preference performance statement—2021 c 195: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 195, Laws of 2021. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for the preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to allow low-income and middle-income workers to recover some or all of the sales tax they pay to support state and local government as a way to increase their economic security and to decrease the regressivity of our state tax code. It is the

legislature's intent to provide a sales and use tax credit, in the form of a remittance, to low-income and middle-income working families.

(4) The joint legislative audit and review committee shall review this preference in 2028 and every 10 years thereafter. If a review finds that the working families' tax credit does not provide meaningful financial relief to low-income and middle-income households, this act shall expire at the end of the calendar year two years after the adoption of the final report containing that finding. In its review of the program, the joint legislative audit and review committee should use at least the following metrics: Size of the benefit per household, number of household beneficiaries statewide, and demographic information of beneficiaries to include family size, income level, race and ethnicity, and geographic location.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the remittance data prepared by the department of revenue." [2021 c 195 § 4.]

Findings—Intent—2008 c 325: "The legislature finds that many Washington families do not earn enough annually to keep pace with increasing health care, child care, and work-related expenses. Because the state relies so heavily on sales tax revenue, families in Washington with the lowest incomes pay proportionately four or five times as much in state taxes as the most affluent households. The legislature finds that higher-income families are able to recover some of the sales and use taxes that they pay to support state and local government through the federal income tax deduction for sales and use taxes, but that lower-income people, who are not able to itemize, receive no benefit. Therefore, it is the intent of the legislature to provide a sales and use tax exemption, in the form of a remittance, to lower-income working families in Washington, and to use the federal earned income tax credit as a proxy for the amount of sales tax paid." [2008 c 325 § 1.]

82.08.02061 Exemptions—Working families—Report to legislature. The department must assess the implementation of the working families' tax exemption in a report to the legislature to identify administrative or resource issues that require legislative action. The department must submit the report to the finance committee of the house of representatives and the ways and means committee of the senate within eighteen months of the implementation of the program. [2014 c 97 § 317; 2008 c 325 § 3.]

Findings—Intent—2008 c 325: See note following RCW 82.08.0206.

82.08.0207 Exemptions—Adapted housing—Disabled veterans—Construction. (1) An eligible purchaser who has paid the tax levied by RCW 82.08.020 on materials incorporated into, and labor and services rendered in respect to, adapted housing is eligible for an exemption from all or a portion of those taxes in the form of a remittance. The total amount of a remittance that an eligible purchaser may receive under this section and/or RCW 82.12.0207 is limited to two thousand five hundred dollars for each adapted housing project. The remittance under this section is for the state portion of the sales tax only.

(2)(a) An eligible purchaser claiming an exemption from tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020 on such purchases eligible for the remittance. The eligible purchaser may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020 on such purchases, subject to the limits in subsections (1) and (3) of this section. As part of the application, the eligible purchaser must provide proof of eligibility for the remittance in the form of a copy of the grant award letter from the United States department of veterans affairs, construction contracts for adapted housing, and invoices for purchases qualifying for a remittance under this section.

(2022 Ed.)

(b) An eligible purchaser may not apply for more than one remittance under this section per calendar quarter.

(c) The department must on a quarterly basis remit exempted amounts to eligible purchasers whose applications were approved by the department during the previous quarter.

(3)(a) The remittance under this section is only available on a first-in-time basis. The department must keep a running total of all approved remittances under this section and/or RCW 82.12.0207 during each fiscal year. The department may not allow any remittance that would cause the total amount of remittances allowed under this section and/or RCW 82.12.0207 to exceed one hundred twenty-five thousand dollars in any fiscal year, unless additional amounts are appropriated for this specific purpose.

(b) The department must provide notification on its website monthly of the amount remaining before the statewide annual limit in this subsection is reached.

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

(a) "Adapted housing" means a construction project that has been approved by the United States department of veterans affairs as part of the specially adapted housing grant program or the special housing adaptation grant program to modify or construct a home so that it can accommodate the needs of a disabled or severely disabled veteran.

(b) "Eligible purchaser" means a disabled or severely disabled veteran who has received either a specially adapted housing grant or a special housing adaptation grant from the United States department of veterans affairs.

(c) "Special housing adaptation" has the same meaning, eligibility requirements, and restrictions as "special home adaptation grant" in 38 C.F.R. 3.809a, as of July 1, 2016.

(d) "Specially adapted housing" has the same meaning, eligibility requirements, and restrictions as in 38 C.F.R. 3.809, as of July 1, 2016. [2017 c 176 § 2.]

Findings—Intent—2017 c 176: "(1)(a) The legislature finds that it is important to recognize the service of veterans and to acknowledge the continued sacrifice of those veterans who have service-connected physical disabilities. The legislature further finds that many disabled veterans often need customized, accessible housing in order to be self-sufficient and to maintain a high quality of life. The legislature further finds that disabled veterans have higher poverty rates than disabled nonveterans. The legislature further finds that the federal government provides a grant to assist disabled veterans with the costs of constructing, modifying, or adapting their homes, but that thousands of these dollars end up covering the sales or use tax owed on these construction projects. The legislature further finds that this results in a shift of cost to the same population of disabled veterans whose burden the federal grant program is intended to ease.

(b) It is the legislature's intent to provide specific financial relief for disabled veterans by providing a sales and use tax exemption in the form of a remittance for the construction of adapted housing for disabled veterans who have been awarded a federal grant to modify their homes.

(2)(a) This section is the tax preference performance statement for the tax preferences contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(c) To measure the effectiveness of this act in achieving the specific public policy objective described in subsection (1) of this section, the joint legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of qualifying adapted housing projects, as reported to the department of revenue through the remittance application process on an annual basis; and

(ii) The total amount of adapted housing grants awarded to veterans, as reported by the United States department of veterans affairs.

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

(e) The joint legislative audit and review committee must review the tax preferences provided in this act as part of its normal review process of tax preferences." [2017 c 176 § 1.]

Application—2017 c 176: "This act applies to sales or uses that occur on or after August 1, 2017." [2017 c 176 § 5.]

82.08.0208 Exemptions—Digital codes. (1) The tax imposed by RCW 82.08.020 does not apply to the sale of a digital code for one or more digital products if the sale of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.08.020.

(2)(a) The tax imposed by RCW 82.08.020 does not apply to a business or other organization for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(c), available free of charge for the use or enjoyment of the general public. The exemption provided in this subsection (2) does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public.

(b) For purposes of this subsection (2), "general public" means all persons and not limited or restricted to a particular class of persons, except that the general public includes:

(i) A class of persons that is defined as all persons residing or owning property within the boundaries of a state, political subdivision of a state, or a municipal corporation; and

(ii) With respect to libraries, authorized library patrons.

(3)(a) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of digital goods, and services rendered in respect to digital goods, if the digital goods and services rendered in respect to digital goods are purchased solely for business purposes. The exemption provided by this subsection (3) also applies to the sale to a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes.

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

(i) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this subsection (3). Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(ii) "Services rendered in respect to digital goods" means those services defined as a retail sale in RCW 82.04.050(2)(g).

(4)(a) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

(b) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased, or the prewritten computer software or services defined as a retail sale in RCW 82.04.050(6)(c) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) purchased for personal use.

(c) A buyer claiming an exemption under this subsection (4) must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.0208 and 82.14.457.

(d) For purposes of this subsection (4), "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(5)(a) Except as provided in (b) of this subsection (5), the tax imposed by RCW 82.08.020 does not apply to sales of audio or video programming by a radio or television broadcaster.

(b)(i) Except as provided in (b)(ii) of this subsection (5), the exemption provided in this subsection (5) does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(ii) The exemption provided in this subsection (5) applies to the sale of programming described in (b)(i) of this subsection (5) if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(c) For purposes of this subsection (5), "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

(6) Sellers making tax-exempt sales under subsection (2) or (3) of this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. [2020 c 139 § 11; 2009 c 535 § 501.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.0209 Exemptions—Qualifying grant. (1) The tax levied by RCW 82.08.020 does not apply to a grantee's

receipt of a qualifying grant that is exempt from business and occupation tax under RCW 82.04.767.

(2) Nothing in this section may be construed to:

(a) Imply that the tax levied by RCW 82.08.020 applies to any circumstance not described in subsection (1) of this section; or

(b) Provide an exemption from the tax levied by RCW 82.08.020 for the grantee's use of a qualifying grant to acquire products in a transaction meeting the definition of "retail sale" in RCW 82.04.050.

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

(a) "Grantee" means the recipient of a qualifying grant.

(b) "Product" means the same as in RCW 82.32.023.

(c) "Qualifying grant" means the same as in RCW 82.04.767. [2021 c 4 § 4.]

Retroactive application—Automatic expiration date and tax preference performance statement exemption—Effective date—2021 c 4: See notes following RCW 82.04.767.

82.08.0251 Exemptions—Casual and isolated sales.

The tax levied by RCW 82.08.020 shall not apply to casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under chapters 82.04 or 82.16 RCW: PROVIDED, That the exemption provided by this section shall not be construed as providing any exemption from the tax imposed by chapter 82.12 RCW. [1980 c 37 § 19. Formerly RCW 82.08.030(1).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0252 Exemptions—Sales by persons taxable under chapter 82.16 RCW. The tax levied by RCW 82.08.020 shall not apply to sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under chapter 82.16 RCW, when the gross proceeds from such sales must be included in the measure of the tax imposed under said chapter. [1980 c 37 § 20. Formerly RCW 82.08.030(2).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02525 Exemptions—Sale of copied public records by state and local agencies. The tax levied by RCW 82.08.020 does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.56.010, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [2011 c 60 § 49; 2009 c 535 § 505; 1996 c 63 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.08.0253 Exemptions—Sale and distribution of newspapers. (1) The tax levied by RCW 82.08.020 does not apply to:

(2022 Ed.)

(a) The distribution and newsstand sale of printed newspapers; and

(b) The sale of newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(i) Shares content with the printed newspaper; and

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

(2) For purposes of this section, "printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper. [2009 c 535 § 506; 1980 c 37 § 21. Formerly RCW 82.08.030(3).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising. The tax levied by RCW 82.08.020 does not apply to subscription sales of magazines or periodicals, including magazines and periodicals transferred electronically to the buyer, for the purposes of fund-raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger. [2009 c 535 § 507; 1995 2nd sp.s. c 8 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.08.02537 Exemptions—Sales of academic transcripts. The tax levied by RCW 82.08.020 does not apply to sales of academic transcripts by educational institutions, including academic transcripts transferred electronically. [2009 c 535 § 508; 1996 c 272 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.08.0254 Exemptions—Nontaxable sales. The tax levied by RCW 82.08.020 shall not apply to sales which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 22. Formerly RCW 82.08.030(4).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the

purchaser is entitled to a refund or an exemption under RCW 82.38.080(1)(d) or 82.38.180(3)(a); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is taxable under chapter 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state is entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax must be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2013 c 225 § 640; 2011 1st sp.s. c 16 § 4; 2007 c 223 § 9; 2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Finding—Intent—2005 c 443: "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

Intent—1983 1st ex.s. c 35: "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.08.865.

Additional notes found at www.leg.wa.gov

82.08.0256 Exemptions—Sale of the operating property of a public utility to the state or a political subdivision. The tax levied by RCW 82.08.020 does not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any public service business as defined in RCW 82.16.010. For purposes of this section, "operating property" includes digital goods and digital codes. [2010 c 106 § 213; 2009 c 535 § 509; 1980 c 37 § 24. Formerly RCW 82.08.030(6).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.02565 Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules. (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equip-

ment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Except as provided in (c) of this subsection, sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(c)(i) The exemption under this section is in the form of a remittance for a gas distribution business, as defined in RCW 82.16.010, claiming the exemption for machinery and equipment used for the production of compressed natural gas or liquefied natural gas for use as a transportation fuel.

(ii) A gas distribution business claiming an exemption from state and local tax in the form of a remittance under this section must pay the tax under RCW 82.08.020 and all applicable local sales taxes. Beginning July 1, 2017, the gas distribution business may then apply to the department for remittance of state and local sales and use taxes. A gas distribution business may not apply for a remittance more frequently than once a quarter. The gas distribution business must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The gas distribution business must retain, in adequate detail, records to enable the department to determine whether the business is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(iii) The department must determine eligibility under this section based on the information provided by the gas distribution business, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying businesses who submitted applications during the previous quarter.

(iv) Beginning July 1, 2028, a gas distribution business may not apply for a refund under this section or RCW 82.12.02565.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and devel-

opment operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturer" means a person that qualifies as a manufacturer under RCW 82.04.110. "Manufacturer" also includes a person that:

(i) Prints newspapers or other materials; or

(ii) Is engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media.

(e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.

(f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the preparation of food products on the premises of a person selling food products at retail.

(2022 Ed.)

(g) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(h) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(i) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(j) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes the testing of tangible personal property for use in that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the testing of tangible personal property for use in the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(3) This section does not apply (a) to sales of machinery and equipment used directly in the manufacturing, research and development, or testing of cannabis, useable cannabis, or cannabis-infused products, or (b) to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

(4) The exemptions in this section do not apply to an ineligible person. For purposes of this subsection, the following definitions apply:

(a) "Affiliated group" means a group of two or more entities that are either:

(i) Affiliated as defined in RCW 82.32.655; or

(ii) Permitted to file a consolidated return for federal income tax purposes.

(b) "Ineligible person" means all members of an affiliated group if all of the following apply:

(i) At least one member of the affiliated group was registered with the department to do business in Washington state on or before July 1, 1981;

(ii) As of August 1, 2015, the combined employment in this state of the affiliated group exceeds forty thousand full-time and part-time employees, based on data reported to the employment security department by the affiliated group; and

(iii) The business activities of the affiliated group primarily include development, sales, and licensing of computer software and services. [2022 c 16 § 146; 2015 3rd sp.s. c 5 § 301. Prior: 2014 c 216 § 401; 2014 c 140 § 13; 2011 c 23 § 2; 2009 c 535 § 510; 1999 c 211 § 5; 1999 c 211 § 3; 1998 c 330 § 1; prior: 1996 c 247 § 2; 1996 c 173 § 3; 1995 1st sp.s. c 3 § 2.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Construction—2017 c 323: See note following RCW 82.08.052.

Application—2015 3rd sp.s. c 5: "Sections 301 and 302 of this act do not apply with respect to machinery and equipment, as defined in RCW 82.08.02565, first used by the taxpayer in this state before August 1, 2015." [2015 3rd sp.s. c 5 § 306.]

Conflicting laws—2015 3rd sp.s. c 5: "If RCW 82.08.02565, 82.12.02565, or 82.63.010 are amended by any other act enacted during the

regular or any special session of the 2015 legislature, each amendment without reference to the other amendment or amendments of the same statute, the legislature intends for the amendments in this act to be deemed to not conflict in purpose with the amendments in any other such act for the purposes of RCW 1.12.025 and that the amendments in this act be given effect." [2015 3rd sp.s. c 5 § 305.]

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Findings—2011 c 23: "(1) In 1995, the legislature enacted a sales and use tax exemption for manufacturing machinery and equipment, commonly referred to as the "M&E exemption." The legislature finds that the purposes of this exemption were to encourage the growth and development of the state's private sector manufacturing industry and improve this state's ability to compete with other states for manufacturing investment. The legislature further finds that it was not the purpose of the M&E exemption to provide tax breaks to state agencies and institutions, nor to public utilities and other businesses with respect to machinery and equipment primarily used for activities that are taxable under the state public utility tax or are otherwise not considered to be manufacturing for business and occupation tax purposes.

(2) The legislature further finds that despite previous attempts at clarifying the M&E exemption, significant ambiguity persists, particularly with respect to the scope of the exemption. Such ambiguity results in costly appeals and litigation and may result in significant unanticipated revenue losses for the state and local governments.

(3) Therefore, the legislature finds it necessary to reaffirm its original intent in establishing the M&E exemption. The legislature declares that the amendments to the existing M&E exemption and to RCW 82.04.120 in this act are clarifying and, as such, apply retroactively as well as prospectively.

(4) The legislature finds that Washington is home to premier public research institutions. The legislature recognizes that the state's public universities provide cutting-edge research and development, which helps stimulate growth in the private sector and is vital to the economic well-being of our state. University research leads directly to new products, companies, production methods, and ways of organizing work. The legislature further recognizes that our public universities will play an important role in shaping the next generation of Washington industries, including biofuels and other renewable energy, global health, and advanced manufacturing. Therefore, because the amendments to the existing M&E exemption in this act clarify that state agencies and institutions are not eligible for the M&E exemption, this act provides a new, stand-alone sales and use tax exemption for machinery and equipment used primarily in technological research and development operations by the state's four-year institutions of higher education." [2011 c 23 § 1.]

Intent—2011 c 23: "The legislature declares that the only reason why the phrase "the production of electricity by a light and power business as defined in RCW 82.16.010" was deleted from the definition of "manufacturing operation" in RCW 82.08.02565(2)(f) in section 2 of this act is because that language is superfluous." [2011 c 23 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—1999 c 211: "The legislature finds that the application of the manufacturer's machinery and equipment sales and use tax exemption has, in some instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire." [1999 c 211 § 1.]

Intent—1999 c 211 §§ 2 and 3: See note following RCW 82.04.120.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Intent—1996 c 173: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more." [1996 c 173 § 1.]

Findings—1995 1st sp.s. c 3: "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to continuous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

Additional notes found at www.leg.wa.gov

82.08.025651 Exemptions—Sales of machinery and equipment to public research institutions. (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a public research institution of machinery and equipment used primarily in a research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) A public research institution claiming the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

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

(a) "Machinery and equipment" means those fixtures, pieces of equipment, digital goods, and support facilities that are an integral and necessary part of a research and development operation, and tangible personal property that becomes an ingredient or component of such fixtures, equipment, and support facilities, including repair parts and replacement parts. "Machinery and equipment" may include, but is not limited to: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, or invention; vats, tanks, and fermenters; operating structures; and all equipment used to control, monitor, or operate the machinery and equipment.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings; and

(iv) Those building fixtures that are not an integral and necessary part of a research and development operation and that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) "Primarily" means greater than fifty percent as measured by time. If machinery and equipment is used simultaneously in a research and development operation and also for other purposes, the use for other purposes must be disregarded during the period of simultaneous use for purposes of determining whether the machinery and equipment is used primarily in a research and development operation.

(d) "Public research institution" means any college or university included within the definitions of state universities, regional universities, or state college in RCW 28B.10.016.

(e) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010. [2020 c 139 § 12; 2011 c 23 § 4.]

Findings—2011 c 23: See note following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.08.02566 Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption. (1) The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or to sales of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply to sales to any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.12.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 208; 1997 c 302 § 1; 1996 c 247 § 4.]

Findings—Intent—1996 c 247: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to include machinery and equipment used for research and development with potential manufacturing applications." [1996 c 247 § 1.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.08.025661 Exemptions—Aircraft maintenance repair—Building construction. (Expires January 1, 2027.)

(1) Subject to the requirements of this section, the tax levied by RCW 82.08.020 does not apply to:

(a) Charges for labor and services rendered in respect to the constructing of new buildings, made to: (i) An eligible maintenance repair operator engaged in the maintenance of airplanes; or (ii) a port district, political subdivision, or municipal corporation, if the new building is to be leased to an eligible maintenance repair operator engaged in the maintenance of airplanes;

(b) Sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing; or

(c) Charges made for labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(2)(a) The exemption in this section is in the form of a remittance. A buyer claiming an exemption from the tax in the form of a remittance under this section must pay all applicable state and local sales taxes imposed under RCW 82.08.020 and chapter 82.14 RCW on all purchases qualifying for the exemption.

(b) The department must determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer may on a quarterly basis submit an application, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the location and size of new structures; and construction invoices and documents.

(c) The department must on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(d) A person may request a remittance for state sales and use taxes after the aircraft maintenance and repair station has been operationally complete for four years, but not sooner than December 1, 2021. However, the department may not remit the state portion of sales and use taxes if the person did not report at least one hundred average employment positions to the employment security department for October 1, 2020, through September 30, 2021, with an average annualized wage of eighty thousand dollars. A person must provide the department with the unemployment insurance number provided to the employment security department for the establishment.

(e) A person may request a remittance for local sales and use taxes on or after July 1, 2016.

(3) In order to qualify under this section before starting construction, the port district, political subdivision, or municipal corporation must have entered into an agreement with an eligible maintenance repair operator to build such a facility. A person claiming the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must file a complete annual report with the department under RCW 82.32.534.

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

(a) "Eligible maintenance repair operator" means a person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and located in an international airport owned by a county with a population greater than one million five hundred thousand.

(b) "Operationally complete" means constructed to the point of being functionally capable of hosting the repair and maintenance of airplanes.

(5) This section expires January 1, 2027. [2022 c 56 § 5; 2016 c 191 § 2.]

Tax preference performance statement—2016 c 191 §§ 2 and 3: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 2 and 3 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preference in sections 2 and 3 of this act as one intended to create jobs, as indicated in RCW 82.32.808(2)(c).

(3) At the end of the third year after an aircraft maintenance and repair station is operationally complete, the joint legislative audit and review committee must evaluate, at a minimum:

(a) Whether a taxpayer claiming this tax preference is on target to reach the employment levels and average annualized wages under section 2 of this act by the end of the aircraft maintenance and repair station's fourth year of operation; and

(b) Whether the average annualized wages for employees are on a par with industry standards for the sector.

(4) In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to the annual report and annual survey for tax preferences that federal aviation administration part 145 repair stations are required to file with the department [of revenue] and to employment data available from the employment security department." [2016 c 191 § 1.]

Effective date—2016 c 191: "This act takes effect July 1, 2016." [2016 c 191 § 6.]

82.08.02568 Exemptions—Sales of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. The tax levied by RCW 82.08.020 shall not apply to sales of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 1.]

Additional notes found at www.leg.wa.gov

82.08.02569 Exemptions—Sales of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory. The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property to a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0257 Exemptions—Auction sales of personal property used in farming. The tax levied by RCW 82.08.020 does not apply to auction sales made by or through auctioneers of personal property (including household goods)

that has been used in conducting a farm activity, when the seller thereof is a farmer as defined in RCW 82.04.213 and the sale is held or conducted upon a farm and not otherwise. The exemption in this section does not apply to personal property used by the seller in the production of cannabis, useable cannabis, or cannabis-infused products. [2022 c 16 § 147; 2014 c 140 § 15; 2009 c 535 § 511; 1980 c 37 § 25. Formerly RCW 82.08.030(7).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02573 Exemptions—Sales by a nonprofit organization for fund-raising activities. The tax levied by RCW 82.08.020 does not apply to a sale made by a nonprofit organization or a library, if the gross income from the sale is exempt under RCW 82.04.3651. [2010 c 106 § 214; 1998 c 336 § 3.]

Findings—1998 c 336: See note following RCW 82.04.3651.

Additional notes found at www.leg.wa.gov

82.08.0258 Exemptions—Sales to federal corporations providing aid and relief. The tax levied by RCW 82.08.020 shall not apply to sales to corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1980 c 37 § 26. Formerly RCW 82.08.030(8).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0259 Exemptions—Sales of livestock. The tax levied by RCW 82.08.020 shall not apply to sales of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm. [2001 c 118 § 4; 1980 c 37 § 27. Formerly RCW 82.08.030(9).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.026 Exemptions—Sales of natural or manufactured gas. The tax levied by RCW 82.08.020 shall not apply to sales of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 8; 1989 c 384 § 4.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.08.0261 Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce. (1) Except as otherwise provided in this section, the tax levied by RCW 82.08.020 does not apply to sales of tangible personal property (other than the type referred to in RCW 82.08.0262) for use by the purchaser in connection with the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce. However, any actual use of such property

in this state is, at the time of such actual use, subject to the tax imposed by chapter 82.12 RCW.

(2)(a) With respect to the sale of liquefied natural gas to a business operating as a private or common carrier by water in interstate or foreign commerce, the buyer is entitled to a partial exemption from the tax levied by RCW 82.08.020 and the associated local sales taxes. The exemption under this subsection (2) is for the state and local retail sales taxes on ninety percent of the amount of the liquefied natural gas transported and consumed outside this state by the buyer.

(b) Sellers are relieved of the obligation to collect the state and local retail sales taxes on sales eligible for the partial exemption provided in this subsection (2) to buyers who are registered with the department if the seller:

(i) Obtains a completed exemption certificate from the buyer, which must include the buyer's tax registration number with the department; or

(ii) Captures the relevant data elements as allowed under the streamlined sales and use tax agreement, including the buyer's tax registration number with the department.

(c) Buyers entitled to a partial exemption under this subsection (2) must either:

(i) Pay the full amount of state and local retail sales tax to the seller on the sale, including the amount of tax qualifying for exemption under this subsection (2), and then request a refund of the exempted portion of the tax from the department within the time allowed for making refunds under RCW 82.32.060; or

(ii) If the seller did not collect the retail sales tax from the buyer, remit to the department the state and local retail sales taxes due on all liquefied natural gas consumed in this state and on ten percent of the liquefied natural gas that is transported and consumed outside of this state.

(3) This section does not apply to the sale of liquefied natural gas on or after July 1, 2028, for use as fuel in any marine vessel. [2014 c 216 § 405; 1980 c 37 § 28. Formerly RCW 82.08.030(10).]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0262 Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state or airplanes sold to United States government—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc. (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of airplanes (i) to the United States government; (ii) for use in conducting interstate or foreign commerce by transporting property or persons for hire or by performing services under a contract with the United States government; or (iii) for use in providing intrastate air transportation by a commuter air carrier;

(b) Sales of locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting property or persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state;

(c) Sales of tangible personal property that becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the interstate commerce commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; and

(d) Sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

(2) The term "commuter air carrier" means an air carrier holding authority under Title 14, Part 298 of the Code of Federal Regulations that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed. [2015 c 86 § 305; 2009 c 503 § 1; 1998 c 311 § 5; 1994 c 43 § 1; 1980 c 37 § 29. Formerly RCW 82.08.030(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0263 Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: PROVIDED, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency. [1998 c 311 § 6; 1995 c 63 § 1; 1980 c 37 § 30. Formerly RCW 82.08.030(12).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0264 Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state. (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even when delivery is made within this state, but only if:

(a) The motor vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a vehicle trip permit issued by the department of licensing pursuant to RCW 46.16A.320, or any agency of another state that has authority to issue similar permits; or

(b) The motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the buyer's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

(2) For the purposes of this section, the seller of a motor vehicle, trailer, or camper is not required to collect and shall not be found liable for the tax levied by RCW 82.08.020 on the sale if the tax is not collected and the seller retains the following documents, which must be made available upon request of the department:

(a) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(b) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

(i) A current residential rental agreement;

(ii) A property tax statement from the current or previous year;

(iii) A utility bill, dated within the previous two months;

(iv) A state income tax return from the previous year;

(v) A voter registration card;

(vi) A current credit report; or

(vii) Any other document determined by the department to be acceptable;

(c) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section; and

(d) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required under subsection (1) of this section.

(3) If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (2) of this section are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided under this section. This subsection does not prevent the department from contacting a buyer as a result of information obtained from a source other than the seller's records.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a seller, in order to purchase a motor vehicle, trailer, or camper without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(5)(a) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under subsection (2) of this section, and any seller who fails to retain the documents required under subsection (2) of this section for the period prescribed by RCW 82.32.070, is personally liable for the amount of tax due.

(b) Any seller that makes sales without collecting the retail sales tax under this section and who has actual knowledge that the buyer's documentation required by subsection (2) of this section is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(6) For purposes of this section, "buyer" does not include cosigners or financial guarantors, unless those parties are listed as a registered owner on the vehicle title. [2010 c 161

§ 1165; 2007 c 135 § 1; 1980 c 37 § 31. Formerly RCW 82.08.030(13).]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0266 Exemptions—Sales of watercraft to non-residents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the federal boating act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as required by the department of revenue and signed by the purchaser or his or her agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, a copy of which shall be retained by the dealer. [2013 c 23 § 316; 1999 c 358 § 5; 1980 c 37 § 33. Formerly RCW 82.08.030(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.02665 Exemptions—Sales of watercraft, vessels to residents of foreign countries. The tax levied by RCW 82.08.020 does not apply to sales of vessels to residents of foreign countries for use outside of this state, even though delivery is made within this state, but only if (1) the vessel will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification as required by the department of revenue and signed by the purchaser or the purchaser's agent establishes the fact that the purchaser is a resident of a foreign country and that the vessel is for use outside of this state. A copy of the exemption certificate is to be retained by the dealer.

As used in this section, "vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. [1999 c 358 § 6; 1993 c 119 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0267 Exemptions—Sales of poultry for producing poultry and poultry products for sale. The tax levied by RCW 82.08.020 shall not apply to sales of poultry for use in the production for sale of poultry or poultry products. [1980 c 37 § 34. Formerly RCW 82.08.030(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0268 Exemptions—Sales of machinery and implements, and related parts and labor, for farming to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of:

(1) Machinery and implements for use in conducting a farming activity;

(2) Parts for machinery and implements for use in conducting a farming activity; and

(3) Labor and services for the repair of machinery, implements, and parts for use in conducting a farming activity,

when such machinery, implements, and parts will be transported immediately outside the state. As proof of exemption, an affidavit or certification in such form as the department of revenue shall require shall be retained as a business record of the seller. [1998 c 167 § 1; 1980 c 37 § 35. Formerly RCW 82.08.030(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0269 Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state. The tax levied by RCW 82.08.020 shall not apply to sales for use in states, territories, and possessions of the United States which are not contiguous to any other state, but only when, as a necessary incident to the contract of sale, the seller delivers the subject matter of the sale to the purchaser or his or her designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories, and possessions. [2013 c 23 § 317; 1980 c 37 § 36. Formerly RCW 82.08.030(18).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0271 Exemptions—Sales to municipal corporations, the state, and political subdivisions of tangible personal property, labor and services on watershed protection and flood prevention contracts. The tax levied by RCW 82.08.020 shall not apply to sales to municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services rendered in respect to contracts for watershed protection and/or flood prevention. This exemption shall be limited to that portion of the selling price which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Laws 566, as amended. [1980 c 37 § 37. Formerly RCW 82.08.030(19).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0272 Exemptions—Sales of semen for artificial insemination of livestock. The tax levied by RCW 82.08.020 shall not apply to sales of semen for use in the artificial insemination of livestock. [1980 c 37 § 38. Formerly RCW 82.08.030(20).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state—Proof of nonresident status—Penalties. (1) Subject to the conditions and limitations in this section, an exemption from the tax levied by RCW 82.08.020 in the form of a remittance from the department is provided for sales to nonresidents of this state of tangible personal property, digital goods, and digital codes. The exemption only applies if:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at the purchaser's place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the seller certifies in writing to the purchaser that the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the provisions in subsections (1) and (3) through (7) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must pay the state and local sales tax to the seller at the time of purchase and then request a remittance from the department in accordance with this subsection and subsection (4) of this section. A request for remittance must include proof of the person's status as a nonresident at the time of the purchase for which a remittance is requested. The request for a remittance must also include any additional information and documentation as required by the department, which may include a description of the item purchased for which a remittance is requested, the sales price of the item, the amount of sales tax paid on the item, the date of the purchase, the name of the seller and the physical address where the sale took place, and copies of sales receipts showing the qualified purchases.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4)(a)(i) Beginning January 1, 2020, through December 31, 2020, a person may request a remittance from the department for state sales taxes paid by the person on qualified retail purchases made in Washington between July 1, 2019, and December 31, 2019.

(ii) Beginning January 1, 2021, a person may request a remittance from the department during any calendar year for state sales taxes paid by the person on qualified retail purchases made in Washington during the immediately preceding calendar year only. No application may be made with respect to purchases made before the immediately preceding calendar year.

(b) The remittance request, including proof of nonresident status and any other documentation and information required by the department, must be provided in a form and manner as prescribed by the department. Only one remittance request may be made by a person per calendar year.

(c) The total amount of a remittance request must be at least twenty-five dollars. The department must deny any request for a remittance that is less than twenty-five dollars.

(d) The department will examine the applicant's proof of nonresident status and any other documentation and information as required in the application to determine whether the applicant is entitled to a remittance under this section.

(5)(a) Any person making fraudulent statements to the department, which includes the offer of fraudulent or fraudulently procured identification or fraudulent sales receipts, in order to receive a remittance of retail sales tax is guilty of perjury under chapter 9A.72 RCW and is ineligible to receive any further remittances from the department under this section.

(b) Any person obtaining a remittance of retail sales tax from the department by providing proof of identification or sales receipts not the person's own, or counterfeit identification or sales receipts is (i) liable for repayment of the remittance, including interest as provided in chapter 82.32 RCW from the date the remittance was transmitted to the person until repaid in full, (ii) liable for a civil penalty equal to the greater of one hundred dollars or the amount of the remittance obtained in violation of this subsection (5)(b), and (iii) ineligible to receive any further remittances from the department under this section.

(c) Any person assisting another person in obtaining a remittance of retail sales tax in violation of (b) of this subsection is jointly and severally liable for amounts due under (b) of this subsection and is also ineligible to receive any further remittances from the department under this section.

(6) A person who receives a refund of sales tax from the seller for any reason with respect to a purchase made in this state is not entitled to a remittance for the tax paid on the purchase. A person who receives both a remittance under this section and a refund of sales tax from the seller with respect to the same purchase must immediately repay the remittance to the department. Interest as provided in chapter 82.32 RCW applies to amounts due under this section from the date that the department made the remittance until the amount due under this subsection is paid to the department. A person who receives a remittance with respect to a purchase for which the person had, at the time the person submitted the application for a remittance, already received a refund of sales tax from the seller is also liable for a civil penalty equal to the greater

of one hundred dollars or the amount of the remittance obtained in violation of this subsection and is ineligible to receive any further remittances from the department under this section.

(7) The exemption provided by this section is only for the state portion of the sales tax. For purposes of this section, the state portion of the sales tax is not reduced by any local sales tax that is deducted or credited against the state sales tax as provided by law.

(8) The exemption in this section does not apply to sales of cannabis, useable cannabis, or cannabis-infused products. [2022 c 16 § 148; 2019 c 423 § 101; 2014 c 140 § 17; 2011 c 7 § 1; 2010 c 106 § 215; 2009 c 535 § 512; 2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Finding—Intent—2019 c 423: "(1) The legislature finds that counties that border other states and Canada experience a significant problem of residents of Washington state who evade taxes and fees by failing to register their vehicles, aircraft, and vessels in Washington state. According to a 2007 Washington State University study, the department of revenue lost eighty million dollars over the previous five years to persons avoiding taxes and fees in this manner. It was also estimated in the study that twenty thousand vehicles were illegally registered in Oregon to residents of Clark county, Washington. The problem has undoubtedly grown worse in the decade since the study was completed resulting in hundreds of millions of dollars in lost revenue to state and local coffers as these new residents fail to pay their fair share for public services. Moreover, a public safety risk is created when inaccurate information is provided to law enforcement or insurance companies in the event of an accident or infraction.

(2) Current statutes contain monetarily significant penalties that are appropriate given the scope of the harm. It is the intent of the legislature that law enforcement and prosecutors proceed against violators to the fullest extent of the law. In order to give them more tools and ensure compliance with the law, it is the intent of the legislature to set up a deferred finding program consistent with other programs in the state that allows defendants to obtain dismissal of charges if they take certain remedial steps. It is the intent of the legislature that the punishment for those who do not comply with the deferred finding program remain in force and be fully implemented." [2019 c 423 § 201.]

Effective date—2019 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 423 § 301.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0274 Exemptions—Sales of form lumber to person engaged in constructing, repairing, etc., structures for consumers. The tax levied by RCW 82.08.020 shall not apply to sales of form lumber to any person engaged in the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: PROVIDED, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 40. Formerly RCW 82.08.030(22).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to farmworker housing—Exemption certificate—Rules. (Expires January 1, 2032.) (1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures, in which at least 50 percent of housing units in the development are used as farmworker housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is provided for all housing units in the development and is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for farmworker housing provided on a year-round basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any farmworker housing built under this section must be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due is immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time farmworker housing ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due is immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as farmworker housing until the date of payment.

(4) The exemption provided in this section does not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business. The exemption provided in this section does not apply to housing built exclusively for workers in the United States on an H-2A visa under the United States citizenship and immigration services.

(5) If during any agricultural season in the qualifying five years under subsection (3) of this section the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(6) For purposes of this section and RCW 82.12.02685, the following definitions apply unless the context clearly requires otherwise.

(a) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010, and includes any employer engaged in aquaculture as defined in RCW 15.85.020.

(b) "Farm work" means services relating to:

(i) Cultivating the soil, raising or harvesting, or catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agricultural or aquacultural commodity;

(2022 Ed.)

(ii) Delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity; or

(iii) Working in a processing plant and directly handling agricultural or aquacultural product.

(c) "Farmworker" means a single person, or all members of a household, whether such persons are related or not, if the combined household income earned from farm work is at least \$3,000 per calendar year.

(d) "Farmworker housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing farmworkers on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110.

(i) "Farmworker housing" includes:

(A) Housing occupied by a household with at least one member who is a farmworker; and

(B) Housing occupied by a farmworker on a seasonal basis, where the housing is not used as farmworker housing for a portion of the year, such as when it is rented to the general public when not being used for farmworker housing.

(ii) "Farmworker housing" does not include:

(A) Housing regularly provided on a commercial basis to the general public;

(B) Housing provided by a housing authority unless at least eighty percent of the occupants are farmworkers whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided; and

(C) Housing provided to farmworkers providing services related to the growing, raising, or producing of cannabis.

(7) This section expires January 1, 2032. [2022 c 16 § 149; 2021 c 250 § 1; 2014 c 140 § 18; 2007 c 54 § 14; 1997 c 438 § 1; 1996 c 117 § 1.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Tax preference performance statement—2021 c 250: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 1 and 2, chapter 250, Laws of 2021. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to increase the supply of farmworker housing.

(4) If a review finds that new farmworker housing is developed utilizing these preferences, then the legislature intends to extend the expiration date of these tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2021 c 250 § 3.]

Effective date—2021 c 250: "This act takes effect October 1, 2021." [2021 c 250 § 4.]

Additional notes found at www.leg.wa.gov

82.08.0275 Exemptions—Sales of and labor and service charges for mining, sorting, crushing, etc., of sand,

[Title 82 RCW—page 115]

gravel, and rock from county or city quarry for public road purposes. The tax levied by RCW 82.08.020 shall not apply to sales of, cost of, or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel and rock when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to sales of, cost of, or charges made for such labor and services, if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 41. Formerly RCW 82.08.030(23).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0277 Exemptions—Sales of pollen. The tax levied by RCW 82.08.020 shall not apply to sales of pollen. [1980 c 37 § 43. Formerly RCW 82.08.030(25).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0278 Exemptions—Sales between political subdivisions resulting from annexation or incorporation. (Effective until January 1, 2030.) The tax levied by RCW 82.08.020 does not apply to:

(1) Sales to one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation, merger, or incorporation of any part of the territory of one political subdivision by another; and

(2) Sales to one political subdivision by another political subdivision pursuant to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the personal property. [2019 c 188 § 1; 1980 c 37 § 44. Formerly RCW 82.08.030(26).]

Tax preference performance statement exemption—2019 c 188: "The provisions of RCW 82.32.808 do not apply to this act." [2019 c 188 § 3.]

Expiration date—2019 c 188: "This act expires January 1, 2030." [2019 c 188 § 4.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0278 Exemptions—Sales between political subdivisions resulting from annexation or incorporation. (Effective January 1, 2030.) The tax levied by RCW 82.08.020 shall not apply to sales to one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 44. Formerly RCW 82.08.030(26).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0279 Exemptions—Renting or leasing of motor vehicles and trailers to a nonresident for use in the transportation of persons or property across state boundaries. The tax levied by RCW 82.08.020 shall not apply to the renting or leasing of motor vehicles and trailers to a nonresident of this state for use exclusively in transporting persons or

property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and for purposes of this exemption the term "nonresident" shall apply to a renter or lessee who has one or more places of business in this state as well as in one or more other states but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained and operated from the renter's or lessee's place of business in another state. [1980 c 37 § 45. Formerly RCW 82.08.030(27).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02795 Exemptions—Sales to free hospitals. (1) The tax levied by RCW 82.08.020 shall not apply to sales to free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 1.]

Additional notes found at www.leg.wa.gov

82.08.02805 Exemptions—Sales to qualifying blood, tissue, or blood and tissue banks. (1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

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

(a) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) The definitions in RCW 82.04.324 apply to this section. [2004 c 82 § 2; 1995 2nd sp.s. c 9 § 4.]

Additional notes found at www.leg.wa.gov

82.08.02806 Exemptions—Sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing. The tax levied by RCW 82.08.020 shall not apply to sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 1.]

Additional notes found at www.leg.wa.gov

82.08.02807 Exemptions—Sales to organ procurement organization. (1) The tax levied by RCW 82.08.020 does not apply to the sales of medical supplies, chemicals, or materials to an organ procurement organization exempt under RCW 82.04.326. This exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

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

(a) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(b) "Materials" means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants, used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(c) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by an organ procurement organization exempt under RCW 82.04.326 for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; or

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. [2020 c 139 § 13; 2014 c 97 § 306; 2002 c 113 § 2.]

Additional notes found at www.leg.wa.gov

82.08.0281 Exemptions—Sales of prescription drugs. (1) The tax levied by RCW 82.08.020 does not apply to sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(2) The tax levied by RCW 82.08.020 does not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The tax levied by RCW 82.08.020 does not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(2022 Ed.)

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

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, alcoholic beverages, cannabis, useable cannabis, or cannabis-infused products:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(c) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(i) A "drug facts" panel; or

(ii) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. [2022 c 16 § 150; 2014 c 140 § 19; 2004 c 153 § 108; 2003 c 168 § 403; 1993 sp.s. c 25 § 308; 1980 c 37 § 46. Formerly RCW 82.08.030(28).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Finding—1993 sp.s. c 25: "The legislature finds that prevention is a significant element in the reduction of health care costs. The legislature further finds that taxing some physician prescriptions and not others is unfair to patients. It is, therefore, the intent of the legislature to remove the taxes from prescriptions issued for family planning purposes." [1993 sp.s. c 25 § 307.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0282 Exemptions—Sales of returnable containers for beverages and foods. The tax levied by RCW 82.08.020 shall not apply to sales of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 47. Formerly RCW 82.08.030(29).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0283 Exemptions—Certain medical items. (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed

under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(3) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) The definitions in this subsection apply throughout this section.

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct a physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment that:

- (i) Can withstand repeated use;
- (ii) Is primarily and customarily used to serve a medical purpose;
- (iii) Generally is not useful to a person in the absence of illness or injury; and
- (iv) Is not worn in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment that:

- (i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;
- (ii) Is not generally used by persons with normal mobility; and
- (iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(d) The terms "durable medical equipment" and "mobility enhancing equipment" are mutually exclusive. [2007 c 6 § 1101; 2004 c 153 § 101; 2003 c 168 § 409; 2001 c 75 § 1; 1998 c 168 § 2; 1997 c 224 § 1; 1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—Intent—1991 c 250: "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0285 Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges. The tax levied by RCW 82.08.020 shall not apply to sales of ferry vessels to the state of Washington or to a local governmental unit in the state of Washington for use in transporting pedestrians, vehicles, and goods within or outside the territorial waters of the state; also sales of tangible personal property which becomes a component part of such ferry vessels; also sales of or charges made for labor and services rendered in respect to constructing or improving such ferry vessels. [1980 c 37 § 50. Formerly RCW 82.08.030(32).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0287 Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles. (1) The tax imposed by this chapter does not apply to sales of passenger motor vehicles which are to be used primarily for ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase.

(2)(a) To qualify for the tax exemption, those passenger motor vehicles with three or more passengers, including the driver, used for ride sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70A.15 RCW, in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan, or in other counties where the vehicle is registered with or operated by a public transportation agency. Additionally at least one of the following conditions must apply: (i) The vehicle must be operated by a public transportation agency for the benefit of the general public; or (ii) the vehicle must be used by a major employer, as defined in RCW 70A.15.4010 as an element of its commute trip reduction program for their employees; or (iii) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

(b) Notwithstanding the ridership requirements under (a) of this subsection (2), unless the vehicle is operated by a public transportation agency, the vehicle must be used for ride sharing in the transport of at least five passengers. [2021 c 135 § 6; 2020 c 20 § 1472; 2014 c 97 § 503; 2001 c 320 § 4; 1996 c 244 § 4; 1995 c 274 § 2; 1993 c 488 § 2; 1980 c 166 § 1.]

Effective date—2021 c 135: See note following RCW 46.18.285.

Finding—1993 c 488: "The legislature finds that ride sharing and vanpools are the fastest growing transportation choice because of their flexibility and cost-effectiveness. Ride sharing and vanpools represent an effective means for local jurisdictions, transit agencies, and the private sector to assist in addressing the requirements of the Commute Trip Reduction Act, the Growth Management Act, the Americans with Disabilities Act, and the Clean Air Act." [1993 c 488 § 1.]

*Reviser's note: RCW 46.16.023 was repealed by 2010 c 161 § 438, effective July 1, 2011.

Ride-sharing vehicles—Special plates: RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.08.02875 Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center. The tax levied by RCW 82.08.020 does not apply to vehicle parking charges that are subject to tax under RCW 36.38.040. [1997 c 220 § 203 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

82.08.0288 Exemptions—Lease of certain irrigation equipment. The tax levied by RCW 82.08.020 does not apply to the lease of irrigation equipment if:

- (1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;
- (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;
- (3) The irrigation equipment is attached to the land in whole or in part;
- (4) The irrigation equipment is not used in the production of cannabis; and
- (5) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [2022 c 16 § 151; 2014 c 140 § 20; 1983 1st ex.s. c 55 § 5.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Additional notes found at www.leg.wa.gov

82.08.0289 Exemptions—Telephone, telecommunications, and ancillary services. Subject to the enactment into law of the 2013 amendments to RCW 82.14B.040 in section 103, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.042 in section 104, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.030 in section 105, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.200 in section 106, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Until August 1, 2013, the tax levied by RCW 82.08.020 does not apply to sales of:

- (a) Local service;
- (b) Coin-operated telephone service; and
- (c) Mobile telecommunications services, including any toll service, provided to a customer whose place of primary use is outside this state.

(2) The definitions in RCW 82.04.065, as well as the definitions in this subsection, apply to this section.

(a) "Local service" means: (i) Ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065, other than toll service, provided to an individual subscribing to a residential class of telephone service offered under a tariff required to be filed with the Washington

(2022 Ed.)

utilities and transportation commission under Title 80 RCW; and (ii) fixed interconnected voice over internet protocol service, other than the nonlocal service allocation attributable to that service, sold by a provider to an individual classified as residential by that provider.

(b) "Toll service" means long distance service regardless of the method of billing for such service, but does not include customer access line charges for access to a toll calling network.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(d) "Fixed interconnected voice over internet protocol service" means a service that meets the definition of interconnected voice over internet protocol service in 47 C.F.R. Sec. 9.3 on January 1, 2009, and that offers an active telephone number or successor dialing protocol assigned by a provider; provides inbound and outbound calling capability; and can be used for transmission of telephone calls only from a fixed location.

(e) "Nonlocal service allocation" means the portion of the provider's fixed interconnected voice over internet protocol service attributable to the provider's nationwide nonlocal service activity as determined using a method sanctioned by the federal communications commission in FCC 06-94 and reported to the federal communications commission for the same calendar quarter. If the provider does not report any nonlocal service activity to the federal communications commission, the full revenue derived from the fixed interconnected voice over internet protocol service is deemed part of the nonlocal service allocation.

(f) "Provider" means a provider of a fixed interconnected voice over internet protocol service that is, or is affiliated with a person that is, subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a). A provider is affiliated with a person if the provider and the person have one hundred percent common ownership. [2013 2nd sp.s. c 8 § 107. Prior: 2007 c 6 § 1006; 2007 c 6 § 1005; 2002 c 67 § 6; 1983 2nd ex.s. c 3 § 30.]

Retroactive application—2013 2nd sp.s. c 8 § 107: "Section 107 of this act applies prospectively as well as retroactively to tax periods open for assessment or refund of taxes under RCW 82.32.050 or 82.32.060, including any refund claims or disputed assessments pending before the department of revenue, board of tax appeals, or any court of law." [2013 2nd sp.s. c 8 § 111.]

VOIP sales tax refunds not authorized before August 1, 2013—2013 2nd sp.s. c 8 § 107: "In accordance with Article VIII, section 5 of the state Constitution, section 107 of this act does not authorize refunds of sales tax validly collected before August 1, 2013, on fixed interconnected voice over internet protocol service as defined in section 107 of this act." [2013 2nd sp.s. c 8 § 112.]

Application—Local service ending after August 1, 2013—2013 2nd sp.s. c 8: "For services affected by the expiration of the exemption for local service under RCW 82.08.0289(1) that cover a billing period starting before and ending after August 1, 2013, RCW 82.08.064(3)(a) is deemed to apply, and retail sales tax will apply to the first billing period starting on or after August 1, 2013." [2013 2nd sp.s. c 8 § 110.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Additional notes found at www.leg.wa.gov

82.08.0291 Exemptions—Sales of amusement and recreation services or personal services by nonprofit youth organization—Local government physical fitness classes. The tax imposed by RCW 82.08.020 does not apply to sales defined as a sale at retail and retail sale under RCW 82.04.050 (3)(g) or (15), by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization; and the tax does not apply to physical fitness classes provided by a local government. [2015 c 169 § 4; 2000 c 103 § 8; 1994 c 85 § 1; 1981 c 74 § 2.]

Effective date—2015 c 169: See note following RCW 82.04.050.

Additional notes found at www.leg.wa.gov

82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis. The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. [1998 c 183 § 1; 1997 c 386 § 56; 1995 c 346 § 1.]

Additional notes found at www.leg.wa.gov

82.08.02917 Youth in crisis—Definition—Limited purpose. For the purposes of RCW 82.08.02915 and 82.12.02915, "youth in crisis" means any youth under eighteen years of age who is either: Homeless; a runaway from the home of a parent, guardian, or legal custodian; abused; neglected; abandoned by a parent, guardian, or legal custodian; or suffering from a substance abuse or mental disorder. [1995 c 346 § 3.]

Additional notes found at www.leg.wa.gov

82.08.0293 Exemptions—Sales of food and food ingredients. (1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

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

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

(c) Cannabis, useable cannabis, or cannabis-infused products.

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

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

fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

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

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

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

retail sales of all food and food ingredients, including prepared food, soft drinks, and dietary supplements.

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

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

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

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

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

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

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

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

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

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is

billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

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

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

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

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

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

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [2022 c 16 § 152; 2021 c 176 § 5249; 2019 c 8 § 401; 2017 3rd sp.s. c 28 § 101; 2014 c 140 § 22; 2011 c 2 § 301 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 902; (2010 1st sp.s. c 23 § 901 expired July 1, 2010); 2010 c 106 § 216; 2009 c 483 § 2; 2004 c 153 § 201; 2003 c 168 § 301; 1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2021 c 176: See note following RCW 24.03A.005.

Effective date—2019 c 8 §§ 105, 301, 302, 401, and 704: See note following RCW 82.08.010.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Findings—2011 c 2 (Initiative Measure No. 1107): "The people of the state of Washington in enacting this initiative measure find:

(1) The 2010 legislature adopted legislation that imposed new or higher taxes on many common food and beverage products, increasing the tax burden on Washington consumers and businesses by hundreds of millions of dollars;

(2) Taxes on food and beverages hurt all Washington consumers, and especially hurt lower and middle income taxpayers who can least afford it;

(3) The legislature's tax increases on food and beverages come at a time when Washington residents and businesses already face an economic crisis;

(4) The process the legislature used to increase taxes on food and beverages did not provide adequate public input on or scrutiny of the proposed tax increases;

(5) Washington residents already pay among the highest sales taxes in the country;

(6) The legislature's tax increases on food and beverages hurt Washington food and beverage producers and retail businesses by making their products more costly and less competitive;

(7) The legislature's tax increases on food and beverages will hurt Washington's economy and cause the loss of many local jobs; and

(8) The legislature's tax increases on food and beverages arbitrarily and unfairly impose higher taxes on some food and beverage products but not on others that are similar or essentially the same.

For these reasons, the people repeal the food and beverage taxes imposed by the 2010 legislature." [2011 c 2 § 101 (Initiative Measure No. 1107, approved November 2, 2010).]

Findings—Intent—2010 1st sp. s. c 23: See notes following RCW 82.04.220.

Finding—Intent—2009 c 483: "The legislature finds that low-income senior citizens are one of the most vulnerable segments of our population who often find it difficult to find safe and clean housing that is also affordable. The federal government has identified this population as being at risk. The federal government provides income tax credits and favorable financing to encourage developers and operators to provide safe and clean housing for our low-income senior citizens. There are only four such facilities in the state, and it is doubtful that any new ones will be built in the future. These four facilities offer "service packages" to their residents, which may include meals, housekeeping, recreation, laundry, and transportation. Washington's sales and use tax law provides generally that when multiple goods and services are offered for one nonitemized price, the entire transaction is subject to sales or use tax if any of the component goods or services are subject to sales tax. Consequently, in order to provide tax relief to these vulnerable tenants, the legislature intends to establish sales and use tax exemptions for the sale of service packages and to meals sold outside of a service package when provided by the lessor or operator of these senior housing facilities to tenants who are at least sixty-two years old." [2009 c 483 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0294 Exemptions—Sales of feed for cultivating or raising fish for sale. The tax levied by RCW 82.08.020 shall not apply to sales of feed to persons for use in the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 3.]

82.08.0296 Exemptions—Sales of feed consumed by livestock at a public livestock market. The tax levied by RCW 82.08.020 shall not apply to sales of feed consumed by livestock at a public livestock market. [1986 c 265 § 1.]

82.08.0297 Exemptions—Sales of food purchased under the supplemental nutrition assistance program. (1) The tax levied by RCW 82.08.020 does not apply to sales of eligible foods that are purchased with benefits under the supplemental nutrition assistance program or successor program, notwithstanding anything to the contrary in RCW 82.08.0293.

(2) When a purchase of eligible foods is made with a combination of benefits under the supplemental nutrition assistance program or successor program and cash, check, or similar payment, the cash, check, or similar payment must be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

(3) As used in this section:

(a) "Eligible foods" means foods that are eligible for purchase with benefits under the supplemental nutrition assistance program or successor program.

(b) "Supplemental nutrition assistance program" refers to a food assistance program that is administered, at the federal level, by the United States department of agriculture, and was formerly known as the food stamp program. [2011 c 174 § 103; 1998 c 79 § 18; 1987 c 28 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0298 Exemptions—Sales of diesel fuel for use in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state. The tax levied by RCW 82.08.020 shall not apply to sales of diesel fuel for use in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 1.]

82.08.0299 Exemptions—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 82.08.020 shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 1.]

Additional notes found at www.leg.wa.gov

82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation. The tax levied by RCW 82.08.020 shall not apply to sales to artistic or cultural organizations of objects which are acquired for the purpose of exhibition or presentation to the general public if the objects are:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 4.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.08.0311 Exemptions—Sales of materials and supplies used in packing horticultural products. The tax levied by RCW 82.08.020 shall not apply to sales of materials and supplies directly used in the packing of fresh perishable horticultural products by any person entitled to a deduction under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 1.]

82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate. (1) As used in this section:

(a) "Production equipment" means the following when used in motion picture or video production or postproduction: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes, dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans, trucks, and other vehicles specifically equipped

for motion picture or video production or used solely for production activities, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, telepromoters [teleprompters], sound recording equipment, and editorial equipment.

(b) "Production services" means motion picture and video processing, printing, editing, duplicating, animation, graphics, special effects, negative cutting, conversions to other formats or media, stock footage, sound mixing, rerecording, sound sweetening, sound looping, sound effects, and automatic dialog replacement.

(c) "Motion picture or video production business" means a person engaged in the production of motion pictures and videotapes for exhibition, sale, or for broadcast by a person other than the person producing the motion picture or videotape.

(2) The tax levied by RCW 82.08.020 does not apply to the rental of production equipment, or the sale of production services, to a motion picture or video production business.

(3) The exemption provided for in this section shall not apply to rental of production equipment, or the sale of production services, to a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

(4) In order to claim an exemption under this section, the purchaser must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files. [1997 c 61 § 1; 1995 2nd sp.s. c 5 § 1.]

Additional notes found at www.leg.wa.gov

82.08.0316 Exemptions—Sales of cigarettes by Indian retailers. The tax levied by RCW 82.08.020 does not apply to sales of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465 or 43.06.466. [2008 c 228 § 3; 2005 c 11 § 3; 2001 c 235 § 4.]

Findings—Intent—Explanatory statement—Effective date—2005 c 11: See notes following RCW 43.06.465.

Intent—Finding—2001 c 235: See RCW 43.06.450.

Additional notes found at www.leg.wa.gov

82.08.0317 Exemptions—Sales of motor vehicles to tribes or tribal members. (1)(a) State sales tax is not imposed on the sale of a motor vehicle: (i) If delivered to a tribe or tribal member in their Indian country, or (ii) if the sale is made to a tribe or tribal member in their Indian country. A tribal member is not required to reside in Indian country for the exemption under this section to apply. However, the tribal member must have tax exempt status as a member of the tribe upon whose Indian country delivery is made.

(b) In order to substantiate the tax exempt status of a tribal member, the seller must require presentation of one of the following:

- (i) The buyer's tribal membership or citizenship card;
- (ii) The buyer's certificate of tribal enrollment; or
- (iii) A letter signed by a tribal official confirming the buyer's tribal membership status.

(c)(i) To establish delivery for purposes of this section, the motor vehicle must be delivered to the tribe or tribal member in their Indian country. The seller must document

the delivery by completing a declaration, which must be signed by the seller and the buyer. The declaration must be limited to attestation regarding the location of delivery and the enrollment status of the tribal member. The department may develop a form for the declaration.

(ii) No other proof of delivery may be accepted in place of or required in addition to the requirements in (c)(i) of this subsection.

(2) If the sale is made to the tribe or tribal member in their Indian country, the requirements in subsection (1)(c) of this section do not apply.

(3) The seller must retain copies of the documentation required under subsection (1) of this section for the period required in RCW 82.32.070.

(4) Nothing in this section may be construed to affect, amend, or modify federal law or Washington state tax law as applied to a tribal member or tribe.

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

(a) "Indian country" has the same meaning as provided in 18 U.S.C. Sec. 1151.

(b) "Tribe" means a federally recognized tribe.

(c) "Tribal member" means an enrolled member of a federally recognized tribe. [2016 c 232 § 1.]

82.08.0318 Exemptions—Sales of vapor products by Indian retailers. (1) The tax levied by RCW 82.08.020 does not apply to sales of vapor products by an Indian retailer during the effective period of a vapor product tax contract subject to RCW 43.06.510 or a vapor product tax agreement under RCW 43.06.515.

(2) The definitions in RCW 43.06.505 apply to this section. [2019 c 445 § 305.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 445 § 405.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

82.08.032 Exemption—Sales, rental, or lease of used park model trailers. The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used park model trailers, as defined in RCW 82.45.032;

(2) The renting or leasing of used park model trailers, as defined in RCW 82.45.032, when the rental agreement or lease exceeds thirty days in duration. [2001 c 282 § 3.]

Intent—2001 c 282: "It is the intent of the legislature to promote fairness in the application of tax. Therefore, for the purposes of excise tax, park model trailers will be taxed in the same manner as mobile homes." [2001 c 282 § 1.]

Additional notes found at www.leg.wa.gov

82.08.033 Exemptions—Sales of used mobile homes or rental or lease of mobile homes. The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used mobile homes as defined in RCW 82.45.032.

(2) The renting or leasing of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of such mobile home is not conducted jointly

with the provision of short-term lodging for transients. [1986 c 211 § 2; 1979 ex.s. c 266 § 3.]

82.08.034 Exemptions—Sales of used floating homes or rental or lease of used floating homes. The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used floating homes, as defined in RCW 82.45.032;

(2) The renting or leasing of used floating homes, as defined in RCW 82.45.032, when the rental agreement or lease exceeds thirty days in duration. [1984 c 192 § 3.]

82.08.035 Exemption for pollution control facilities. See chapter 82.34 RCW.

82.08.036 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined. The tax levied by RCW 82.08.020 shall not apply to consideration: (1) Received as core deposits or credits in a retail or wholesale sale; or (2) received or collected upon the sale of a new replacement vehicle tire as a fee imposed under RCW 70A.205.405. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [2020 c 20 § 1475; 1989 c 431 § 45.]

82.08.037 Credits and refunds for bad debts. (1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt;

(c) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and

(d) Repossessed property.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department must allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original

seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller. [2010 1st sp.s. c 23 § 1502; 2007 c 6 § 102; 2004 c 153 § 302; 2003 c 168 § 212; 1982 1st ex.s. c 35 § 35.]

Intent—2010 1st sp.s. c 23 §§ 1502 and 1503: "The legislature intends with sections 1502 and 1503 of this act to supersede the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. Department of Revenue*, 123 Wn.2d 284 (1994)." [2010 1st sp.s. c 23 § 1501.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Bad debts—Intent—2004 c 153 §§ 302-305: "For the purposes of sections 302 through 305 of this act, the legislature does not intend by any provision of this act relating to bad debts, and did not intend by any provision of chapter 168, Laws of 2003 relating to bad debts, to affect the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. the Department of Revenue*, 123 Wn. 2nd 284 (1994)." [2004 c 153 § 301.]

Additional notes found at www.leg.wa.gov

82.08.040 Consignee, factor, bailee, auctioneer deemed seller. (1) Every consignee, bailee, factor, or auctioneer selling or calling for bids on personal property belonging to another, is deemed the seller of such personal property within the meaning of this chapter. All sales made by such persons are subject to the provisions of this chapter even though the sale would have been exempt from the tax imposed in this chapter had it been made directly by the owner of the property sold.

(2)(a) Except as provided in (b) of this subsection (2), every consignee, bailee, factor, or auctioneer must collect and remit the amount of tax due under this chapter with respect to sales made or called by that seller.

(b) If the owner of the property sold is engaged in the business of making sales at retail in this state, the tax imposed under this chapter may be remitted by such owner under such rules as the department may adopt. [2009 c 535 § 1105; 1975 1st ex.s. c 278 § 46; 1961 c 15 § 82.08.040. Prior: 1939 c 225 § 8; 1935 c 180 § 18; RRS § 8370-18.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.08.050 Buyer to pay, seller to collect tax—State-ment of tax—Exception—Penalties. (1) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the

due date as prescribed in this chapter is guilty of a gross misdemeanor.

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

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

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

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

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

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

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

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

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

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

(8) The amount of tax, until paid by the buyer to the seller or to the department, constitutes a debt from the buyer to the seller. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter

or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

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

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

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

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

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2017 3rd sp.s. c 28 § 211; 2010 c 112 § 8; 2010 c 106 § 217. Prior: 2009 c 563 § 206; 2009 c 289 § 2; 2007 c 6 § 1202; prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.0531.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Intent—2003 c 76: "It is the intent of the legislature to exempt from business and occupation tax and to relieve from the obligation to collect sales and use tax from certain sellers with very limited connections to Washington. These sellers are currently relieved from the obligation to collect sales

and use tax because of the provisions of the federal internet tax freedom act. The legislature intends to continue to relieve these particular sellers from that obligation in the event that the federal internet tax freedom act is not extended. The legislature further intends that any relief from tax obligations provided by this act expire at such time as the United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or a court of competent jurisdiction, in a judgment not subject to review, determines that a state can impose sales and use tax collection duties on remote sellers." [2003 c 76 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Project on exemption reporting requirements: RCW 82.32.440.

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

(ii) From March 14, 2019, a seller is relieved of the obligation to collect the taxes imposed under this chapter and remit those taxes to the department if that obligation arose solely based on the threshold in (a)(ii) of this subsection.

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

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

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

(d)(i) Subject to (b) and (c) of this subsection (1), for a marketplace facilitator, receipts and transactions counting toward the thresholds in (a)(i) and (ii) of this subsection include, in addition to the cumulative gross receipts and separate transactions of its own sales, the cumulative gross

receipts and separate transactions from sales by all marketplace sellers through the marketplace facilitator's marketplace, including marketplace sellers that are not obligated to collect the taxes under this chapter pursuant to the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

(5) This section is subject to RCW 82.32.762. [2019 c 8 § 106; 2015 3rd sp.s. c 5 § 202.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Application—2017 c 323 § 305: "Section 305 of this act applies retroactively for the period January 1, 2015, through December 31, 2015." [2017 c 323 § 306.]

Construction—2017 c 323: "Nothing in section 204, chapter 5, Laws of 2015 3rd sp. sess. may be construed as affecting the taxable status in calendar year 2015 of any person with a substantial nexus with this state under RCW 82.04.067 any time on or after January 1, 2015, and before September 1, 2015, with respect to business and occupation taxes on apportionable activities as defined in RCW 82.04.460." [2017 c 323 § 305.]

Effective dates—2015 3rd sp.s. c 5: "(1) Except as provided otherwise in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015.

(2) Part II of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect September 1, 2015." [2015 3rd sp.s. c 5 § 501.]

Finding—Intent—2015 3rd sp.s. c 5: "(1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obli-

gations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

(3) The legislature further recognizes that the requisite physical presence can be established directly through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives who act on behalf of the taxpayer in the taxing state.

(4) However, the legislature finds that because the United States supreme court has not clearly defined the circumstances under which a physical presence is sufficient to establish a substantial nexus for tax purposes, frequent conflicts have arisen throughout the country among state taxing authorities, taxpayers, tax practitioners, and courts.

(5) Therefore, the legislature intends to provide more clarity for out-of-state sellers that compensate Washington residents for referring customers to the out-of-state seller by providing clear statutory guidelines for determining when these out-of-state sellers are required to collect Washington's retail sales tax." [2015 3rd sp.s. c 5 § 201.]

82.08.0531 Marketplace facilitators—When deemed seller agents—Recordkeeping—Liability. (1) For purposes of this chapter and chapters 82.04 and 82.12 RCW, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(2) Beginning October 1, 2018, marketplace facilitators subject to a tax collection obligation under RCW 82.08.052 (1) or (2) must collect and remit to the department retail sales tax on all taxable retail sales made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller is subject to a tax collection obligation under RCW 82.08.052 (1) or (2). Beginning January 1, 2020, the collection obligation of a marketplace facilitator under this chapter also applies to any other taxes and fees, as defined under RCW 82.02.260, that are imposed on a retail sale made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller has a tax collection obligation under RCW 82.08.052 (1) or (2).

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

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

(b) If a marketplace seller does not receive the gross sales information for all Washington sales through a marketplace facilitator, as required under (a) of this subsection (4),

the marketplace seller may determine its business and occupation tax liability under chapter 82.04 RCW based on a reasonable method of estimating Washington sales as may be required or approved by the department.

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

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

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

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

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

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

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

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

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

(iii) The provisions of this subsection (6) do not apply to retail sales made after December 31, 2019.

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

(i) Accepts the order for the product;

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

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

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

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

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

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

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

(9) Nothing in this section affects the obligation of any purchaser to remit sales or use tax and any other applicable taxes and fees, as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax. [2021 c 145 § 10; 2019 c 8 § 201; 2017 3rd sp.s. c 28 § 203.]

***Reviser's note:** Chapter 82.13 RCW was repealed by 2019 c 8 § 301.

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: "(1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogs. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

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

(3) The legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule. To achieve this objective, this act adopts a new program. Under the new program, remote sellers meeting a specified threshold of gross receipts from retail sales into this state would have the option to either collect retail sales or use tax on taxable retail sales into this state or comply with certain sales and use tax notice and reporting provisions. This option is also available to other persons such as marketplace facilitators for facilitated sales on behalf of third-party remote sellers. The sales and use tax notice and reporting provisions in this act are similar to the multistate tax commission's draft model sales and use tax notice and reporting statute and Colorado's sales and use tax notice and reporting law." [2017 3rd sp.s. c 28 § 201.]

Existing rights and liability—2017 3rd sp.s. c 28: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2017 3rd sp.s. c 28 § 602.]

Severability—2017 3rd sp.s. c 28: "(1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If the department of revenue is prevented from enforcing chapter 82.08 or 82.12 RCW against persons without a physical presence in this state because any provision of this act or its application to any person or circumstance is held invalid, the department of revenue must impose such provisions to the fullest extent allowed under the Constitution and laws of the United States." [2017 3rd sp.s. c 28 § 603.]

Application—2017 3rd sp.s. c 28: "The tax collection, reporting, and payment obligations imposed by this act apply prospectively only." [2017 3rd sp.s. c 28 § 604.]

Effective dates—2018 c 92; 2017 3rd sp.s. c 28: "(1) Except as otherwise provided in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

(2) Sections 101 through 106 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2017.

(3) Section 213 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 23, 2017.

(4) Part III of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017.

(5) Sections 107 through 109 and 502 of this act take effect January 1, 2018." [2018 c 92 § 2; 2017 3rd sp.s. c 28 § 605.]

82.08.054 Computation of tax due. Sellers shall compute the tax due under this chapter and chapters 82.12 and 82.14 RCW by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. This rounding rule shall be applied to the aggregated state and local taxes. [2003 c 168 § 210.]

Additional notes found at www.leg.wa.gov

82.08.055 Advertisement of price. A seller may advertise the price as including the tax or that the seller is paying the tax, subject to the following conditions:

(1) Unless the advertised price is one in a listed series, the words "tax included" are stated immediately following the advertised price and in print size at least half as large as the advertised price;

(2) If the advertised prices are listed in a series, the words "tax included in all prices" are placed conspicuously at the head of the list and in the same print size as the advertised prices;

(3) If a price is advertised as "tax included," the price listed on any price tag shall be shown in the same manner; and

(4) All advertised prices and the words "tax included" are stated in the same medium, be it oral or visual, and if oral, in substantially the same inflection and volume. [1985 c 38 § 2.]

82.08.060 Collection of tax—Methods and schedules. The department of revenue shall have power to adopt rules and regulations prescribing methods and schedules for the

collection of the tax required to be collected by the seller from the buyer under this chapter. The methods and schedules prescribed shall be adopted so as to eliminate the collection of fractions of one cent and so as to provide that the aggregate collections of all taxes by the seller shall, insofar as practicable, equal the amount of tax imposed by this chapter. Such schedules may provide that no tax need be collected from the buyer upon sales below a stated sum and may be amended from time to time to accomplish the purposes set forth herein. [1975 1st ex.s. c 278 § 47; 1961 c 15 § 82.08.060. Prior: 1951 c 44 § 2; 1941 c 76 § 4; 1935 c 180 § 22; Rem. Supp. 1941 § 8370-22.]

Additional notes found at www.leg.wa.gov

82.08.064 Tax rate changes. (1) A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed (a) no sooner than seventy-five days after its enactment into law and (b) only on the first day of January, April, July, or October.

(2) Subsection (1) of this section does not apply to the tax rate change in section 301, chapter 361, Laws of 2003.

(3)(a) A sales and use tax rate increase under this chapter or chapter 82.12 RCW imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A sales and use tax rate decrease under this chapter or chapter 82.12 RCW imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing. [2003 c 361 § 304; 2003 c 168 § 205; 2000 c 104 § 3.]

Reviser's note: This section was amended by 2003 c 168 § 205 and by 2003 c 361 § 304, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Local service ending after August 1, 2013—2013 2nd sp.s. c 8: See note following RCW 82.08.0289.

Findings—2003 c 361: See note following RCW 82.38.030.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

Additional notes found at www.leg.wa.gov

82.08.066 Deemed location for mobile telecommunications services. For the purposes of this chapter, mobile telecommunications services are deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126. The definitions in RCW 82.04.065 apply to this section. [2002 c 67 § 5.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.08.080 Vending machine and other sales. (1) The department of revenue may authorize a seller to pay the tax levied under this chapter upon sales made under conditions of business such as to render impracticable the collection of the tax as a separate item and waive collection of the tax from the customer. Where sales are made by a vending machine that

results in delivery of the merchandise in single purchases of smaller value than the minimum sale upon which a one cent tax may be collected from the purchaser, according to the schedule provided by the department under authority of RCW 82.08.060, and where the design of the sales device is such that multiple sales of items are not possible or cannot be detected so as practically to assess a tax, in such a case the selling price for the purposes of the tax imposed under RCW 82.08.020 shall be sixty percent of the gross receipts of the vending machine through which such sales are made.

(2) No such authority shall be granted except upon application to the department and unless the department, after hearing, finds that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided. The department, by rule, may provide that the applicant, under this section, furnish a proper bond sufficient to secure the payment of the tax.

(3) "Vending machine" means a machine or other mechanical device that accepts payment and:

(a) Dispenses tangible personal property;

(b) Provides facilities for installing, repairing, cleaning, altering, imprinting, or improving tangible personal property; or

(c) Provides a service to the buyer. [2004 c 153 § 409; 1986 c 36 § 2; 1975 1st ex.s. c 278 § 48; 1963 c 244 § 2; 1961 c 15 § 82.08.080. Prior: 1937 c 227 § 8; 1935 c 180 § 24; RRS § 8370-24.]

Additional notes found at www.leg.wa.gov

82.08.090 Installment sales and leases. In the case of installment sales and leases of personal property, the department of revenue, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [1975 1st ex.s. c 278 § 49; 1961 c 15 § 82.08.090. Prior: 1959 ex.s. c 3 § 8; 1959 c 197 § 4; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

Additional notes found at www.leg.wa.gov

82.08.100 Cash receipts taxpayers—Bad debts. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his or her cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.08.037. [2013 c 23 § 318; 2004 c 153 § 303; 1982 1st ex.s. c 35 § 37; 1975 1st ex.s. c 278 § 50; 1961 c 15 § 82.08.100. Prior: 1959 ex.s. c 3 § 9; 1959 c 197 § 5; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.

Additional notes found at www.leg.wa.gov

82.08.110 Sales from vehicles. In the case of a person who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a "place of busi-

ness" within the meaning of chapter 82.32 RCW. [1961 c 15 § 82.08.110. Prior: 1935 c 180 § 26; RRS § 8370-26.]

82.08.120 Refunding or rebating of tax by seller prohibited—Penalty. Whoever, excepting as expressly authorized by this chapter, refunds, remits, or rebates to a buyer, either directly or indirectly and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor. The violation of this section by any person holding a license granted by the state or any political subdivision thereof shall be sufficient grounds for the cancellation of the license of such person upon written notification by the department of revenue to the proper officer of the department granting the license that such person has violated the provisions of this section. Before any license shall be canceled hereunder, the licensee shall be entitled to a hearing before the department granting the license under such regulations as the department may prescribe. [1985 c 38 § 4; 1975 1st ex.s. c 278 § 51; 1961 c 15 § 82.08.120. Prior: 1939 c 225 § 13; 1935 c 180 § 27; RRS § 8370-27.]

Additional notes found at www.leg.wa.gov

82.08.130 Reseller's permit—Purchase and resale—Rules. (1) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a reseller permit or other documentation authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the property according to the general nature of the buyer's business. The buyer must account for the value of any articles purchased with a reseller permit or other documentation authorized under RCW 82.04.470 that is used by the buyer and remit the deferred sales tax on the property to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells property or services at retail, without intervening use by the buyer, must collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property or service resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that include the names of the persons from whom the property or services were purchased, the date of the purchase, the type of property or services, the amount of the purchase, and the tax that was paid.

(3) The department must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a reseller permit or other documentation as authorized in RCW 82.04.470.

(4) Nothing in this section may be construed to authorize a deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060. [2010 c 112 § 9. Prior: 2009 c 563 § 207; 2009 c 535 § 1106; 1993 sp.s. c 25 § 702.]

[Title 82 RCW—page 130]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Reseller's permit: RCW 82.04.470 and 82.32.291.

Additional notes found at www.leg.wa.gov

82.08.140 Administration. The provisions of RCW 82.04.470 and all of the provisions of chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.08.140. Prior: 1935 c 180 § 30; RRS § 8370-30.]

82.08.145 Delivery charges. When computing the tax levied by RCW 82.08.020, if a shipment consists of taxable tangible personal property and nontaxable tangible personal property, and delivery charges are included in the sales price, the seller must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to collect and remit tax on the percentage allocated to exempt tangible personal property. The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 801.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection. (1) There is levied and collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price.

(2) There is levied and collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to restaurant spirits retailers.

(3) There is levied and collected an additional tax upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of one dollar and seventy-two cents per liter.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of seven cents per liter. All revenues collected during any month from this additional tax must be deposited in the state general fund by the twenty-fifth day of the following month.

(2022 Ed.)

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of three and four-tenths percent of the selling price.

(b) An additional tax is imposed upon retail sale of spirits in the original package to a restaurant spirits retailer at the rate of two and three-tenths percent of the selling price.

(c) An additional tax is imposed upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of forty-one cents per liter.

(d) All revenues collected during any month from additional taxes under this subsection must be deposited in the state general fund by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter.

(b) All revenues collected during any month from additional taxes under this subsection must be deposited by the twenty-fifth day of the following month into the general fund.

(8) The tax imposed in RCW 82.08.020 does not apply to sales of spirits in the original package.

(9) The taxes imposed in this section must be paid by the buyer to the seller, and each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller must be stated separately from the selling price, and for purposes of determining the tax due from the buyer to the seller, it is conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section. Sellers must report and return all taxes imposed in this section in accordance with rules adopted by the department.

(10)(a) Except as otherwise provided in this subsection, the terms, "spirits" and "package" have the same meaning as provided in chapter 66.04 RCW.

(b) Until July 1, 2023, for the purposes of the taxes imposed under this section, the term "spirits" does not include mini-bottles of spirits sold by a person who possesses a valid endorsement under section 2(6), chapter 48, Laws of 2021 and is licensed as a spirits, beer, and wine restaurant under RCW 66.24.400.

(c) For the purposes of this subsection, "mini-bottles of spirits" means an original factory-sealed container holding not more than 50 milliliters of spirits. [2021 c 48 § 6; 2012 c 2 § 106 (Initiative Measure No. 1183, approved November 8, 2011); 2009 c 479 § 65; 2005 c 514 § 201; 2003 c 167 § 11; 1998 c 126 § 16; 1997 c 321 § 55; 1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

Tax preference performance statement and expiration exemption—2021 c 48: "This act is exempt from the provisions of RCW 82.32.808 and 82.32.805." [2021 c 48 § 7.]

(2022 Ed.)

Findings—Intent—Expiration of temporary authorization—Customer identification—Food requirements—Effective date—2021 c 48: See notes following RCW 66.08.071.

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

82.08.155 Spirits tax—Delinquent in reporting or remitting—Penalties. (1)(a) If the department determines that a taxpayer is more than thirty days delinquent in reporting or remitting spirits taxes on a tax return or assessed by the department, including any applicable penalties and interest on such taxes, the department may request that the liquor and cannabis board suspend the taxpayer's spirits license or licenses and refuse to renew any existing spirits license held by the taxpayer or issue any new spirits license to the taxpayer. The department must provide written notice to the affected taxpayer of the department's request to the liquor and cannabis board.

(b) Before the department may make a request to the liquor and cannabis board as authorized in (a) of this subsection (1), the department must have provided the taxpayer with at least seven calendar days prior written notice. This notice must inform the taxpayer that the department intends to request that the liquor and cannabis board suspend the taxpayer's spirits license or licenses and refuse to renew any existing license of the taxpayer or issue any new spirits license to the taxpayer unless, within seven calendar days of the date of the notice, the taxpayer submits any unfiled tax returns for reporting spirits taxes and remits full payment of its outstanding spirits tax liability to the department or negotiates payment arrangements for the unpaid spirits taxes. The notice required by this subsection (1)(b) must include information listing any unfiled tax returns; the amount of unpaid spirits taxes, including any applicable penalties and interest; who to contact to inquire about payment arrangements; and that the taxpayer may seek administrative review by the department of the notice, and the deadline for seeking such review. Nothing in this subsection (1)(b) requires the department to enter into any payment arrangement proposed by a taxpayer if the department determines that the taxpayer's proposal is not satisfactory.

(c) The department may not make a request to the liquor and cannabis board under (a) of this subsection relating to any spirits taxes that are the subject of pending administrative review by the department.

(2) A taxpayer's right to administrative review of the notice required in subsection (1)(b) of this section:

(a) May be conducted under any rule adopted pursuant to RCW 82.01.060(4) or as a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494; and

(b) Does not include the right to challenge the amount of any spirits taxes assessed by the department if the taxpayer previously sought or could have sought administrative review of the assessment as provided in RCW 82.32.160.

(3) The notices required by this section may be provided electronically in accordance with RCW 82.32.135.

(4) For purposes of this section:

(a) "Spirits license" has the same meaning as in RCW 66.24.010(3)(c); and

(b) "Spirits taxes" means the taxes imposed in RCW 82.08.150. [2020 c 139 § 14; 2012 c 39 § 1.]

Construction—2012 c 39: "This act must be liberally construed to effectuate the intent of the legislature to provide for the effective collection of liquor taxes imposed in RCW 82.08.150." [2012 c 39 § 9.]

Effective date—2012 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2012]." [2012 c 39 § 11.]

82.08.160 Remittance of tax—Liquor excise tax fund created. (1) On or before the twenty-fifth day of each month, all taxes collected under RCW 82.08.150 during the preceding month must be remitted to the state department of revenue, to be deposited with the state treasurer. Except as provided in subsections (2), (3), (4), and (5) of this section, upon receipt of such moneys the state treasurer must credit sixty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) and one hundred percent of the sums collected and remitted under RCW 82.08.150 (3) and (4) to the state general fund and thirty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) to a fund which is hereby created to be known as the "liquor excise tax fund."

(2) During the 2012 fiscal year, 66.19 percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the state general fund and the remainder collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the liquor excise tax fund.

(3) During fiscal year 2013, all funds collected under RCW 82.08.150 (1), (2), (3), and (4) must be deposited into the state general fund.

(4) During the 2013-2015 fiscal biennium, seventy-seven and one-half percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the state general fund, and the remainder collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the liquor excise tax fund. The amendments in *this section are curative, clarifying, and remedial and apply retroactively to July 1, 2013.

(5) During the 2015-2017 fiscal biennium, the liquor excise tax fund may be appropriated for the local government fiscal note program in the department of commerce. It is the intent of the legislature to continue these policies in the 2017-2019 fiscal biennium. [2015 3rd sp.s. c 4 § 975; 2014 c 221 § 923; 2013 2nd sp.s. c 4 § 1003; 2012 2nd sp.s. c 5 § 3; 2011 1st sp.s. c 50 § 969; 1982 1st ex.s. c 35 § 4; 1981 1st ex.s. c 5 § 26; 1969 ex.s. c 21 § 12; 1961 c 15 § 82.08.160. Prior: 1955 c 396 § 2.]

***Reviser's note:** "This section" means section 923, chapter 221, Laws of 2014.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2014 c 221: See note following RCW 28A.710.260.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 5: See note following RCW 43.135.045.

Additional notes found at www.leg.wa.gov

82.08.170 Apportionment and distribution from liquor excise tax fund. (1) Except as provided in subsections (4) and (5) of this section, during the months of January, April, July, and October of each year, the state treasurer must make the transfers required under subsections (2) and (3) of this section from the liquor excise tax fund and then the apportionment and distribution of all remaining moneys in the liquor excise tax fund to the counties, cities, and towns in the following proportions: (a) Twenty percent of the moneys in the liquor excise tax fund must be divided among and distributed to the counties of the state in accordance with the provisions of RCW 66.08.200; and (b) eighty percent of the moneys in the liquor excise tax fund must be divided among and distributed to the cities and towns of the state in accordance with the provisions of RCW 66.08.210.

(2) Each fiscal quarter and prior to making the twenty percent distribution to counties under subsection (1)(a) of this section, the treasurer shall transfer to the liquor revolving fund created in RCW 66.08.170 sufficient moneys to fund the allotments from any legislative appropriations for county research and services as provided under chapter 43.110 RCW.

(3) During the months of January, April, July, and October of each year, the state treasurer must transfer two million five hundred thousand dollars from the liquor excise tax fund to the state general fund.

(4) During calendar year 2012, the October distribution under subsection (1) of this section and the July and October transfers under subsections (2) and (3) of this section must not be made. During calendar year 2013, the January, April, and July distributions under subsection (1) of this section and transfers under subsections (2) and (3) of this section must not be made.

(5) The liquor excise tax fund may be appropriated for the local government fiscal note program in the department of commerce. [2022 c 157 § 20; 2021 c 334 § 998; 2020 c 357 § 919; 2015 3rd sp.s. c 4 § 976; 2012 2nd sp.s. c 5 § 4; 2002 c 38 § 3; 1997 c 437 § 4; 1983 c 3 § 215; 1961 c 15 § 82.08.170. Prior: 1955 c 396 § 3.]

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW 43.79.555.

Effective date—2020 c 357: See note following RCW 43.79.545.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2012 2nd sp.s. c 5: See note following RCW 43.135.045.

Additional notes found at www.leg.wa.gov

82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the counties, cities, and towns are entitled under RCW 82.08.170 if the counties, cities, or towns are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 36.]

Additional notes found at www.leg.wa.gov

82.08.190 Bundled transactions—Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1)(a) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one nonitemized price.

(b) A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) "Distinct and identifiable products" does not include:

(a) Packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(c) Items included in the definition of sales price in RCW 82.08.010.

(3) "One nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(b) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(c) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

(i) As used in this subsection (4)(c), de minimis means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products;

(ii) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis;

(iii) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(d) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing

equipment, over-the-counter drugs, prosthetic devices, all as defined in this chapter, or medical supplies; and

(ii) Where the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction. [2007 c 6 § 1401.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.08.195 Bundled transactions—Tax imposed. (1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) The tax imposed by RCW 82.08.020 does not apply in respect to a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the sale is to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

(7) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product

or one or more digital products and other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (7).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 nor to that portion of the selling price of the code attributable to any digital goods, the sale of which is exempt under RCW 82.08.0208(3). [2020 c 139 § 15; 2010 c 111 § 601. Prior: 2009 c 535 § 801; 2009 c 483 § 3; 2007 c 6 § 1402.]

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.08.207 Investment data for investment firms. (Expires July 1, 2031.) (1) The tax imposed by RCW 82.08.020 does not apply to sales of standard financial information to qualifying international investment management companies or persons affiliated with a qualifying international investment management company. The exemption provided in this section applies regardless of whether the standard financial information is provided to the buyer in a tangible format or on a tangible storage medium or as a digital product transferred electronically.

(2) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(3) A buyer may not continue to claim the exemption under this section once the buyer has purchased standard financial information during the current calendar year with an aggregate total selling price in excess of fifteen million dollars and an exemption has been claimed under this section or RCW 82.12.207 for such standard financial information. The fifteen million dollar limitation under this subsection does not apply to any other exemption under this chapter that applies to standard financial information. Sellers are not

responsible for ensuring a buyer's compliance with the fifteen million dollar limitation under this subsection. Sellers may not be assessed for uncollected sales tax on a sale to a buyer claiming an exemption under this section after having exceeded the fifteen million dollar limitation under this subsection, except as provided in RCW 82.08.050 (4) and (5).

(4) The definitions in this subsection and RCW 82.04.293 apply throughout this section unless the context clearly requires otherwise.

(a) "Qualifying international investment management company" means a person who is eligible for the tax rate in RCW 82.04.290(1).

(b)(i) "Standard financial information" means financial data, facts, or information, or financial information services, not generated, compiled, or developed only for a single customer. Standard financial information includes, but is not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports.

(ii) For purposes of this subsection (4)(b), "financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchanges where shares are traded; and currency information.

(5) This section expires July 1, 2031. [2019 c 426 § 6; 2013 2nd sp.s. c 13 § 702.]

Findings—Intent—2019 c 426 §§ 6 and 7: "(1) The legislature finds that a strong financial cluster is critical to the economic health of Washington state. The legislature further finds that anchor institutions are key to growing a strong financial cluster, including international investment management firms. Therefore, the legislature finds that maintaining a competitive tax policy in Washington state enables the state to maintain its anchor investment management firms.

(2) The legislature finds that standard financial information has not historically been subject to sales tax. In 2007 the legislature clarified that sales tax does not apply to electronically delivered standard financial information purchased by investment management companies or financial institutions. In 2013, the legislature provided clarification by passing a sales and use tax exemption for standard financial information purchased by investment management companies.

(3) The legislature further finds that taxation of such standard financial information would be uncompetitive and inconsistent with the fundamental structure of sales tax as a tax on retail transactions. Therefore, it is the legislature's intent to conform with a previously determined policy objective of exempting certain standard financial information purchased by investment management companies from sales and use tax in order to improve industry competitiveness." [2019 c 426 § 4.]

Tax preference performance statement—2019 c 426 §§ 6 and 7: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 6 and 7, chapter 426, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b) and to reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to maintain a viable financial cluster. It is the legislature's intent to exempt sales and use taxes on sales of standard financial information to qualifying international investment management companies, in order to maintain the presence of at least one international investment management services firm headquartered in Washington state with at least two hundred billion dollars of assets under management.

(4) If a review finds that there is at least one international investment management services firm with at least two hundred billion dollars of assets under management headquartered in Washington state, then the legislature

intends to extend the expiration date of the tax preferences." [2019 c 426 § 5.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that in 2007, Engrossed Substitute House Bill No. 1981 was enacted into law, which provided a sales tax exemption for electronically delivered standard financial information if the sales were to an investment management company or financial institution. The legislature further finds that in 2009 and 2010, Engrossed Substitute House Bill No. 2075 and Substitute House Bill No. 2620 were passed, to address the taxation of electronically delivered products. The legislature further finds that this legislation imposed sales and use tax on most digital services, goods, and prewritten software, but provided a broad business exemption for digital goods. The legislature further finds that the sales tax exemption for standard financial information from the 2007 legislation was eliminated because it was believed that the broader business exemption in Engrossed Substitute House Bill No. 2075 covered these transactions. The legislature further finds that the method of transmission of data by data providers to investment management companies has evolved over time where data providers add search tools to their web-based data, which makes it subject to sales tax.

(2) The legislature's intent under part VII of this act is to conform with a previously determined policy objective of exempting certain standard financial information purchased by international investment management companies from sales and use tax on the understanding that the fiscal impact is minimal. Therefore, it is the legislature's further intent to reevaluate the exemption in three years to ensure that actual fiscal impact on state revenues reasonably conforms with the fiscal estimate in the fiscal note for this legislation." [2013 2nd sp.s. c 13 § 701.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.08.215 Exemptions—Large private airplanes. (Expires July 1, 2031.) (1)(a) The tax levied by RCW 82.08.020 does not apply to:

(i) Sales of large private airplanes to nonresidents of this state; and

(ii) Sales of or charges made for labor and services rendered in respect to repairing, cleaning, altering, or improving large private airplanes owned by nonresidents of this state.

(b) The exemption provided by this section applies only when the large private airplane is not required to be registered with the department of transportation, or its successor, under chapter 47.68 RCW. The airplane owner or lessee claiming an exemption under this section must provide the department, upon request, a copy of the written statement required under *RCW 47.68.250(5)(c)(ii) documenting the airplane's registration exemption and any additional information the department may require.

(2) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(3) Upon request, the department of transportation must provide to the department of revenue information needed by the department of revenue to verify eligibility under this section.

(4) For purposes of this section "large private airplane" means an airplane not used in interstate commerce, not owned or leased by a government entity, weighing more than forty-one thousand pounds, and assigned a category A, B, C, or D test flow management system aircraft weight class by

(2022 Ed.)

the federal aviation administration's office of aviation policy and plans.

(5) This section expires July 1, 2031. [2020 c 304 § 1; 2013 2nd sp.s. c 13 § 1103.]

***Reviser's note:** RCW 47.68.250 was amended by 2021 c 131 § 2, changing subsection (5)(c)(ii) to subsection (6)(c)(ii).

Effective date—2013 2nd sp.s. c 13: "Part XI of this act takes effect January 1, 2014." [2013 2nd sp.s. c 13 § 1905.]

Intent—Findings—Tax preference review—2020 c 304 §§ 1-5; 2013 2nd sp.s. c 13 §§ 1101-1105: See note following RCW 47.68.250.

82.08.225 Taxes on lodging, car rentals, and restaurants—Deposit into statewide tourism marketing account. (1) Beginning July 1, 2018, 0.2 percent of taxes collected pursuant to RCW 82.08.020(1) on retail sales of lodging, car rentals, and restaurants must be deposited into the statewide tourism marketing account created in RCW 43.384.040. Except as provided otherwise for fiscal year 2019 in subsection (2) of this section, future revenue collections under this section may be up to three million dollars per biennium and must be deposited into the statewide tourism marketing account created in RCW 43.384.040. The deposit under this subsection to the statewide tourism marketing account may only occur if the legislature authorizes the deposit in the biennial omnibus appropriations act.

(2) For fiscal year 2019, up to a maximum of one million five hundred thousand dollars must be deposited in the statewide tourism marketing account created in RCW 43.384.040. The deposit under this subsection to the statewide tourism marketing account may only occur if the legislature authorizes the deposit in the biennial omnibus appropriations act. [2018 c 275 § 9.]

82.08.700 Exemptions—Vessels sold to nonresidents. (1) The tax levied by RCW 82.08.020 does not apply to sales to nonresident individuals of vessels thirty feet or longer if an individual purchasing a vessel purchases and displays a valid use permit.

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

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

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

(4) A vessel dealer shall issue a use permit to a buyer if the dealer is satisfied that the buyer is a nonresident. The use permit must be in a form and manner required by the department and must include an affidavit, signed by the purchaser, declaring that the vessel will be used in a manner consistent with this section. The fee for the issuance of a use permit is five hundred dollars for vessels fifty feet in length or less and eight hundred dollars for vessels greater than fifty feet in length. Funds collected under this section and RCW 82.12.700 must be reported on the dealer's excise tax return and remitted to the department in accordance with RCW 82.32.045. The department must transmit the fees to the state treasurer to be deposited in the state general fund. The use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. A use permit is not renewable. A purchaser at the time of purchase must make an irrevocable election to take the exemption authorized in this section or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel dealer must maintain a copy of the use permit for the dealer's records. Vessel dealers must provide copies of use permits issued by the dealer under this section and RCW 82.12.700 to the department on a quarterly basis.

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

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

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

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

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

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

(c) The department may waive the electronic filing requirement in this subsection for good cause shown. [2010 c 106 § 219; 2007 c 22 § 1.]

Additional notes found at www.leg.wa.gov

82.08.701 Exemptions—Grantee's receipt of salmon recovery grants. (1) The tax levied by RCW 82.08.020 does not apply to a grantee's receipt of amounts received as grants that are deductible under RCW 82.04.4339.

(2) Nothing in this section may be construed to:

(a) Imply that the tax levied by RCW 82.08.020 applies to any circumstance not described in subsection (1) of this section; or

(b) Provide an exemption from the tax levied by RCW 82.08.020 for the grantee's use of grant proceeds to acquire products in a transaction meeting the definition of "retail sale" in RCW 82.04.050.

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

(a) "Grantee" means the recipient of a grant deductible under RCW 82.04.4339.

(b) "Product" means the same as in RCW 82.32.023. [2021 c 143 § 3.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2021 c 143: See notes following RCW 82.04.4339.

82.08.798 Exemptions—Sales of feminine hygiene products. (1) The tax levied by RCW 82.08.020 does not apply to the sales of feminine hygiene products.

(2) "Feminine hygiene products" means sanitary napkins, tampons, menstrual cups, or any other similar products sold at retail designed specifically to catch menstrual flow either internally or externally. [2020 c 350 § 3.]

Tax preference performance statement—2020 c 350 §§ 3 and 4: "(1) This section is the tax preference performance statement for the sales and use tax exemptions for feminine hygiene products provided in sections 3 and 4, chapter 350, Laws of 2020. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility to preferential tax treatment.

(2) The legislature categorizes these tax preferences as one[s] intended to provide tax relief for certain individuals as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to authorize a permanent sales and use tax exemption for feminine hygiene products to reduce the tax burden on females for a product that is fundamental to personal hygiene and health.

(4) The joint legislative audit and review committee is not required to include the tax preferences authorized in sections 3 and 4, chapter 350, Laws of 2020 as part of its normal review process of tax preferences. The tax preferences authorized in sections 3 and 4, chapter 350, Laws of 2020 will be included in the tax exemption report required under RCW 43.06.400 published by the department of revenue." [2020 c 350 § 2.]

Findings—Intent—2020 c 350: "The legislature finds that feminine hygiene products are a necessity for most females in the state. Taxing a necessary feminine hygiene product unjustly adds an additional tax burden on females that creates a tax gap between genders, requiring females to potentially pay more of their income to state taxes. The legislature further finds that taxing feminine hygiene products adds to the regressive tax burden on low-income families. The legislature further finds that feminine hygiene products are not a discretionary purchase, they are a necessity for which there is no alternative for females to maintain proper health and hygiene. Therefore, the legislature intends to provide a permanent sales and use tax exemption for feminine hygiene products." [2020 c 350 § 1.]

Exemption from automatic expiration date of new tax preference—2020 c 350: "The automatic expiration date provisions of RCW 82.32.805(1)(a) do not apply to this act." [2020 c 350 § 5.]

Effective date—2020 c 350: "This act takes effect July 1, 2020." [2020 c 350 § 6.]

82.08.803 Exemptions—Nebulizers. (1) An exemption from the tax imposed by RCW 82.08.020 in the form of a refund is provided for sales of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the tax lev-

ied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" means a device, not a building fixture, that converts a liquid medication into a mist so that it can be inhaled.

(2) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1103; 2004 c 153 § 104.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.08.804 Exemptions—Ostomic items. The tax levied by RCW 82.08.020 shall not apply to sales of ostomic items used by colostomy, ileostomy, or urostomy patients. "Ostomic items" means disposable medical supplies used by colostomy, ileostomy, and urostomy patients, and includes bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and other like supplies. "Ostomic items" does not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets. [2004 c 153 § 106.]

Additional notes found at www.leg.wa.gov

82.08.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

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

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

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2027. [2017 c 135 § 21; 2015 3rd sp.s. c 6 § 504; 2011 c 174 § 303. Prior: 2010 1st sp.s. c 2 § 3; 2010 c 114 § 122; 2009 c 535 § 513; 2006 c 182 § 3; 2004 c 24 § 10.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

(2022 Ed.)

82.08.806 Exemptions—Sale of computer equipment parts and services to printer or publisher. (1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260(14) or 82.04.280(1)(a).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and non-administrative purposes, the administrative use must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes. [2020 c 139 § 16; 2011 c 174 § 204; 2010 1st sp.s. c 23 § 516; 2009 c 461 § 5; 2004 c 8 § 2.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—2004 c 8: (1) The legislature finds that the manufacturer's machinery and equipment sales and use tax exemption is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses.

(2) The legislature finds that the printing and publishing industries have not been able to realize the benefits of the manufacturer's machinery and equipment sales and use tax exemption to the same extent as other manufacturing industries due to dramatic changes in business methods caused by computer technology not contemplated when the manufacturer's machinery and equipment sales and use tax exemption was adopted. As a result of these changes in business methods, a substantial amount of computer equipment used by printers and publishers is not eligible for the manufacturer's machinery and equipment sales and use tax exemption because the computer equipment is not used within the manufacturing site.

(3) The legislature further finds that additional incentives for printers and publishers need to be adopted to provide these industries with similar benefits as the manufacturer's machinery and equipment sales and use tax exemption provides for other manufacturing industries, and in recognition of the rapid rate of technological advancement in business methods undergone by the printing and publishing industries. The legislature intends to accomplish this by providing a sales and use tax exemption to printers and publishers for computer equipment, not otherwise eligible for the manufacturer's machinery and equipment sales and use tax exemption, used primarily in the printing or publishing of printed material, and for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such computer equipment." [2004 c 8 § 1.]

Additional notes found at www.leg.wa.gov

82.08.807 Exemptions—Direct mail delivery charges. The tax levied by RCW 82.08.020 does not apply to delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. [2005 c 514 § 115.]

Additional notes found at www.leg.wa.gov

82.08.808 Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers.

(1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a comprehensive cancer center. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

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

(a) "Comprehensive cancer center" has the meaning provided in RCW 82.04.4265.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. [2005 c 514 § 402.]

Additional notes found at www.leg.wa.gov

82.08.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers. (1)(a) Except as provided in subsection (4) of this section, the tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which (i) are exclusively powered by a clean alternative fuel or (ii) use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least thirty miles using only battery power.

(b) Beginning with sales made or lease agreements signed on or after July 1, 2016, the exemption in this section is only applicable for up to thirty-two thousand dollars of a vehicle's selling price or the total lease payments made plus the selling price of the leased vehicle if the original lessee purchases the leased vehicle before the expiration of the exemption as described in subsection (6) of this section.

(2) The seller must keep records necessary for the department to verify eligibility under this section.

(3) As used in this section, "clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology.

(4)(a) A sale, other than a lease, of a vehicle identified in subsection (1)(a) of this section made on or after July 15, 2015, and before July 1, 2016, is not exempt from sales tax as described under subsection (1) of this section if the selling price of the vehicle plus trade-in property of like kind exceeds thirty-five thousand dollars.

(b) A sale, other than a lease, of a vehicle identified in subsection (1)(a) of this section made on or after July 1, 2016, and before the expiration of the exemption as described in subsection (6) of this section, is not exempt from sales tax as described under subsection (1)(b) of this section if, at the time of sale, the lowest manufacturer's suggested retail price, as determined in rule by the department of licensing pursuant to chapter 34.05 RCW, for the base model is more than forty-two thousand five hundred dollars.

(c) For leased vehicles for which the lease agreement was signed before July 1, 2015, lease payments are exempt from sales tax as described under subsection (1)(a) of this section regardless of the vehicle's fair market value at the inception of the lease.

(d) For leased vehicles identified in subsection (1)(a) of this section for which the lease agreement is signed on or after July 15, 2015, and before July 1, 2016, lease payments are not exempt from sales tax if the fair market value of the vehicle being leased exceeds thirty-five thousand dollars at the inception of the lease. For the purposes of this subsection (4), "fair market value" has the same meaning as "value of the article used" in RCW 82.12.010.

(e) For leased vehicles identified in subsection (1)(a) of this section for which the lease agreement is signed on or after July 1, 2016, and before the expiration of the exemption as described in subsection (6) of this section, lease payments are not exempt from sales tax as described under subsection (1)(b) of this section if, at the inception of the lease, the lowest manufacturer's suggested retail price, as determined in rule by the department of licensing pursuant to chapter 34.05

RCW, for the base model is more than forty-two thousand five hundred dollars.

(f) The department of licensing must maintain and publish a list of all vehicle models qualifying for the sales tax exemption under this section until the expiration of the exemption as described in subsection (6) of this section.

(5) On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns. For purposes of this section, the first transfer for the calendar quarter after July 15, 2015, must be calculated assuming only those revenues that should have been deposited into the general fund beginning July 1, 2015.

(6)(a) The exemption under this section expires, effective with sales of vehicles delivered to the buyer or leased vehicles for which the lease agreement was signed, after the last day of the calendar month immediately following the month the department receives notice from the department of licensing under subsection (7)(b) of this section. All leased vehicles that qualified for the exemption before the expiration of the exemption must continue to receive the exemption as described under subsection (1)(b) of this section on lease payments due through the remainder of the lease.

(b) Upon receiving notice from the department of licensing under subsection (7)(b) of this section, the department must provide notice as soon as is practicable on its website of the expiration date of the exemption under this section.

(c) For purposes of this subsection, even if the department of licensing provides the department with notice under subsection (7)(b) of this section before the end of the fifth working day of the month notice is required, the notice is deemed to have been received by the department at the end of the fifth working day of the month notice is required.

(d) If, by the end of the fifth working day of May 2019, the department has not received notice from the department of licensing under subsection (7)(b) of this section, the exemption under this section expires effective with sales of vehicles delivered to the buyer or leased vehicles for which the lease agreement was signed after June 30, 2019.

(e) Nothing in this subsection (6) may be construed to affect the validity of any exemption properly allowed by a seller under this section before the expiration of the exemption as described in (a) of this subsection and reported to the department on returns filed after the expiration of the exemption.

(f) Nothing in this subsection (6) may be construed to allow an exemption under this section for the purchase of a qualifying vehicle by the original lessee of the vehicle after the expiration of the exemption as provided in (a) of this subsection.

(7)(a) By the end of the fifth working day of each month, until the expiration of the exemption as described in subsection (6) of this section, the department of licensing must

determine the cumulative number of qualifying vehicles titled on or after July 15, 2015, and provide notice of the cumulative number of these vehicles to the department.

(b) The department of licensing must notify the department once the cumulative number of qualifying vehicles titled in the state on or after July 15, 2015, equals or exceeds seven thousand five hundred.

(8) By the last day of July 2016, and every six months thereafter until the expiration of the exemption as described in subsection (6) of this section, based on the best available data, the department must report the following information to the transportation committees of the legislature: The cumulative number of qualifying vehicles titled in the state on or after July 15, 2015, as reported to it by the department of licensing; and the dollar amount of all state retail sales and use taxes exempted on or after July 15, 2015, under this section and RCW 82.12.809.

(9) For purposes of this section, "qualifying vehicle" means a vehicle qualifying for the exemption under this section or RCW 82.12.809 in which the sale was made or the lease agreement was signed on or after July 15, 2015. [2016 sp.s. c 32 § 2; 2015 3rd sp.s. c 44 § 408; 2010 1st sp.s. c 11 § 2; 2005 c 296 § 1.]

Effective date—2016 sp.s. c 32: "This act takes effect July 1, 2016." [2016 sp.s. c 32 § 4.]

Tax preference performance statement—2016 sp.s. c 32: "This section is the tax preference performance statement for the tax preferences contained in sections 2 and 3 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the use of clean alternative fuel vehicles in Washington. It is the legislature's intent to extend the existing sales and use tax exemption on certain clean alternative fuel vehicles in order to reduce the price charged to customers for clean alternative fuel vehicles.

(3) To measure the effectiveness of the tax preferences in sections 2 and 3 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of clean alternative fuel vehicles titled in the state.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the department of licensing must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2016 sp.s. c 32 § 1.]

Tax preference performance statement—2015 3rd sp.s. c 44 §§ 408 and 409: "This section is the tax preference performance statement for the tax preferences contained in sections 408 and 409 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the use of clean alternative fuel vehicles in Washington. It is the legislature's intent to extend the existing sales and use tax exemption on certain clean alternative fuel vehicles in order to reduce the price charged to customers for clean alternative fuel vehicles.

(3) To measure the effectiveness of the tax preferences in sections 408 and 409 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of clean alternative fuel vehicles registered in the state.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the department of licensing must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2015 3rd sp.s. c 44 § 407.]

Additional notes found at www.leg.wa.gov

82.08.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation. (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of tangible personal property to a light and power business, as defined in RCW 82.16.010, for construction or installation of air pollution control facilities at a thermal electric generation facility; or

(b) Sales of, cost of, or charges made for labor and services performed in respect to the construction or installation of air pollution control facilities.

(3) The exemption provided under this section applies only to sales, costs, or charges:

(a) Incurred for air pollution control facilities constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975;

(b) If the air pollution control facilities are constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70A.15 RCW; and

(c) For which the purchaser provides the seller with an exemption certificate, signed by the purchaser or purchaser's agent, that includes a description of items or services for which payment is made, the amount of the payment, and such additional information as the department reasonably may require.

(4) This section does not apply to sales of tangible personal property purchased or to sales of, costs of, or charges made for labor and services used for maintenance or repairs of pollution control equipment.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due as follows:

Year event occurs	Portion of previously exempted tax due
2003	100%
2004	95%
2005	90%

Year event occurs	Portion of previously exempted tax due
2006	85%
2007	80%
2008	75%
2009	70%
2010	65%
2011	60%
2012	55%
2013	50%
2014	45%
2015	40%
2016	35%
2017	30%
2018	25%
2019	20%
2020	15%
2021	10%
2022	5%
2023	0%

(6) *RCW 82.32.393 applies to this section. [2020 c 20 § 1473; 1997 c 368 § 2.]

*Reviser's note: RCW 82.32.393 expired December 31, 2015.

Findings—Intent—1997 c 368: "(1) The legislature finds that:

(a) Thermal electric generation facilities play an important role in providing jobs for residents of the communities where such plants are located; and

(b) Taxes paid by thermal electric generation facilities help to support schools and local and state government operations.

(2) It is the intent of the legislature to assist thermal electric generation facilities placed in operation after December 31, 1969, and before July 1, 1975, to update their air pollution control equipment and abate pollution by extending certain tax exemptions and credits so that such plants may continue to play a long-term vital economic role in the communities where they are located." [1997 c 368 § 1.]

Additional notes found at www.leg.wa.gov

82.08.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation. (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the tax levied by RCW 82.08.020 does not apply to sales of coal used to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70A.15 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control authority or the department of ecology, the department of ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) *RCW 82.32.393 applies to this section. [2020 c 20 § 1474; 1997 c 368 § 4.]

*Reviser's note: RCW 82.32.393 expired December 31, 2015.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

82.08.816 Exemptions—Electric vehicle batteries and fuel cells—Labor and services—Infrastructure. (Expires July 1, 2025.) (1) The tax imposed by RCW 82.08.020 does not apply to:

(a) The sale of batteries or fuel cells for electric vehicles, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure, including hydrogen fueling stations;

(d) The sale of tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(e) The sale of zero emissions buses.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities.

(d) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(e) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(f) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(g) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(h) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

(4) This section expires July 1, 2025. [2022 c 292 § 401; 2022 c 182 § 309; 2019 c 287 § 11; 2009 c 459 § 4.]

Reviser's note: This section was amended by 2022 c 182 § 309 and by 2022 c 292 § 401, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2022 c 292: See note following RCW 43.330.565.

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators

and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Cannabis, useable cannabis, or cannabis-infused products;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins,

drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse must be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(1)(d);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department must determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer must on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department must on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [2022 c 16 § 153; 2014 c 140 § 23; 2011 c 174 § 206; (2011 c 174 § 205 expired July 1, 2012); 2006 c 354 § 12; (2006 c 354 § 11 expired July 1, 2012); 2005 c 513 § 11; 1997 c 450 § 2.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Findings—Intent—1997 c 450: "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

Additional notes found at www.leg.wa.gov

82.08.830 Exemptions—Sales at camp or conference center by nonprofit organization. The tax levied by RCW 82.08.020 shall not apply to a sale made at a camp or conference center if the gross income from the sale is exempt under RCW 82.04.363. [1997 c 388 § 2.]

Additional notes found at www.leg.wa.gov

82.08.832 Exemptions—Sales of gun safes. (1) The tax levied by RCW 82.08.020 does not apply to sales of gun safes.

(2) As used in this section and RCW 82.12.832, "gun safe" means an enclosure specifically designed or modified for the purpose of storing a firearm and equipped with a padlock, key lock, combination lock, or similar locking device which, when locked, prevents the unauthorized use of the firearm. [1998 c 178 § 1.]

Additional notes found at www.leg.wa.gov

82.08.833 Exemptions—Sales or transfers of firearms—Unlicensed persons—Background check requirements. The tax imposed by RCW 82.08.020 does not apply to the sale or transfer of any firearms between two unlicensed persons if the unlicensed persons have complied with all background check requirements of chapter 9.41 RCW. [2015 c 1 § 10 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

(2022 Ed.)

82.08.834 Exemptions—Sales/leasebacks by regional transit authorities. The tax levied by RCW 82.08.020 does not apply to lease amounts paid by a seller/lessee to a lessor under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property, used by the seller/lessee, or to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term, but only if the seller/lessee previously paid any tax otherwise due under this chapter or chapter 82.12 RCW at the time of acquisition of the tangible personal property. [2000 2nd sp.s. c 4 § 21.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

82.08.850 Exemptions—Conifer seed. (1) The tax levied by RCW 82.08.020 does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller and is: (a) Used for growing timber outside Washington; or (b) sold to an Indian tribe or member and is to be used for growing timber in Indian country. This section applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010.

(2) If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase.

(3) A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax exemption provided in this section is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the purchased seed. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid. [2001 c 129 § 2.]

Finding—Intent—2001 c 129: "The legislature finds that in-state sellers of conifer seed and persons growing customer-owned conifer seed into seedlings are placed at a marketplace disadvantage compared to persons doing the same activity out of state because of the unique storage and growing requirements of conifer seed. It is the intent of the legislature to eliminate this disadvantage by providing a limited sales tax exemption for the sale of conifer seed to be used to grow timber outside Washington, or sold to an Indian tribe or member to grow timber in Indian country, if upon sale the seed is immediately placed into freezer storage operated by the seller." [2001 c 129 § 1.]

Additional notes found at www.leg.wa.gov

82.08.855 Exemptions—Replacement parts for qualifying farm machinery and equipment. (1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

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

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

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

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

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

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

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

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

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products or bee pollination services having an estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product or bee pollination service during the first full tax year in which the person engages in business as a farmer.

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

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

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

(b) "Eligible farmer" means:

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

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

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

(iv) A farmer as defined in RCW 82.04.213 who does not meet the definition of "eligible farmer" in (b)(i), (ii), or (iii) of this subsection, and who did not engage in farming for the entire immediately preceding tax year, because the farmer is either new to farming or newly returned to farming; or

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

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

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

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

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow,

raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

- (ii) Aircraft;
- (iii) Hand tools and hand-powered tools; and
- (iv) Property with a useful life of less than one year.

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

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

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve-month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year. [2015 3rd sp.s. c 6 § 1106; 2014 c 97 § 601; 2007 c 332 § 1; 2006 c 172 § 1.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—Tax preference intended to be permanent—2015 3rd sp.s. c 6 §§ 1102-1106: See notes following RCW 82.04.330.

Additional notes found at www.leg.wa.gov

82.08.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users. (1) The tax levied by RCW 82.08.020 does not apply to sales of diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for agricultural purposes. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were sold as separate products. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(2) The definitions in RCW 82.04.213 and this subsection apply to this section.

(a)(i) "Agricultural purposes" means the performance of activities directly related to the growing, raising, or producing of agricultural products.

(ii) "Agricultural purposes" does not include: (A) Heating space for human habitation or water for human consumption; or (B) transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(b) "Aircraft fuel" is defined as provided in RCW 82.42.010.

(c) "Biodiesel fuel" is defined as provided in RCW 19.112.010.

(d) "Diesel fuel" is defined as provided in 26 U.S.C. 4083, as amended or renumbered as of January 1, 2006.

(e) "Farm fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop har-

(2022 Ed.)

vesting services. [2010 c 106 § 218; 2007 c 443 § 1; 2006 c 7 § 1.]

Additional sales tax exemption for motor vehicle and special fuel: RCW 82.08.0255.

Additional notes found at www.leg.wa.gov

82.08.870 Exemptions—Motorcycles for training programs. The tax levied by RCW 82.08.020 does not apply to sales of motorcycles purchased for use in a motorcycle operator training and education program created under RCW 46.20.520. [2001 c 285 § 2.]

82.08.875 Exemptions—Automotive adaptive equipment. (Expires July 1, 2028.) (1) The tax imposed by RCW 82.08.020 does not apply to sales to eligible purchasers of prescribed add-on automotive adaptive equipment, including charges incurred for labor and services rendered in respect to the installation and repairing of such equipment. The exemption provided in this section only applies if the eligible purchaser is reimbursed in whole or part for the purchase by the United States department of veterans affairs or other federal agency, and the reimbursement is paid directly by that federal agency to the seller.

(2) Sellers making tax-exempt sales under this section must:

(a) Obtain an exemption certificate from the eligible purchaser in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement;

(b) File their tax return with the department electronically; and

(c) Report their total gross sales on their return and deduct the exempt sales under subsection (1) of this section from their reported gross sales.

(3) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Add-on automotive adaptive equipment" means equipment installed in, and modifications made to, a motor vehicle that are necessary to assist physically challenged persons to enter, exit, or safely operate a motor vehicle. The term includes but is not limited to wheelchair lifts, wheelchair restraints, ramps, under vehicle lifts, power door openers, power seats, lowered floors, raised roofs, raised doors, hand controls, left foot gas pedals, chest and shoulder harnesses, parking brake extensions, dual battery systems, steering devices, reduced and zero effort steering and braking, voice-activated controls, and digital driving systems. The term does not include motor vehicles and equipment installed in a motor vehicle by the manufacturer of the motor vehicle.

(b) "Eligible purchaser" means a veteran, or member of the armed forces serving on active duty, who is disabled, regardless of whether the disability is service connected as that term is defined by federal statute 38 U.S.C. Sec. 101, as amended, as of January 1, 2018.

(c) "Prescribed add-on automotive adaptive equipment" means add-on automotive adaptive equipment prescribed by a physician.

(4) This section expires July 1, 2028. [2018 c 130 § 3; 2013 c 211 § 2.]

Findings—Intent—2018 c 130: "(1) The legislature finds that it is important to recognize the service of active duty military and veterans and to acknowledge the continued sacrifice of those veterans who have been catastrophically injured. The legislature further finds that:

(a) Many disabled veterans often need customized, accessible transportation to be self-sufficient and to maintain a high quality of life;

(b) Individuals with a severe disability are twice as likely to be at or below the national poverty level;

(c) The federal government pays for the cost of add-on automotive adaptive equipment for severely injured veterans; however, it does not cover the cost of sales or use tax owed on this equipment and that this cost is then shifted onto the veterans, who often times cannot afford the tax due to the substantial amount of adaptive equipment required in such customized vehicles; and

(d) This added financial burden has the unintended effect of causing some veterans to acquire their adaptive equipment in neighboring states that do not impose a sales tax, thereby negatively impacting Washington businesses providing mobility enhancing equipment and services to Washington veterans.

(2) It is the legislature's intent to provide specific financial relief for severely injured veterans and to ameliorate a negative consequence of Washington's tax structure by providing a sales and use tax exemption for adaptive equipment required to customize vehicles for disabled veterans." [2018 c 130 § 1.]

Tax preference performance statement—2018 c 130: "(1) This section is the tax preference performance statement for the tax preferences contained in chapter 130, Laws of 2018. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preferences in chapter 130, Laws of 2018 as ones intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(3) To measure the effectiveness of chapter 130, Laws of 2018 in achieving the specific public policy objective described in section 1, chapter 130, Laws of 2018, the joint legislative audit and review committee must, at minimum, review the following:

(a) The dollar amount of qualifying add-on automotive adaptive equipment purchases, as reported to the department of revenue; and

(b) The number of approved applications for add-on automotive adaptive equipment, as reported by the United States department of veterans affairs.

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

(5) The joint legislative audit and review committee must review the tax preferences provided in chapter 130, Laws of 2018 as part of its normal review process of tax preferences." [2018 c 130 § 2.]

Findings—Intent—2013 c 211: "(1) The legislature finds that it is important to recognize the service of active duty military and veterans and to acknowledge the continued sacrifice of those veterans who have been catastrophically injured. The legislature further finds that many disabled veterans often need customized, accessible transportation to be self-sufficient and to maintain a high quality of life. The legislature further finds that individuals with a severe disability are three times more likely to be at or below the national poverty level. The legislature further finds that the federal government pays for the cost of mobility adaptive equipment for severely injured veterans; however, it does not cover the cost of sales or use tax owed on this equipment. The legislature further finds that this cost is then shifted onto the veterans, who oftentimes cannot afford the tax due to the substantial amount of adaptive equipment required in such customized vehicles. The legislature further finds that this added financial burden has the unintended effect of causing some veterans to acquire their mobility adaptive equipment in neighboring states that do not impose a sales tax, thereby negatively impacting Washington businesses providing mobility enhancing equipment and services to Washington veterans.

(2) It is the legislature's intent to provide specific financial relief for severely injured veterans and to ameliorate a negative consequence of Washington's tax structure by providing a sales and use tax exemption for mobility adaptive equipment required to customize vehicles for disabled veterans. It is the further intent of the legislature to reexamine this exemption in five years to determine whether it has mitigated the competitive disadvantage stemming from Washington's tax structure on mobility businesses and to assess whether the cost of the exemption in terms of forgone state revenue is

beyond what was reasonably assumed in the fiscal estimate for the legislation." [2013 c 211 § 1.]

Effective date—2013 c 211: "This act takes effect August 1, 2013." [2013 c 211 § 4.]

82.08.880 Exemptions—Animal pharmaceuticals.

(1) The tax levied by RCW 82.08.020 does not apply to sales to farmers or to veterinarians of animal pharmaceuticals approved by the United States department of agriculture or by the United States food and drug administration, if the pharmaceutical is to be administered to an animal that is raised by a farmer for the purpose of producing for sale an agricultural product.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For the purposes of this section and RCW 82.12.880, the following definitions apply:

(a) "Farmer" and "agricultural product" mean the same as in RCW 82.04.213.

(b) "Veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW. [2001 2nd sp.s. c 17 § 1.]

Additional notes found at www.leg.wa.gov

82.08.890 Exemptions—Qualifying livestock nutrient management equipment and facilities.

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue upon request. Conservation districts must maintain lists of eligible persons

as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility.

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

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i)

Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) The exemption under this section does not apply to sales made from July 1, 2010, through June 30, 2013. [2014 c 97 § 602; 2010 1st sp.s. c 23 § 601; 2009 c 469 § 601; 2006 c 151 § 2; 2001 2nd sp.s. c 18 § 2.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—2001 2nd sp.s. c 18: "It is the intent of the legislature to provide tax exemptions to assist dairy farmers to comply with the dairy nutrient management act, chapter 90.64 RCW, to encourage owners of nondairy animal feeding operations to develop and implement approved nutrient management plans, and to assist public or private entities to establish and operate anaerobic digesters to treat livestock nutrients on a regional or on-farm basis." [2006 c 151 § 1; 2001 2nd sp.s. c 18 § 1.]

Additional notes found at www.leg.wa.gov

82.08.900 Exemptions—Anaerobic digesters. (1) The tax levied by RCW 82.08.020 does not apply to sales to an eligible person:

(a) In respect to equipment necessary to process biogas from a landfill into marketable coproducts, including but not limited to biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(b) Establishing or operating an anaerobic digester or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester, or to sales of tangible personal property that becomes an ingredient or component of the anaerobic digester.

(2) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.900 unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts, including but not limited to biogas conditioning, compression, nutrient recovery, and electrical generation equipment.

(b) "Eligible person" means any person establishing or operating an anaerobic digester or landfill or processing biogas from an anaerobic digester or landfill into marketable coproducts. [2018 c 164 § 4; 2015 c 86 § 202; 2006 c 151 § 4; 2001 2nd sp.s. c 18 § 4.]

Reviser's note: The tax preference enacted in section 4, chapter 164, Laws of 2018 expires January 1, 2029, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Tax preference performance statement—2018 c 164: "This section is the tax preference performance statement for the tax preferences contained in sections [3,] 4, 6, 8, and 9, chapter 164, Laws of 2018. The performance

statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the production of renewable natural gas in Washington state. It is the legislature's intent to reinstate and expand tax incentives for certain landfills and anaerobic digesters in order to stimulate investment in biogas capture and conditioning, compression, nutrient recovery, and use of renewable natural gas for heating, electricity generation, and transportation fuel.

(3) To measure the effectiveness of the tax preferences in sections [3,] 4, 6, 8, and 9, chapter 164, Laws of 2018 in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of public and private landfills and anaerobic digesters producing renewable natural gas in the state and the extent to which they are utilizing these incentives.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the department of revenue must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2018 c 164 § 1.]

Effective date—2018 c 164: "This act takes effect July 1, 2018." [2018 c 164 § 10.]

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

Additional notes found at www.leg.wa.gov

82.08.910 Exemptions—Propane or natural gas to heat chicken structures. (1) The tax levied by RCW 82.08.020 does not apply to sales to farmers of propane or natural gas used to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures. The structures must be used exclusively to house chickens that are sold as agricultural products.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.910.

(a) "Structures" means barns, sheds, and other similar buildings in which chickens are housed.

(b) "Farmer" has the same meaning as provided in RCW 82.04.213.

(c) "Agricultural product" has the same meaning as provided in RCW 82.04.213. [2001 2nd sp.s. c 25 § 3.]

Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25: See notes following RCW 82.04.260.

82.08.920 Exemptions—Chicken bedding materials. (1) The tax levied by RCW 82.08.020 does not apply to sales to a farmer of bedding materials used to accumulate and facilitate the removal of chicken manure. The farmer must be raising chickens that are sold as agricultural products.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.920.

(a) "Bedding materials" means wood shavings, straw, sawdust, shredded paper, and other similar materials.

(b) "Farmer" has the same meaning as provided in RCW 82.04.213.

(c) "Agricultural product" has the same meaning as provided in RCW 82.04.213. [2001 2nd sp.s. c 25 § 5.]

Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25: See notes following RCW 82.04.260.

82.08.925 Exemptions—Dietary supplements. The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 302.]

Additional notes found at www.leg.wa.gov

82.08.935 Exemptions—Disposable devices used to deliver prescription drugs for human use. The tax levied by RCW 82.08.020 shall not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. "Disposable devices used to deliver drugs" means single use items such as syringes, tubing, or catheters. [2003 c 168 § 404.]

Additional notes found at www.leg.wa.gov

82.08.940 Exemptions—Over-the-counter drugs for human use. The tax levied by RCW 82.08.020 shall not apply to sales of over-the-counter drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 405.]

Additional notes found at www.leg.wa.gov

82.08.945 Exemptions—Kidney dialysis devices. The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices. [2004 c 153 § 110; 2003 c 168 § 410.]

Additional notes found at www.leg.wa.gov

82.08.950 Exemptions—Steam, electricity, electrical energy. The tax levied by RCW 82.08.020 shall not apply to sales of steam, electricity, or electrical energy. [2003 c 168 § 703.]

Additional notes found at www.leg.wa.gov

82.08.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (Expires June 30, 2024.) (1) The tax levied by RCW 82.08.020 does not apply to sales of hog fuel used to produce electricity, steam, heat, or biofuel. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets; and

(b) "Biofuel" means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(3) If a taxpayer who claimed an exemption under this section closes a facility in Washington for which employment positions were reported under RCW 82.32.605, resulting in a loss of jobs located within the state, the department must declare the amount of the tax exemption claimed under this section for the previous two calendar years to be immediately due.

(4) This section expires June 30, 2024. [2021 c 145 § 11; 2013 2nd sp.s. c 13 § 1002; 2009 c 469 § 301.]

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to retain and grow family-wage jobs in rural, economically distressed areas; to promote healthy forests; and to utilize Washington's abundant natural resources to promote diversified renewable energy use in the state." [2013 2nd sp.s. c 13 § 1001.]

Effective date—2013 2nd sp.s. c 13: "Parts III, X, XV, and XVI of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 2nd sp.s. c 13 § 1903.]

Additional notes found at www.leg.wa.gov

82.08.962 Exemptions—Sales of machinery and equipment used in generating electricity. (Expires January 1, 2030.)

(1)(a) Subject to the requirements of this section, the tax imposed by RCW 82.08.020 does not apply to sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts AC of electricity. Except as otherwise provided in this section, the purchaser must pay the state and local sales tax on such sales and apply to the department for a remittance of the tax paid.

(b) Beginning on July 1, 2011, through December 31, 2019, the amount of the exemption under this subsection (1)(b) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

(c) Beginning January 1, 2020, through December 31, 2029, the purchaser is entitled to an exemption, in the form of a remittance, under this subsection (1)(c) in an amount equal to:

(i) Fifty percent of the state and local sales tax paid, if:

(A) The exempt purchase is for machinery and equipment or labor and services rendered in respect to installing such machinery and equipment in (a) of this subsection, excluding qualified purchases under subsection (c)(i)(B) of this subsection, and the department of labor and industries certifies that the project includes: Procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the project is being constructed. In the event that a project is built without one or

more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard; or

(B) The exempt purchase is for machinery and equipment that is used directly in the generation of electricity by a solar energy system capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, and labor and services rendered in respect to installing such machinery and equipment, and the department of labor and industries certifies that the project has met the requirements of (c)(i)(A) of this subsection, and the purchaser provides the following documentation to the department as part of the application for a remittance:

(I) A copy of the contractor's certificate of registration in compliance with chapter 18.27 RCW;

(II) The contractor's current state unified business identifier number;

(III) A copy of the contractor's proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(IV) Documentation of the contractor's history of compliance with federal and state wage and hour laws and regulations, consistent with (e)(ii)(D) of this subsection;

(ii) Seventy-five percent of the state and local sales tax paid, if the department of labor and industries certifies that the project complies with (c)(i)(A) and (B) of this subsection and compensates workers at prevailing wage rates determined by local collective bargaining as determined by the department of labor and industries. This subsection (1)(c)(ii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection; or

(iii) One hundred percent of the state and local sales tax paid, if the department of labor and industries certifies that the project is developed under a community workforce agreement or project labor agreement. This subsection (1)(c)(iii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection.

(d) In order to qualify for the remittance under (c) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than January 1, 2020, and be completed by December 31, 2029.

(e) Beginning July 1, 2019, and through December 31, 2029, the purchaser is entitled to an exemption under this subsection (1)(e) in an amount equal to one hundred percent of the state and local sales tax due on:

(i) Machinery and equipment that is used directly in the generation of electricity by a solar energy system that is capable of generating no more than one hundred kilowatts AC of electricity; or

(ii) Labor and services rendered in respect to installing machinery and equipment exempt under (e)(i) of this subsection, and the seller meets the following requirements at the time of the sale for which the exemption is claimed:

(A) Has obtained a certificate of registration in compliance with chapter 18.27 RCW;

(B) Has obtained a current state unified business identifier number;

(C) Possesses proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(D) Has had no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the past twenty-four months.

(f) Purchasers claiming an exemption under (e) of this subsection must provide the seller with an exemption certificate in a form and manner prescribed by the department.

(g) In order to qualify for the exemption under (e)(ii) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than July 1, 2019, and be completed by December 31, 2029.

(2)(a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1)(c) of this section; and

(ii) Set requirements for all good faith efforts under subsection (1)(c)(i) and (ii) of this section, as well as documentation requirements and a certification process. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with said standards and could include: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; participating in community job fairs, conferences, and trade shows; and other measures. The certification process and timeline must be designed to prevent undue delay to project development.

(b) Emergency rules must be adopted by December 1, 2019, and take effect January 1, 2020.

(3) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement

parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(d) "Project labor agreement" and "community workforce agreement" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f).

(4)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(5)(a)(i) A purchaser claiming an exemption in the form of a remittance under subsection (1)(b) or (c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(ii) The application for remittance must include a copy of the certificate issued for the project by the department of labor and industries as prescribed by rule under subsection (2) of this section.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(6)(a) Except as otherwise provided in (c) of this subsection, from October 1, 2017, through December 31, 2019, the exemption provided by this section does not apply to: (i) Machinery and equipment that is used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts AC of electricity; or (ii) sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(b) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if installation of the machinery and equipment commences on or after January 1, 2020.

(c) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating no more than one hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if installation of the machinery and equipment commences on or after July 1, 2019.

(7) This section expires January 1, 2030. [2019 c 288 § 18; 2018 c 164 § 5; 2017 3rd sp.s. c 36 § 14; 2013 2nd sp.s. c 13 § 1502; 2009 c 469 § 101.]

Tax preference performance statement—2019 c 288 §§ 18 and 19: "This section is the tax preference performance statement for the tax preferences contained in sections 18 and 19, chapter 288, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to reduce the amount of carbon dioxide emissions in Washington. It is the legislature's intent to extend the expiration date of and expand the existing sales and use tax exemption for machinery and equipment used directly in generating certain types of alternative energy, in order to reduce the price charged to customers for that machinery and equipment, thereby inducing some customers to buy machinery and equipment for alternative energy when they might not otherwise, thereby displacing electricity from fossil-fueled generating resources, thereby reducing the amount of carbon dioxide emissions in Washington. It is also the intent of the legislature to maximize cost savings associated with clean energy construction for Washington electric customers by encouraging development of these resources in time for projects to benefit from both this incentive and expiring federal incentives.

(3) It is also the legislature's specific public policy objective to provide an incentive for more of the projects that meet the objectives of subsection (2) of this section to be constructed with high labor standards, including family level wages and providing benefits including health care and pensions, as well as maximizing access to economic benefits from such projects for local workers and diverse businesses.

(4) The joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW for the tax preferences contained in sections 18 and 19, chapter 288, Laws of 2019 and it is the intent of the legislature to allow the tax preferences to expire upon their scheduled expiration dates." [2019 c 288 § 17.]

Findings—Intent—Effective date—2019 c 288: See RCW 19.405.010 and 19.405.901.

Effective date—2018 c 164: See note following RCW 82.08.900.

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to help promote energy independence in the state of Washington and to better position Washington to attract a vibrant clean energy technology manufacturing sector to the state. The purpose of the tax preference created in part XV of this act is to incentivize electricity generation from renewable energy sources, reducing the costs of transitioning to these sources and technologies by exempting machinery, equipment, and labor and service charges associated with such electricity generation from the retail sales and use tax. This tax preference makes the most of the local renewable resources, protects us from the price volatility of certain fossil fuel sources, and helps the state achieve its greenhouse gas emissions targets. In addition, promoting manufacture and installation of facilities capable of generating power from renewable sources can create economic benefits in both rural and urban counties, creating high-quality jobs and developing a skilled workforce in an industry

(2022 Ed.)

sector in which significant job growth is anticipated over the coming decades." [2013 2nd sp.s. c 13 § 1501.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Additional notes found at www.leg.wa.gov

82.08.965 Exemptions—Semiconductor materials manufacturing. (Contingent effective date; contingent expiration date.) (1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due will be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, must make a determination of the number of positions that would be filled at full employment. This number must be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire must maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes will be due and payable by April 1st of the following year. The department must assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of

semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun.

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 510; (2017 3rd sp.s. c 37 § 509 expired January 1, 2018); 2017 c 135 § 22; 2010 c 114 § 123; 2003 c 149 § 5.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

***Contingent effective date—2017 c 135; 2010 c 114:** See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (*Expires December 1, 2028.*) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the exemption under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if the number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the exemption is claimed.

(5) This section expires December 1, 2028. [2021 c 145 § 12; 2020 c 139 § 17; 2017 3rd sp.s. c 37 § 506; (2017 3rd sp.s. c 37 § 505 expired January 1, 2018); 2017 c 135 § 23; 2014 c 97 § 405; 2010 c 114 § 124; 2009 c 469 § 502; 2006 c 84 § 3.]

Tax preference performance statement—2020 c 139; 2017 3rd sp.s. c 37 §§ 505-508: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 505 through 508, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create or retain jobs, as indicated in RCW 82.32.808(2) (a) through (c).

(3) It is the legislature's specific public policy objective to encourage significant construction projects; retain, expand, and attract semiconductor business; and encourage and expand family-wage jobs. It is the legislature's intent to extend by ten years the exemptions for sales and use of gases and chemicals used in the production of semiconductor materials, in order to encourage the growth and retention of the semiconductor business in Washington, thereby strengthening Washington's competitiveness with other states for manufacturing investment.

(4) If a review finds that the number of construction projects in the industry has increased, and that the number of people employed by the solar silicon, silicon manufacturing, and semiconductor fabrication industry in Washington is the same or more than in 2015, and that at least sixty percent of employees earn sixty thousand dollars a year, then the legislature intends to extend the expiration date of the tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to data from the department of revenue's annual survey for tax years ending before January 1, 2020, and annual tax performance report for subsequent tax years." [2020 c 139 § 2; 2017 3rd sp.s. c 37 § 504.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Contingent effective date; contingent expiration date.*) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534. No application is neces-

sary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 520; (2017 3rd sp.s. c 37 § 519 expired January 1, 2018); 2017 c 135 § 24; 2010 c 114 § 125; 2003 c 149 § 7.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.975 Exemptions—Computer parts and software related to the manufacture of commercial airplanes. (Expires July 1, 2040.) (1) The tax levied by RCW 82.08.020 does not apply to sales of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.08.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to sales of or charges made for labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

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

(a) "Aerospace products" means:

(i) Commercial airplanes and their components;

(ii) Machinery and equipment that is designed and used primarily for the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components by federal aviation regulation part 145 certificated repair stations; and

(iii) Tooling specifically designed for use in manufacturing commercial airplanes or their components.

(b) "Aerospace services" means the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components, but only when such services are performed by a FAR part 145 certificated repair station.

(c) "Commercial airplane" and "component" have the same meanings provided in RCW 82.32.550.

(d) "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(4) This section expires July 1, 2040. [2013 3rd sp.s. c 2 § 11; 2008 c 81 § 2; 2003 2nd sp.s. c 1 § 9.]

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Findings—2008 c 81: "The legislature finds that the aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, support staff, and other employees working directly in the industry throughout the state. The legislature further finds that suppliers and vendors that support the aerospace industry in turn provide a range of well-paying jobs. In 2003, and again in 2006, the legislature determined it was in the public inter-

(2022 Ed.)

est to encourage the continued presence of this industry through the provision of tax incentives.

However, the legislature recognizes that key elements of Washington's aerospace industry cluster were afforded few, if any, of the aerospace tax incentives enacted in 2003 and 2006. The comprehensive tax incentives in this act are intended to more comprehensively address the cost of doing business in Washington state compared to locations in other states for a larger segment of the aerospace industry cluster." [2008 c 81 § 1.]

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.08.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes. (Expires July 1, 2040.) (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Charges, for labor and services rendered in respect to the constructing of new buildings, made to (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes;

(b) Sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing; or

(c) Charges made for labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) No application is necessary for the tax exemption in this section. However, in order to qualify under this section before starting construction, the port district, political subdivision, or municipal corporation must have entered into an agreement with the manufacturer to build such a facility. A person claiming the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) The exemption in this section applies to buildings or parts of buildings, including buildings or parts of buildings used for the storage of raw materials or finished product, that are used primarily in the manufacturing of any one or more of the following products:

(a) Commercial airplanes;

(b) Fuselages of commercial airplanes; or

(c) Wings of commercial airplanes.

(5) For the purposes of this section, "commercial airplane" has the meaning given in RCW 82.32.550.

(6) This section expires July 1, 2040. [2017 c 135 § 25; 2013 3rd sp.s. c 2 § 3; 2010 c 114 § 126; 2003 2nd sp.s. c 1 § 11.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.08.983 Exemptions—Wax and ceramic materials.

(1) The tax levied by RCW 82.08.020 does not apply to sales of wax and ceramic materials used to create molds consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications. The tax also does not apply to labor or services used to create wax patterns and ceramic shells used as molds and consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications.

(2) A person claiming the exemption under this section must claim the exemption in a form and manner prescribed by the department. [2010 c 225 § 1.]

Reviser's note: Chapter 6, Laws of 2015 3rd sp.s. was signed by the governor on July 1, 2015. 2015 3rd sp.s. c 6 § 1202 removed the expiration date of 2010 c 225 §§ 1 and 2 by repealing 2010 c 225 § 4.

Tax preference performance statement—2015 3rd sp.s. c 6: "(1) This section is the tax preference performance statement for the tax preference contained in section 1202 of this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preference created in this act as one intended to reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to provide permanent tax relief that corrects the structural inefficiencies under RCW 82.08.983 with regard to wax and ceramic materials used to create molds during the process of creating ferrous and nonferrous investment castings used in industrial applications." [2015 3rd sp.s. c 6 § 1201.]

Tax preference intended to be permanent—2015 3rd sp.s. c 6: "As this part is intended to create a permanent tax exemption, the tax preference in this act is not subject to the expiration date requirements in RCW 82.32.805 and is not subject to the requirements in RCW 82.32.808(4)." [2015 3rd sp.s. c 6 § 1203.]

Additional notes found at www.leg.wa.gov

82.08.985 Exemptions—Insulin. The tax levied by RCW 82.08.020 shall not apply to sales of insulin for human use. [2004 c 153 § 102.]

Additional notes found at www.leg.wa.gov

82.08.986 Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers.

(Expires July 1, 2048.) (1)(a) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center to which a valid exemption certificate applies, and to charges made for labor and services rendered in respect to installing eligible server equipment.

(b) This exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure at an eligible computer data center for which an exemption certificate has been issued.

(c) No new exemption certificates may be issued on or after July 1, 2036.

(d) The exemptions provided in this section expire July 1, 2048.

(e) Each calendar year, the department may issue no more than six certificates for data centers which qualify through refurbishment. Certificates are available for refurbishment

on a first-in-time basis based on the date the application required under this section is received by the department. Each qualifying business may apply for only one certificate for a refurbished data center each calendar year.

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

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

(c) With respect to computer data centers for which the commencement of construction occurs after July 1, 2015, but before July 1, 2019, the exemption provided in this section is limited to no more than eight computer data centers, with total eligible data centers provided under this section limited to twelve from July 1, 2015, through June 9, 2022. Tenants of qualified data centers do not constitute additional data centers under the limit. The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department.

(d) The exemption certificate is effective on the date the application is received by the department, which is deemed to be the date of issuance. Only purchases on or after the date of issuance qualify for the exemption under this section. No tax refunds are authorized for purchases made before the effective date of the exemption certificate.

(e) Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

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

(A) Thirty-five family wage employment positions; or, if lower

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

(i) After the minimum number of family wage employment positions as required under (a)(i) of this subsection (3) is established, a qualifying business or a qualifying tenant must maintain the minimum family wage employment positions required under (a)(i) of this subsection (3) while the exemption certificate is valid.

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

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

(A) The net increase, since the date of issuance of the qualifying business's exemption certificate, in family wage employment positions employed by qualifying tenants; and

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

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

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

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

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant is equal to the net increase in family wage employment positions assigned to an eligible computer data center as described in (b)(ii)(A)(I) and (II) of this subsection (3), multiplied by the percentage of total space within the eligible computer data center occupied by the qualifying tenant. Any combination of qualifying business and qualifying tenant family wage employment positions may meet this requirement.

(C)(I) In the instance of an existing data center facility that was ineligible, regardless of the date of commencement of construction, that later obtains an exemption certificate under this section, the data center may count the existing employment positions that are dedicated to the data center toward the family wage employment position requirements if the employment positions meet the requirements of a family wage employment position as described in (c)(i)(B) and (C) of this subsection (3).

(II) In the instance of the refurbishment of an existing data center that previously qualified under the data center program, the data center may count the existing employment positions dedicated to the data center toward the family wage employment position requirements if the employment positions meet the requirements of a family wage employment position as described in (c)(i)(B) and (C) of this subsection (3).

(c)(i) For purposes of this subsection:

(A) For exemption certificates issued before June 9, 2022, family wage employment positions are new permanent employment positions requiring forty hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and receiving a wage equivalent to or greater than one hundred fifty percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(B) For exemption certificates issued on or after June 9, 2022, family wage employment positions are new permanent employment positions requiring 40 hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita

personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(C) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position.

(D) "New permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the qualifying business or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the qualifying business and by employees of qualifying tenants.

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

(d)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (3), previously exempted sales and use taxes are immediately due and payable and any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, except as described in (d)(iii) of this subsection (3).

(ii) The department of labor and industries must, at the request of the department, assist in determining whether the requirements of this subsection (3) have been met.

(iii) If the department, with the assistance of the department of labor and industries, finds that a failure to meet the requirements of this subsection (3) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may provide exceptions or extensions to the requirements of this subsection (3).

(iv) Any repayment of taxes triggered by the failure of a qualifying business or qualifying tenant to meet the requirements of this subsection (3) must be calculated in proportion to the duration of time for which any applicable requirement was not met.

(v) If the department is notified that a qualifying business or qualifying tenant fails to meet the requirements of this subsection (3), the department may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met.

(4) For exemption certificates issued on or after June 9, 2022:

(a) Within three years after being placed in service, the qualifying business operating a newly constructed data center must certify to the department that it has attained certification under one or more of the following sustainable design or green building standards:

- (i) BREEAM for new construction or BREEAM in-use;
- (ii) Energy star;
- (iii) Envision;

(iv) ISO 50001-energy management;
 (v) LEED for building design and construction or LEED for operations and maintenance;
 (vi) Green globes for new construction or green globes for existing buildings;
 (vii) UL 3223; or
 (viii) Other reasonable standards approved by the department.

(b) The department may require qualifying businesses and qualifying tenants to submit records necessary to verify the requirements under (a) of this subsection have been met.

(c)(i) For a qualifying business or qualifying tenant that does not meet the requirements of (a) of this subsection (4), all previously exempted sales and use taxes may be immediately due and payable, any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, and an additional 10 percent penalty is assessed, except as described in (c)(ii) of this subsection (4).

(ii) If the department finds that a failure to meet the requirements of this subsection (4) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may, at its discretion, provide exceptions or extensions to the requirements of this subsection (4). The department may, at its discretion, coordinate with agencies with relevant expertise to assist in determining whether the requirements have been met.

(5) A qualifying business or a qualifying tenant claiming the exemption under this section is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through:

(a) Coordinating with the industrial waste coordination program established under RCW 43.31.625 to identify and provide technical assistance in implementing industrial symbiosis projects;

(b) To the extent possible, procuring or contracting for power from renewable sources;

(c) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems; and

(d) Taking actions to conserve, reuse, and replace water. This includes using water efficient fixtures and practices; treating, infiltrating, and harvesting rainwater; recycling water before discharging; partnering with local water utilities to use discharged water for irrigation and other water conservation purposes; using reclaimed water where possible for data center operations; and supporting water restoration in local watersheds.

(6) A qualifying business or a qualifying tenant claiming an exemption under this section or RCW 82.12.986 must complete an annual tax performance report with the department as required under RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(7)(a) The certificate holder may not at any time assign or transfer a certificate without the prior written consent of

the department. The department must allow certificate transfers if the certificate holder meets the following requirements:

(i) The certificate assignee or transferee is qualified to do business in the state;

(ii) The assignee or transferee acknowledges the transfer of the certificate in writing;

(iii) The assignee or transferee agrees to keep and perform all the terms of the certificates; and

(iv) An assignment or transfer of the certificate is to an entity that:

(A) Controls, is controlled by, or under common control with, the certificate holder;

(B) Acquires all or substantially all of the stock or assets of the certificate holder; or

(C) Is the resulting entity of a merger or consolidation with the certificate holder.

(b) In the event the assignee or transferee acquires eligible server equipment in a qualifying asset sale under (a)(iv)(B) of this subsection, the purchaser shall be deemed to purchase the eligible server equipment pursuant to the transferred certificate.

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

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

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

(c) "Certificate of occupancy" means:

(i) For a newly constructed eligible computer data center, the certificate of occupancy issued by a local governing authority for the structure or structures which comprise the eligible computer data center; or

(ii) For renovations of an eligible computer data center, the certificate of occupancy issued by a local governing authority for the renovated structure or structures that comprise the eligible computer data center.

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

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (d)(i)(A) through (C) of this subsection (8).

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

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

(f)(i) "Eligible computer data center" means a computer data center:

(A) Located in a rural county as defined in RCW 82.14.370 at the time an application for an exemption under this section is received;

(B) Having at least twenty thousand square feet dedicated to housing working servers; and

(C) For which the commencement of construction occurs:

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

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

(III) After June 30, 2015, and before July 1, 2035.

(ii) For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or refurbishment of existing facilities regardless of whether the existing facility was previously ineligible and regardless of whether commencement of construction of the existing facility occurred outside of the dates listed in (f)(i)(C)(I) through (III) of this subsection, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of a computer data center. If no building permit is required for renovation or refurbishment, then the date that renovation or refurbishment begins is the "commencement of construction."

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

(h) "Eligible server equipment" means:

(i) For a qualifying business whose computer data center qualifies as an eligible computer data center under (f)(i)(C)(I) of this subsection (8), the original server equipment installed in an eligible computer data center on or after April 1, 2010, and before January 1, 2026, and replacement server equipment. For purposes of this subsection (8)(h)(i), "replacement server equipment" means server equipment that:

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

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

(ii) For a qualifying business whose computer data center qualifies as an eligible computer data center under (f)(i)(C)(II) of this subsection (8), "eligible server equipment" means the original server equipment installed in an eligible computer data center on or after April 1, 2012, and before January 1, 2026, and replacement server equipment. For purposes of this subsection (8)(h)(ii), "replacement server equipment" means server equipment that:

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

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

(iii) For a qualifying business whose computer data center qualifies as an eligible computer data center under (f)(i)(C)(III) of this subsection (8), "eligible server equipment" means the original server equipment installed in a building within an eligible computer data center on or after July 1, 2015, and replacement server equipment. Server equipment installed in movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping containers, is not "directly installed in a building." For purposes of this subsection (8)(h)(iii), "replacement server equipment" means server equipment that:

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

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before June 9, 2022, for the exemptions provided under this section and RCW 82.12.986; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than twelve years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

(iv) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center with an exemption certificate on or after April 1, 2010, and replacement server equipment. For purposes of this subsection (8)(h)(iv), "replacement server equipment" means server equipment that:

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

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before June 9, 2022, for the exemptions provided under this section and RCW 82.12.986; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than 12 years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

(i) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and

institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(j) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state. The term also does not include a lessee of space in an eligible computer data center under (f)(i)(C)(I) of this subsection (8), if the lessee and lessor are affiliated and:

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

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

(k)(i) "Refurbished" or "refurbishment" means a substantial improvement to an eligible computer data center to update or modernize servers, server space, ventilation, or power infrastructure in an eligible computer data center.

(ii) For a qualifying computer data center to be considered refurbished, the qualifying business must certify, in a form and manner prescribed by the department, that the refurbishment of an eligible computer data center is complete. The refurbishment is considered complete on the date that the improved portion of the computer data center is operationally complete and able to be used for its intended purpose.

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

(9) This section expires July 1, 2048. [2022 c 267 § 3; 2017 c 135 § 26; 2015 3rd sp.s. c 6 § 302; 2012 2nd sp.s. c 6 § 302; 2010 1st sp.s. c 23 § 1601; 2010 1st sp.s. c 1 § 2.]

Tax preference performance statement—2022 c 267 §§ 3-6: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 3, 4, 5, and 6, chapter 267, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these sales and use tax exemptions on eligible server equipment and eligible power infrastructure equipment at eligible computer data centers as ones intended to: Induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a); improve industry competitiveness as indicated in RCW 82.32.808(2)(b); create or retain

jobs as indicated in RCW 82.32.808(2)(c); and reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to:

(a) Maintain and grow the existing data center sector in Washington state, and encourage development of new data center facilities and refurbishment of existing data centers, thereby increasing the competitiveness of Washington's tax structure, which will increase or maintain construction and trade job growth in rural areas, and increase local tax revenue streams.

(b) Improve industry competitiveness and to increase, create, or retain jobs in computer data centers in counties with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates, thereby increasing family wage jobs. It is the legislature's intent to establish a pilot program that would provide a sales and use tax exemption on eligible server equipment and power infrastructure installed in eligible computer data centers, charges made for labor and services rendered in respect to installing eligible server equipment, and for construction, installation, repair, alteration, or improvement of eligible power infrastructures in order to increase investment in data center construction, leasing, and other investment throughout rural counties and counties with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates, thereby growing employment in the technology industry while adding real and personal property to state and local property tax rolls, thereby increasing the county tax base.

(4) The legislature intends to extend the expiration date of the tax preference. The joint legislative audit and review committee shall conduct a review and determine if the tax preference is (a) generating capital investment in new computer data centers, refurbished data centers, or existing data centers (e.g., replacement server equipment), (b) generating state and local tax collections from data center investment and operations, and (c) generating or maintaining construction and trade jobs in the state. The review must factor in changing economic conditions.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including data available from the department of revenue regarding rural county property tax assessments and employment data from the employment security department." [2022 c 267 § 2.]

Findings—Intent—2022 c 267: "(1) The legislature finds that data centers are a cornerstone for strong internet infrastructure that is critical to the continuing prosperity of Washington's vibrant digital economy.

(2) The legislature further finds that the data center industry is experiencing explosive growth across the nation and the competition among states for data center investments has increased dramatically. A department of commerce study, *2018 State of the Data Center Industry, An Analysis of Washington's Competitiveness*, found that data center growth in rural Washington is at the lower end of the growth rate experienced by other major competitive markets.

(3) The legislature recognizes that rural county data center investments are necessary but insufficient for the state's total economy and competitiveness. Washington is the only state that restricts incentives geographically. As a result, data centers serving urban counties requiring higher performance and that offer colocation services for multiple tenants that foster technology ecosystems are lost to other states, particularly neighboring Oregon.

(4) The legislature further finds that data centers are one of the most energy-intensive building types, consuming 10 to 50 times the energy per floor space of a typical commercial office building. In addition, the legislature finds that it is imperative that the economic expansion of data centers not result in negative environmental impacts to the communities in which the data centers are located. To this end, the legislature encourages data centers to be good environmental stewards for their community through adopting practices to mitigate negative environmental impacts of data centers, such as the use of energy derived from renewable resources, redirecting waste heat for alternative uses, or other industrial symbiosis practices.

(5) The legislature therefore intends to encourage additional investments in data technology facilities through expanding and extending the current sales and use tax exemption for rural county data centers and establishing a sales and use tax exemption pilot program for data centers in counties with populations over 800,000, which will in turn incentivize local economic development, increased local tax revenues, and construction and trade jobs across Washington through the development of additional data center facilities." [2022 c 267 § 1.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 302 and 303: "This section is the tax preference performance statement for the sales and use tax exemption contained in sections 302 and 303 of this act.

This performance statement is only intended to be used for subsequent evaluation of the tax preferences in sections 302 and 303 of this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(2) It is the legislature's specific public policy objective to improve industry competitiveness. It is the legislature's intent to provide a sales and use tax exemption on eligible server equipment and power infrastructure installed in eligible computer data centers, charges made for labor and services rendered in respect to installing eligible server equipment, and for construction, installation, repair, alteration, or improvement of eligible power infrastructures in order to increase investment in data center construction in rural Washington counties, thereby adding real and personal property to state and local property tax rolls, thereby increasing the rural county tax base.

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

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue regarding rural county property tax assessments." [2015 3rd sp.s. c 6 § 301.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Intent—Finding—2012 2nd sp.s. c 6: "(1) It is the legislature's intent to encourage immediate investments in technology facilities that can provide an economic stimulus, sustain long-term jobs that provide living wages, and help build the digital infrastructure that can enable the state to be competitive for additional technology investment and jobs.

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

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

(4) The legislature finds that offering an exemption for server and related electrical equipment and installation will act as a stimulus to incent immediate investment. This investment will bring jobs, tax revenues, and economic growth to some of our state's rural areas." [2012 2nd sp.s. c 6 § 301.]

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—Finding—2010 1st sp.s. c 1: "(1) It is the legislature's intent to encourage immediate investments in technology facilities that can provide an economic stimulus, sustain long-term jobs that provide living wages, and help build the digital infrastructure that can enable the state to be competitive for additional technology investment and jobs.

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

(3) Since the economic downturn, Washington has not succeeded in attracting any private investments in these centers after siting six major data centers between 2004 and 2007.

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

(2022 Ed.)

(5) The legislature finds that a fifteen-month window that offers an exemption for server and related electrical equipment and installation will act as a stimulus to incent immediate investment. This investment will bring jobs, tax revenues, and economic growth to some of our state's rural areas." [2010 1st sp.s. c 1 § 1.]

Additional notes found at www.leg.wa.gov

82.08.9861 Exemptions—Eligible server equipment—Eligible power infrastructure in counties with populations over 800,000. (Expires July 1, 2038.) (1)(a) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center to which a valid exemption certificate applies, and to charges made for labor and services rendered in respect to installing eligible server equipment.

(b) The exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor, material, equipment, and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure at an eligible computer data center for which an exemption certificate has been issued.

(c) No new exemption certificates may be issued on or after July 1, 2028.

(d) The exemptions provided in this section expire July 1, 2038.

(2)(a)(i) In order to obtain an exemption, a qualifying business must be located in a county with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates and must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(ii) For the purposes of demonstrating that the requirements of this subsection (2)(a) are met, a qualifying business must submit records of available power for customers at the time of the application for the exemption under this section. The qualifying business must demonstrate that it has a minimum of 1.5 megawatts of available power. The qualifying business must provide requests for proposals, pricing offered, and marketing materials associated with the requirements of this subsection, as required by the department, as supporting documentation that the requirements of this subsection (2)(a) have been met.

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

(c)(i) The exemptions provided in this section are limited to qualifying businesses or tenants, and the department is authorized to approve:

(A) Six applications to obtain the exemptions for qualifying businesses in the first calendar year of the exemption; and

(B) Six applications to obtain the exemptions for qualifying businesses in each year, calendar year three through calendar year six, of the exemption.

(ii) The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department.

(d) The exemption certificate is effective on the date the application is received by the department, which is deemed to be the date of issuance. Only purchases on or after the date of issuance qualify for the exemption under this section. No tax refunds are authorized for purchases made before the effective date of the exemption certificate.

(e) Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(f) A qualifying tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business. Tenants that previously qualified under RCW 82.08.986 or 82.12.986 must reapply if they intend to expand into a qualifying business.

(3)(a)(i) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment assigned to an eligible computer data center has increased by a minimum of three family wage employment positions for each incremental increase of 20,000 square feet of space that is newly dedicated to housing working servers at the eligible computer data center. For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3)(a)(i) is based only on the space occupied by the qualifying tenant in the eligible computer data center.

(ii) After the minimum number of family wage employment positions as required under (a)(i) of this subsection (3) is established, a qualifying business or a qualifying tenant must maintain the minimum family wage employment positions required under (a)(i) of this subsection (3) while the exemption certificate is valid.

(b) In calculating the number of family wage employment positions:

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

(A) The net increase, since the date of issuance of the qualifying business's exemption certificate, in family wage employment positions employed by qualifying tenants; and

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

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

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

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

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant is equal to the net increase in family wage employment positions assigned to an eligible computer data center as described in (b)(ii)(A)(I) and (II) of this subsection (3), multiplied by the percentage of total space within the eligible computer data center occupied by

the qualifying tenant. Any combination of qualifying business and qualifying tenant family wage employment positions may meet this requirement.

(c)(i) For purposes of this subsection:

(A) For exemption certificates issued on or after June 9, 2022, family wage employment positions are new permanent employment positions requiring 40 hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(B) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position.

(C) "New permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the qualifying business or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the qualifying business and by employees of qualifying tenants.

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

(d)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (3), all previously exempted sales and use taxes immediately due and payable, and any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, except as described in (d)(iii) of this subsection (3).

(ii) The department of labor and industries must, at the request of the department, assist in determining whether the requirements of this subsection (3) have been met.

(iii) If the department, with the assistance of the department of labor and industries, finds that a failure to meet the requirements of this subsection (3) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may provide exceptions or extensions to the requirements of this subsection (3).

(iv) Any repayment of taxes triggered by the failure of a qualifying business or qualifying tenant to meet the requirements of this subsection (3) must be calculated in proportion to the duration of time for which any applicable requirement was not met.

(v) If the department is notified that a qualifying business or qualifying tenant fails to meet the requirements of this subsection (3), the department may require a qualifying busi-

ness or qualifying tenant to submit records necessary to determine whether the requirements have been met.

(4) For exemption certificates issued on or after June 9, 2022:

(a) Within three years after being placed in service, the qualifying business operating a newly constructed data center must certify to the department that it has attained certification under one or more of the following sustainable design or green building standards:

- (i) BREEAM for new construction or BREEAM in-use;
- (ii) Energy star;
- (iii) Envision;
- (iv) ISO 50001-energy management;
- (v) LEED for building design and construction or LEED for operations and maintenance;
- (vi) Green globes for new construction or green globes for existing buildings;
- (vii) UL 3223; or
- (viii) Other reasonable standards approved by the department.

(b) The department may require qualifying businesses and qualifying tenants to submit records necessary to verify the requirements under this subsection (4) have been met.

(c)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (4), all previously exempted sales and use taxes are immediately due and payable, any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, and an additional 10 percent penalty is assessed, except as described in (c)(ii) of this subsection (4).

(ii) If the department finds that a failure to meet the requirements of this subsection (4) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may, at its discretion, provide exceptions or extensions to the requirements of this subsection (4). The department may, at its discretion, coordinate with agencies with relevant expertise to assist in determining whether the requirements of this subsection (4) have been met.

(5) A qualifying business or a qualifying tenant claiming the exemption under this section is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through:

(a) Coordinating with the industrial waste coordination program established under RCW 43.31.625 to identify and provide technical assistance in implementing industrial symbiosis projects;

(b) To the extent possible, procuring or contracting for power from renewable sources;

(c) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems; and

(d) Taking actions to conserve, reuse, and replace water. This includes using water efficient fixtures and practices; treating, infiltrating, and harvesting rainwater; recycling water before discharging; partnering with local water utilities

(2022 Ed.)

to use discharged water for irrigation and other water conservation purposes; using reclaimed water where possible for data center operations; and supporting water restoration in local watersheds.

(6) Qualifying businesses and tenants must claim an exemption under this section in the current tax year when the taxes would have been due unless an extension is filed with the department.

(7) A qualifying business or a qualifying tenant claiming an exemption under this section must complete an annual tax performance report as required in RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(8)(a) The certificate holder may not at any time assign or transfer a certificate without the prior written consent of the department. The department must allow certificate transfers if the certificate holder meets the following requirements:

(i) The certificate assignee or transferee is qualified to do business in the state;

(ii) The assignee or transferee acknowledges the transfer of the certificate in writing;

(iii) The assignee or transferee agrees to keep and perform all the terms of the certificates; and

(iv) An assignment or transfer of the certificate is to an entity that:

(A) Controls, is controlled by, or under common control with, the certificate holder;

(B) Acquires all or substantially all of the stock or assets of the certificate holder; or

(C) Is the resulting entity of a merger or consolidation with the certificate holder.

(b) Information submitted on the tax performance report is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided otherwise in RCW 82.32.330.

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

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

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW.

(c) "Certificate of occupancy" means:

(i) For a newly constructed eligible computer data center, the certificate of occupancy issued by a local governing authority for the structure or structures which comprise the eligible computer data center; or

(ii) For renovations of an eligible computer data center, the certificate of occupancy issued by a local governing authority for the renovated structure or structures that comprise the eligible computer data center.

(d)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated

fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; continuous on-site security guards; video camera surveillance; an electronic system requiring pass-codes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (d)(i)(A) through (C) of this subsection (9).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least 100,000 square feet.

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

(f) "Eligible computer data center" means a computer data center having at least 20,000 square feet dedicated for housing working servers. Movable or fixed stand-alone, pre-fabricated, or modular units, including intermodal shipping containers, do not qualify as "eligible computer data centers."

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

(h)(i) "Eligible server equipment" means for a qualifying business whose computer data center qualifies as an eligible computer data center, the original server equipment installed in an eligible computer data center on or after June 9, 2022, and replacement server equipment.

(ii) For purposes of this subsection (9)(h), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.9861; and

(B) Is installed and put into regular use within 10 years of June 9, 2022.

(iii) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center with an exemption certificate on or within 10 years of June 9, 2022, and replacement server equipment. For purposes of this subsection (9)(h)(iii), "replacement server equipment" means server equipment that:

(A)(I) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.9861 and is installed and put into regular use before July 1, 2027; or

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before June 9, 2022, for the exemptions provided under this section and RCW 82.12.9861; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than 12 years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

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

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

(k)(i) "Refurbished" or "refurbishment" means a substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. Such an improvement must update or modernize servers, server space, ventilation, or power infrastructure in an eligible computer data center.

(ii) For a qualifying computer data center to be considered refurbished, the qualifying business must certify, in a form and manner prescribed by the department, that the refurbishment of an eligible computer data center is complete. The refurbishment is considered complete on the date that the improved portion of the computer data center is operationally complete and able to be used for its intended purpose.

(l) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner. For the purposes of this subsection, "electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards, monitors, printers, and mice, unless used within the eligible computer data center.

(10) This section expires July 1, 2038. [2022 c 267 § 5.]

Tax preference performance statement—2022 c 267 §§ 3-6: See note following RCW 82.08.986.

Findings—Intent—2022 c 267: See note following RCW 82.08.986.

82.08.988 Requirements for computer data centers receiving an exemption—Labor agreements. From June 9, 2022, in order to obtain the exemption provided in RCW 82.08.986 or 82.08.9861, a qualifying business or qualifying tenant must certify to the department that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption under RCW 82.08.986 or 82.08.9861 will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements, provided the following apply:

(1) The owner and the prime contractor and all of its subcontractors regardless of tier have the absolute right to select any qualified and responsible bidder for the award of contracts on a specified project without reference to the existence or nonexistence of any agreements between such bidder and any party to such project labor agreement, and only when such bidder is willing, ready, and able to become a party to, signs a letter of assent, and complies with such agreement or agreements, should it be designated the successful bidder; and

(2) It is understood that this is a self-contained, stand-alone agreement, and that by virtue of having become bound to such agreement or agreements, neither the project contractor nor the subcontractors are obligated to sign any other local, area, or national agreement. [2022 c 267 § 7.]

Findings—Intent—2022 c 267: See note following RCW 82.08.986.

82.08.990 Exemptions—Import or export commerce. The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property if the sale is exempt from business and occupation tax under RCW 82.04.610. [2007 c 477 § 3.]

Intent—Purpose—2007 c 477: See note following RCW 82.04.610.

82.08.993 Exemptions—Fuel cell electric vehicles—Report to the legislature. (Expires June 30, 2029.) (1)(a) Subject to the limitations in this subsection, beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, 50 percent of the tax levied by RCW 82.08.020 does not apply to sales or leases of new electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b)(i) By the end of the fifth working day of each month, until the expiration of the exemption as described in (c) of this subsection, the department must determine the cumulative number of vehicles that have claimed the exemption as described in (a) of this subsection.

(ii) The department of licensing must collect and provide, upon request, information in a form or manner as required by the department to determine the number of exemptions that have been claimed.

(c) The exemption under this section expires after the last day of the calendar month immediately following the (2022 Ed.)

month the department determines that the total number of vehicles exempt under (a) of this subsection reaches 650. All leased vehicles that qualified for the exemption before the expiration of the exemption must continue to receive the exemption as described under (a) of this subsection on lease payments due through the remainder of the lease.

(d) The department must provide notification on its website monthly on the amount of exemptions that have been applied for, the amount issued, and the amount remaining before the limit described in (c) of this subsection has been reached, and, once that limit has been reached, the date the exemption expires pursuant to (c) of this subsection.

(e) A person may not claim the exemption under this subsection if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(f) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles.

(2)(a) Subject to the limitations in this subsection (2), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, the entire tax levied by RCW 82.08.020 does not apply to the sale or lease of used electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles. However, the maximum value amount eligible for the exemption under (a) of this subsection is the lesser of either \$16,000 or the fair market value of the vehicle.

(c) A person may not claim the exemption under this subsection (2) if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(3)(a) For qualifying vehicles sold by a person licensed to do business in the state of Washington, the seller must keep records necessary for the department to verify eligibility under this section. The seller reporting the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(b) For vehicles purchased from (i) a seller that is not licensed to do business in the state of Washington, or (ii) a private party, the buyer must keep records necessary for the department to verify eligibility under this section. The buyer claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; date of sale; sales price; and the total amount qualifying for the incentive claimed for each vehicle. This information must be provided in a form and manner prescribed by the department.

(4)(a) The department of licensing must maintain and publish a list of all vehicle models qualifying for the tax exemptions under this section and RCW 82.12.817 until the expiration of this section, and is authorized to issue final rulings on vehicle model qualification for these criteria.

(b) The department of revenue retains responsibility for determining whether a vehicle meets the applicable qualifying criterion under subsections (1) and (2) of this section.

(5) By the last day of August 2023, and annually thereafter until this section expires, based on the best available data, the department must report the following information to the transportation committees of the legislature: The cumulative number of fuel cell electric vehicles that qualified for the exemptions under this section and RCW 82.12.817 by month of purchase or lease start and vehicle make and model; the dollar amount of all state retail sales and use taxes exempted on or after the qualification period start date, under this section and RCW 82.12.817; and estimates of the future costs of leased vehicles that qualified for the exemptions under this section and RCW 82.12.817.

(6)(a) Sales of vehicles delivered to the buyer after the expiration of this section, or leased vehicles for which the lease agreement was signed after the expiration of this section, do not qualify for the exemptions under this section.

(b) All leased vehicles that qualified for the exemption under this section before the expiration of this section must continue to receive the exemption on any lease payments due through the remainder of the lease.

(7) For the purposes of this section:

(a) "Fair market value" has the same meaning as "value of the article used" in RCW 82.12.010.

(b) "Fuel cell" means a technology that uses an electrochemical reaction to generate electric energy by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "New vehicle" has the same meaning as "new motor vehicle" in RCW 46.04.358.

(d) "Selling price" and "sales price" have the same meaning as in RCW 82.08.010.

(e) "Used vehicle" has the same meaning as in RCW 46.04.660.

(8) This section expires June 30, 2029. [2022 c 182 § 303; 2021 c 171 § 2.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—2021 c 171: "This section is the tax preference performance statement for the tax preferences contained in sections 2 and 3, chapter 171, Laws of 2021. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the use of hydrogen fuel cell electric vehicles in Washington as another way of promoting clean alternative fuel vehicle adoption in the state. It is the legislature's intent to establish an eight-year pilot tax incentive program for fuel cell electric vehicles by creating a temporary partial sales and use tax exemption on fuel cell electric vehicles in order to reduce the price charged to customers and to evaluate the feasibility of wider adoption of the use of fuel cell electric technology in transportation.

(3) Since the tax incentive created in sections 2 and 3 of this act is limited to eight years, the joint legislative audit and review committee must, within the committee's appropriations, evaluate the effectiveness of this tax

incentive on the number of hydrogen fuel cell vehicles titled in the state by November 1, 2028.

(4) The department of licensing and the department of revenue must, within the departments' respective appropriations, provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2021 c 171 § 1.]

Effective date—2021 c 171: "Sections 1 through 3 of this act take effect July 1, 2022." [2021 c 171 § 4.]

82.08.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.

(1) The tax imposed by RCW 82.08.020 does not apply to sales of personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2009 c 535 § 514; 2007 c 381 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.996 Exemptions—Battery-powered electric marine propulsion systems—Qualifying vessels. (Expires July 1, 2030.)

(1) The tax imposed by RCW 82.08.020 does not apply to:

(a) The sale of new battery-powered electric marine propulsion systems with continuous power greater than fifteen kilowatts;

(b) The sale of new vessels equipped with propulsion systems that qualify under (a) of this subsection;

(c)(i) The sale of batteries and battery packs used to exclusively power electric marine propulsion systems or hybrid electric marine propulsion systems, if such systems operate with a continuous power greater than fifteen kilowatts;

(ii) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving batteries or battery packs that qualify under (c)(i) of this subsection;

(d)(i) The sale of new shoreside batteries purchased and installed for the purpose of reducing grid demand when charging electric and hybrid vessels;

(ii) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving shoreside batteries;

(iii) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving shoreside batteries infrastructure; and

(iv) The sale of tangible personal property that will become a component of shoreside batteries infrastructure.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For the purposes of this section:

(a) "Battery" means a secondary battery or storage cell that can be charged, discharged into a load, and recharged many times; and includes one of several different combinations of electrode materials and electrolytes;

(b) "Battery pack" means a group of any number of secondary or rechargeable batteries within a casing and used as a power source for battery-powered electric marine propulsion systems or hybrid electric marine propulsion systems;

(c) "Battery-powered electric marine propulsion system" means a fully electric outboard or inboard motor used by vessels, the sole source of propulsive power of which is the energy stored in the battery packs. The term includes required accessories, such as throttles, displays, and battery packs;

(d) "Hybrid electric marine propulsion system" means a propulsion system that includes two or more sources of propulsion in one design, one of which must be electric;

(e) "Shoreside batteries" means batteries installed at a dock or similar location to provide an electric charge to a vessel powered by an electric marine propulsion system;

(f) "Shoreside batteries infrastructure" means the shore-side battery bank, charging apparatus, and emergency services generator; and

(g) "Vessel" includes every watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

(4) This section expires July 1, 2030. [2020 c 341 § 1; 2019 c 287 § 21.]

Effective date—2020 c 341: "This act takes effect July 1, 2020." [2020 c 341 § 4.]

Tax preference performance statement—2020 c 341 §§ 1 and 2; 2019 c 287 §§ 21 and 22: "This section is the tax preference performance statement for the tax preferences contained in sections 1 and 2, chapter 341, Laws of 2020 and sections 21 and 22, chapter 287, Laws of 2019. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase the use of electric vessels in Washington. It is the legislature's intent to establish a sales and use tax exemption on certain electric vessels in order to reduce the price charged to customers for electric vessels and to create and retain jobs associated with electric marine battery manufacturing and the construction of new electric ferries in Washington.

(3) To measure the effectiveness of the tax preferences in sections 1 and 2, chapter 341, Laws of 2020 and sections 21 and 22, chapter 287, Laws of 2019 in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of electric vessels titled in the state.

(4) If a review finds that jobs in Washington associated with electric marine battery manufacturing and the construction of new electric ferries using electric battery power are created and retained, then the legislature intends to extend the expiration date of these tax preferences.

(5) In order to obtain the data necessary to perform the reviews in subsections (3) and (4) of this section, the department of licensing and the department of revenue must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary." [2020 c 341 § 3; 2019 c 287 § 20.]

Effective date—2019 c 287: See note following RCW 82.29A.125.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

82.08.997 Exemptions—Temporary medical housing. (1) The tax levied by RCW 82.08.020 does not apply to sales of temporary medical housing by a health or social welfare organization, if the following conditions are met:

(a) The temporary medical housing is provided only:

(i) While the patient is receiving medical treatment at:
(A) A hospital required to be licensed under RCW 70.41.090; or
(B) an outpatient clinic associated with such hospital; or

(2022 Ed.)

(ii) During any period of recuperation or observation immediately following medical treatment received by a patient at a facility in (a)(i)(A) or (B) of this subsection; and

(b) The health or social welfare organization does not furnish lodging or related services to the general public.

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

(a) "Health or social welfare organization" has the meaning provided in RCW 82.04.431; and

(b) "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being. [2008 c 137 § 2.]

Additional notes found at www.leg.wa.gov

82.08.998 Exemptions—Weatherization of a residence. (1) The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property used in the weatherization of a residence under the weatherization assistance program under chapter 70A.35 RCW. The exemption only applies to tangible personal property that becomes a component of the residence.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) "Residence" and "weatherization" have the meanings provided in RCW 70A.35.020. [2020 c 20 § 1476; 2008 c 92 § 1.]

82.08.999 Exemptions—Joint municipal utility services authorities. The tax levied by RCW 82.08.020 shall not apply to any sales, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.106 RCW and any of its members. [2011 c 258 § 12.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.08.9994 Exemptions—Bottled water—Prescription use. (1) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water dispensed or to be dispensed to patients pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition.

(2) For purposes of this section, "prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(3) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(4) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. [2017 3rd sp.s. c 28 § 103.]

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

82.08.9941 Exemptions—Bottled water—Primary water source unsafe. (1)(a) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water to persons whose primary source of drinking water is unsafe.

(b) For purposes of this subsection and RCW 82.12.9941, a person's primary source of drinking water is unsafe if:

(i) The public water system providing the drinking water has issued a public notification that the drinking water may pose a health risk, and the notification is still in effect on the date that the bottled water was purchased;

(ii) Test results on the person's drinking water, which are no more than twelve months old, from a laboratory certified to perform drinking water testing show that the person's drinking water does not meet safe drinking water standards applicable to public water systems; or

(iii) The person otherwise establishes, to the department's satisfaction, that the person's drinking water does not meet safe drinking water standards applicable to public water systems.

(2) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(3)(a) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(b) The department may waive the requirement for an exemption certificate in the event of disaster or similar circumstance. [2017 3rd sp.s. c 28 § 105.]

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

82.08.9995 Exemptions—Restaurant employee meals. (1) The tax levied by RCW 82.08.020 does not apply to a meal provided without specific charge by a restaurant to its employees.

(2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.0293.

(b) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed and breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants." So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items. [2015 c 86 § 303; 2011 c 55 § 2.]

Additional notes found at www.leg.wa.gov

82.08.9996 Exemptions—Vessel deconstruction. (1) The tax levied by RCW 82.08.020 does not apply to sales of vessel deconstruction performed at:

(a) A qualified vessel deconstruction facility; or

(b) An area over water that has been permitted under section 402 of the clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel deconstruction.

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

(a)(i) "Vessel deconstruction" means permanently dismantling a vessel, including: Abatement and removal of hazardous materials; the removal of mechanical, hydraulic, or electronic components or other vessel machinery and equipment; and either the cutting apart or disposal, or both, of vessel infrastructure. For the purposes of this subsection, "hazardous materials" includes fuel, lead, asbestos, polychlorinated biphenyls, and oils.

(ii) "Vessel deconstruction" does not include vessel modification or repair.

(b) "Qualified vessel deconstruction facility" means structures, including floating structures, that are permitted under section 402 of the clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel deconstruction.

(3) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. [2014 c 195 § 301.]

Reviser's note: Section 301, chapter 195, Laws of 2014 expires January 1, 2025, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Effective date—2014 c 195 §§ 301 and 302: "Sections 301 and 302 of this act take effect October 1, 2014." [2014 c 195 § 304.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

82.08.9997 Exemptions—Retail sale of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by cannabis agreement between state and tribe. The taxes imposed by this chapter do not apply to the retail sale of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by an agreement entered into under RCW 43.06.490. "Cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as defined in RCW 69.50.101. The provisions of RCW 82.32.805 and 82.32.808 do not apply to this section. [2022 c 56 § 6; 2022 c 16 § 154; 2015 c 207 § 4.]

Reviser's note: This section was amended by 2022 c 16 § 154 and by 2022 c 56 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—Finding—2015 c 207: See note following RCW 43.06.490.

82.08.9998 Exemptions—Cannabis concentrates, useable cannabis, or cannabis-infused products—Products containing low amounts of THC. (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department of health in rules adopted under RCW 69.50.375(4) in chapter 246-70 WAC as being a compliant cannabis product, by cannabis retailers with medical cannabis endorsements to qualifying patients or designated providers who have been issued recognition cards;

(b) Sales of products containing THC with a THC concentration of 0.3 percent or less to qualifying patients or designated providers who have been issued recognition cards by cannabis retailers with medical cannabis endorsements;

(c) Sales of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, by cannabis retailers with medical cannabis endorsements, to any person;

(d) Sales of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by health care professionals under RCW 69.51A.280;

(e)(i) Cannabis, cannabis concentrates, useable cannabis, cannabis-infused products, or products containing THC with a THC concentration of 0.3 percent or less produced by a cooperative and provided to its members; and

(ii) Any nonmonetary resources and labor contributed by an individual member of the cooperative in which the individual is a member. However, nothing in this subsection (1)(e) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.08.020 on any purchase of property or services contributed to the cooperative.

(2022 Ed.)

(2) Each seller making exempt sales under subsection (1) of this section must maintain information establishing eligibility for the exemption in the form and manner required by the department.

(3) The department must provide a separate tax reporting line for exemption amounts claimed under this section.

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

(a) "Cooperative" means a cooperative authorized by and operating in compliance with RCW 69.51A.250.

(b) "Cannabis retailer with a medical cannabis endorsement" means a cannabis retailer permitted under RCW 69.50.375 to sell cannabis for medical use to qualifying patients and designated providers.

(c) "Products containing THC with a THC concentration of 0.3 percent or less" means all products containing THC with a THC concentration not exceeding 0.3 percent and that, when used as intended, are inhalable, ingestible, or absorbable.

(d) "THC concentration," "cannabis," "cannabis concentrates," "useable cannabis," "cannabis retailer," and "cannabis-infused products" have the same meanings as provided in RCW 69.50.101 and the terms "qualifying patients," "designated providers," and "recognition card" have the same meaning as provided in RCW 69.51A.010. [2022 c 16 § 155; 2019 c 393 § 4; 2015 2nd sp.s. c 4 § 207.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2019 c 393: See note following RCW 69.50.345.

Intent—2019 c 393: See note following RCW 69.50.346.

Applicability—2015 2nd sp.s. c 4 §§ 207 and 208: "The provisions of RCW 82.32.805 and 82.32.808(8) do not apply to the exemptions in RCW 82.08.9998 and 82.12.9998." [2015 2nd sp.s. c 4 § 209.]

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

82.08.9999 Exemptions—Vehicles using clean alternative fuels and electric vehicles. (Expires August 1, 2028.)

(1) Beginning August 1, 2019, with sales made or lease agreements signed on or after the qualification period start date:

(a) The tax levied by RCW 82.08.020 does not apply as provided in (b) of this subsection to sales or leases of new or used passenger cars, light duty trucks, and medium duty passenger vehicles that:

(i) Are exclusively powered by a clean alternative fuel; or

(ii) Use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least 30 miles using only battery power; and

(iii)(A) Have a vehicle selling price plus trade-in property of like kind for purchased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$30,000; or

(B) Have a fair market value at the inception of the lease for leased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$30,000;

(b)(i) The exemption in this section is applicable for up to the amounts specified in (b)(ii) or (iii) of this subsection of:

(A) The total amount of the vehicle's selling price, for sales made; or

(B) The total lease payments made plus any additional selling price of the leased vehicle if the original lessee purchases the leased vehicle before the qualification period end date, for lease agreements signed.

(ii) Based on the purchase date or the date the lease agreement was signed of the vehicle if the vehicle is a new vehicle at the time of the purchase date or the date the lease agreement was signed:

(A) From the qualification period start date until July 31, 2021, the maximum amount eligible under (b)(i) of this subsection is \$25,000;

(B) From August 1, 2021, until July 31, 2023, the maximum amount eligible under (b)(i) of this subsection is \$20,000;

(C) From August 1, 2023, until July 31, 2025, the maximum amount eligible under (b)(i) of this subsection is \$15,000.

(iii) If the vehicle is a used vehicle at the time of the purchase date or the date the lease agreement was signed, the maximum amount eligible under (b)(i) of this subsection is \$16,000.

(2) The seller must keep records necessary for the department to verify eligibility under this section. A person claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(3)(a) The department of licensing must maintain and publish a list of all vehicle models qualifying for the tax exemptions under this section or RCW 82.12.9999 until the expiration date of this section, and is authorized to issue final rulings on vehicle model qualification for these criteria. A seller is not responsible for repayment of the tax exemption under this section and RCW 82.12.9999 for a vehicle if the department of licensing's published list of qualifying vehicle models on the purchase date or the date the lease agreement was signed includes the vehicle model and the department of licensing subsequently removes the vehicle model from the published list, and, if applicable, the vehicle meets the qualifying criterion under subsection (1)(a)(iii)(B) of this section and RCW 82.12.9999(1)(a)(iii)(B).

(b) The department of revenue retains responsibility for determining whether a vehicle meets the applicable qualify-

ing criterion under subsection (1)(a)(iii)(B) of this section and RCW 82.12.9999(1)(a)(iii)(B).

(4) By the last day of October 2019, and every six months thereafter until this section expires, based on the best available data, the department must report the following information to the transportation committees of the legislature: The cumulative number of vehicles that qualified for the exemption under this section and RCW 82.12.9999 by month of purchase or lease start and vehicle make and model; the dollar amount of all state retail sales and use taxes exempted on or after the qualification period start date, under this section and RCW 82.12.9999; and estimates of the future costs of leased vehicles that qualified for the exemption under this section and RCW 82.12.9999.

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

(a) "Clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2019, and the rules of the Washington state department of ecology.

(b) "Fair market value" has the same meaning as "value of the article used" in RCW 82.12.010.

(c) "New vehicle" has the same meaning as "new motor vehicle" in RCW 46.04.358.

(d) "Qualification period end date" means August 1, 2025.

(e) "Qualification period start date" means August 1, 2019.

(f) "Used vehicle" has the same meaning as in RCW 46.04.660.

(6)(a) Sales of vehicles delivered to the buyer or leased vehicles for which the lease agreement was signed after the qualification period end date do not qualify for the exemption under this section.

(b) All leased vehicles that qualified for the exemption under this section before the qualification period end date must continue to receive the exemption as described under subsection (1)(b) of this section on any lease payments due through the remainder of the lease before August 1, 2028.

(7) This section expires August 1, 2028.

(8) This section is supported by the revenues generated in RCW 46.17.324, and therefore takes effect only if RCW 46.17.324 is enacted by June 30, 2019. [2022 c 182 § 305; 2021 c 145 § 13; 2019 c 287 § 9.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

82.08.9991 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1705.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.12 RCW

USE TAX

Sections

82.12.010	Definitions.	82.12.0269	Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes.
82.12.020	Use tax imposed.	82.12.0271	Exemptions—Use of wearing apparel only as a sample for display for sale.
82.12.0201	Dedication of taxes—Comprehensive performance audits.	82.12.0272	Exemptions—Use of personal property in single trade shows.
82.12.0203	Refinery fuel gas—Value—Tax rate—Local use tax exemption.	82.12.0273	Exemptions—Use of pollen.
82.12.0205	Exemptions—Waste vegetable oil.	82.12.0274	Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation.
82.12.0207	Exemptions—Adapted housing—Disabled veterans—Construction.	82.12.02745	Exemptions—Use by free hospitals of certain items.
82.12.0208	Exemptions—Digital codes.	82.12.02747	Exemptions—Use of medical products by qualifying blood, tissue, or blood and tissue banks.
82.12.02088	Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state—Apportionment.	82.12.02748	Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing.
82.12.022	Natural or manufactured gas—Use tax imposed—Exemption.	82.12.02749	Exemptions—Use of medical supplies, chemicals, or materials by organ procurement organization.
82.12.023	Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020.	82.12.0275	Exemptions—Use of certain drugs or family planning devices.
82.12.024	Deferral of use tax on certain users of natural or manufactured gas.	82.12.0276	Exemptions—Use of returnable containers for beverages and foods.
82.12.0251	Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties.	82.12.0277	Exemptions—Certain medical items.
82.12.02525	Exemptions—Sale of copied public records by state and local agencies.	82.12.0279	Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof.
82.12.0253	Exemptions—Use of tangible personal property taxable under chapter 82.16 RCW.	82.12.0282	Exemptions—Use of vans as ride-sharing vehicles.
82.12.0254	Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of vehicles in the transportation of persons or property across state boundaries—Conditions—Use of vehicle under trip permit to point outside state.	82.12.0283	Exemptions—Use of certain irrigation equipment.
82.12.0255	Exemptions—Nontaxable tangible personal property, warranties, and digital products.	82.12.0284	Exemptions—Use of computers or computer components, accessories, software, digital goods, or digital codes donated to schools or colleges.
82.12.0256	Exemptions—Use of motor vehicle and special fuel—Conditions.	82.12.02915	Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis.
82.12.02565	Exemptions—Machinery and equipment used for manufacturing, research and development, or a testing operation.	82.12.0293	Exemptions—Use of food and food ingredients.
82.12.025651	Exemptions—Use of machinery and equipment by public research institutions.	82.12.0294	Exemptions—Use of feed for cultivating or raising fish for sale.
82.12.02566	Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.	82.12.0296	Exemptions—Use of feed consumed by livestock at a public livestock market.
82.12.025661	Exemptions—Aircraft maintenance repair—Building construction.	82.12.0297	Exemptions—Use of food purchased under the supplemental nutrition assistance program.
82.12.02568	Exemptions—Use of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.	82.12.0298	Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.
82.12.02569	Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.	82.12.031	Exemptions—Use by artistic or cultural organizations of certain objects.
82.12.0257	Exemptions—Use of personal property of the operating property of a public utility by state or political subdivision.	82.12.0311	Exemptions—Use of materials and supplies in packing horticultural products.
82.12.0258	Exemptions—Use of personal property previously used in farming and purchased from farmer at auction.	82.12.0315	Exemptions—Rental or sales related to motion picture or video productions—Exceptions.
82.12.0259	Exemptions—Use of personal property, digital automated services, or certain other services by federal corporations providing aid and relief.	82.12.0316	Exemptions—Sales of cigarettes by Indian retailers.
82.12.02595	Exemptions—Personal property and certain services donated to nonprofit organization or governmental entity.	82.12.0318	Exemptions—Use of vapor products sold by Indian retailers.
82.12.0261	Exemptions—Use of livestock.	82.12.032	Exemption—Use of used park model trailers.
82.12.0262	Exemptions—Use of poultry for producing poultry and poultry products for sale.	82.12.033	Exemption—Use of certain used mobile homes.
82.12.0263	Exemptions—Use of fuel by extractor or manufacturer thereof.	82.12.034	Exemption—Use of used floating homes.
82.12.0264	Exemptions—Use of dual-controlled motor vehicles by school for driver training.	82.12.0345	Exemptions—Use of newspapers.
82.12.0265	Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities.	82.12.0347	Exemptions—Use of academic transcripts.
82.12.0266	Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state.	82.12.035	Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.
82.12.0267	Exemptions—Use of semen in artificial insemination of livestock.	82.12.036	Exemptions and credits—Pollution control facilities.
82.12.0268	Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers.	82.12.037	Credits and refunds—Bad debts.
82.12.02685	Exemptions—Use of tangible personal property related to farmworker housing.	82.12.038	Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.
		82.12.040	Retailers to collect tax—Penalty.
		82.12.045	Collection of tax on vehicles by county auditor or director of licensing—Remittance.
		82.12.060	Installment sales or leases.
		82.12.070	Cash receipts taxpayers—Bad debts.
		82.12.080	Administration.
		82.12.145	Delivery charges.
		82.12.195	Bundled transactions—Tax imposed.
		82.12.207	Investment data for investment firms.
		82.12.215	Exemptions—Large private airplanes.
		82.12.225	Exemptions—Nonprofit fund-raising activities.
		82.12.700	Exemptions—Vessels sold to nonresidents.
		82.12.798	Exemptions—Use of feminine hygiene products.
		82.12.799	Exemptions—Vessels exempt from registration.
		82.12.800	Exemptions—Uses of vessel, vessel's trailer by manufacturer.
		82.12.801	Exemptions—Uses of vessel, vessel's trailer by dealer.
		82.12.802	Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules.
		82.12.803	Exemptions—Nebulizers.
		82.12.804	Exemptions—Ostomic items.
		82.12.805	Exemptions—Personal property used at an aluminum smelter.

- 82.12.806 Exemptions—Use of computer equipment parts and services by printer or publisher.
- 82.12.807 Exemptions—Direct mail delivery charges.
- 82.12.808 Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers.
- 82.12.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers.
- 82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation.
- 82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
- 82.12.816 Exemptions—Electric vehicle batteries and fuel cells—Labor and services—Infrastructure.
- 82.12.817 Exemptions—Fuel cell electric vehicles.
- 82.12.820 Exemptions—Warehouse and grain elevators and distribution centers.
- 82.12.832 Exemptions—Use of gun safes.
- 82.12.834 Exemptions—Sales/leasebacks by regional transit authorities.
- 82.12.845 Use of motorcycles loaned to department of licensing.
- 82.12.850 Exemptions—Conifer seed.
- 82.12.855 Exemptions—Replacement parts for qualifying farm machinery and equipment.
- 82.12.860 Exemptions—Property and services acquired from a federal credit union.
- 82.12.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.
- 82.12.875 Automotive adaptive equipment.
- 82.12.880 Exemptions—Animal pharmaceuticals.
- 82.12.890 Exemptions—Livestock nutrient management equipment and facilities.
- 82.12.900 Exemptions—Anaerobic digesters.
- 82.12.910 Exemptions—Propane or natural gas to heat chicken structures.
- 82.12.920 Exemptions—Chicken bedding materials.
- 82.12.925 Exemptions—Dietary supplements.
- 82.12.930 Exemptions—Watershed protection or flood prevention.
- 82.12.935 Exemptions—Disposable devices used to deliver prescription drugs for human use.
- 82.12.940 Exemptions—Over-the-counter drugs for human use.
- 82.12.945 Exemptions—Kidney dialysis devices.
- 82.12.950 Exemptions—Steam, electricity, electrical energy.
- 82.12.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel.
- 82.12.962 Exemptions—Use of machinery and equipment in generating electricity.
- 82.12.964 Use of machinery and equipment used in generating electricity—Effect of exemption expiration.
- 82.12.965 Exemptions—Semiconductor materials manufacturing.
- 82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials.
- 82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials.
- 82.12.975 Computer parts and software related to the manufacture of commercial airplanes.
- 82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes.
- 82.12.983 Exemptions—Wax and ceramic materials.
- 82.12.985 Exemptions—Insulin.
- 82.12.986 Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers.
- 82.12.9861 Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers in counties with populations over 800,000.
- 82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.
- 82.12.996 Exemptions—Battery-powered electric marine propulsion systems—Qualifying vessels.
- 82.12.998 Exemptions—Weatherization of a residence.
- 82.12.999 Exemptions—Joint municipal utility services authorities.
- 82.12.9994 Exemptions—Bottled water—Prescription use.
- 82.12.99941 Exemptions—Bottled water—Primary water source unsafe.
- 82.12.9995 Exemptions—Restaurant employee meals.
- 82.12.9996 Exemptions—Vessel deconstruction.
- 82.12.9997 Exemptions—Cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by cannabis agreement between state and tribe.
- 82.12.9998 Exemptions—Cannabis concentrates, useable cannabis, or cannabis-infused products—Products containing low amounts of THC.
- 82.12.9999 Exemptions—Vehicles using clean alternative fuels and electric vehicles.

82.12.99991 Tax preferences—Expiration dates.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Direct pay permits: RCW 82.32.087.

82.12.010 Definitions. For the purposes of this chapter:

(1) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (1), the use of the property is deemed to be by such consumer.

(2) "Extended warranty" has the same meaning as in RCW 82.04.050(7).

(3) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(4)(a)(i) Except as provided in (a)(ii) of this subsection (4), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

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

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

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, except for natural gas and manufactured gas, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from

storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(c), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software;

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed; and

(h) With respect to natural gas or manufactured gas, the use of which is taxable under RCW 82.12.022, including gas that is also taxable under the authority of RCW 82.14.230, the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer's own facilities for later consumption by the taxpayer.

(7)(a) "Value of the article used" is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of

any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used is determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used is determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used is determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax.

(8) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe.

(9) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used is determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe.

(10) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used is determined as nearly as possible according

to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe. [2017 c 323 § 519; 2015 c 169 § 5. Prior: 2010 c 127 § 4; 2009 c 535 § 304; 2006 c 301 § 3; 2005 c 514 § 104; prior: 2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1; prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—2003 c 5: "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Additional notes found at www.leg.wa.gov

82.12.020 Use tax imposed. (1) There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property acquired by the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), excluding services defined as a retail sale in RCW 82.04.050(6)(c) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

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

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

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

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

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2) (a) or (g) or (6)(c), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010. [2017 c 323 §

520; 2015 c 169 § 6; 2010 1st sp.s. c 23 § 206; 2009 c 535 § 305; 2005 c 514 § 105. Prior: 2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020; prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—2003 c 361: See note following RCW 82.38.030.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1980 c 37: See note following RCW 82.04.4281.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

Additional notes found at www.leg.wa.gov

82.12.0201 Dedication of taxes—Comprehensive performance audits. Beginning on December 8, 2005, 0.16 percent of the taxes collected under RCW 82.12.020 based on the rate in RCW 82.08.020(1) shall be dedicated to funding comprehensive performance audits under RCW 43.09.470. Revenue identified in this section shall be deposited in the performance audits of government account created in RCW 43.09.475. [2006 c 1 § 4 (Initiative Measure No. 900, approved November 8, 2005).]

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Additional notes found at www.leg.wa.gov

82.12.0203 Refinery fuel gas—Value—Tax rate—Local use tax exemption. (1) The value of the article used with respect to refinery fuel gas under this chapter is the most recent monthly United States natural gas wellhead price, as published by the federal energy information administration.

(2) In lieu of the use tax rate provided in RCW 82.12.020, refinery fuel gas is subject to a rate of:

(a) 0.963 percent from January 1, 2018, through December 31, 2018;

(b) 1.926 percent from January 1, 2019, through December 31, 2019;

(c) 2.889 percent from January 1, 2020, through December 31, 2020; and

(d) 3.852 percent from January 1, 2021, and thereafter.

(3) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant that produced or manufactured the same is not subject to local use tax. [2017 3rd sp.s. c 28 § 108.]

(2022 Ed.)

Reviser's note: The tax preference enacted in section 108, chapter 28, Laws of 2017 3rd sp. sess. and the effective date for that section subsequently amended by section 2, chapter 92, Laws of 2018 expires January 1, 2029, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Tax preference performance statement—2018 c 92: "(1) This section is the tax preference performance statement for the tax preference contained in section 108, chapter 28, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers and improve industry competitiveness, as indicated in RCW 82.32.808(2) (a) and (b).

(3) If a review finds that there is an increase in self-produced fuel as the result of this tax preference, then the legislature intends to extend the expiration date of this tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2018 c 92 § 1.]

Application—2017 3rd sp.s. c 28 §§ 107-109: See note following RCW 82.12.0263.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

82.12.0205 Exemptions—Waste vegetable oil. The provisions of this chapter do not apply with respect to the use of waste vegetable oil that is used by a person in the production of biodiesel for personal use. The definitions in RCW 82.08.0205 apply to this section. [2008 c 237 § 3.]

Additional notes found at www.leg.wa.gov

82.12.0207 Exemptions—Adapted housing—Disabled veterans—Construction. (1) An eligible purchaser who has paid the tax levied by RCW 82.12.020 on materials incorporated as an ingredient or component of adapted housing is eligible for an exemption from all or a portion of that tax in the form of a remittance.

(2) All of the eligibility requirements, conditions, limitations, and definitions in RCW 82.08.0207 apply to this section. [2017 c 176 § 3.]

Findings—Intent—Application—2017 c 176: See notes following RCW 82.08.0207.

82.12.0208 Exemptions—Digital codes. (1) The provisions of this chapter do not apply in respect to the use of a digital code for one or more digital products, if the use of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.12.020.

(2) The provisions of this chapter do not apply to the use by a business or other organization of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(c) for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(c) available free of charge for the use or enjoyment of the general public. For purposes of this subsection (2), "general public" has the same meaning as in RCW 82.08.0208. The exemption provided in this subsection (2) does not apply unless the user has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public.

(3) The provisions of this chapter do not apply to the use by students of digital goods furnished by a public or private elementary or secondary school, or an institution of higher education as defined in section 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

(4)(a) The provisions of this chapter do not apply in respect to the use of digital goods that are:

(i) Of a noncommercial nature, such as personal email communications;

(ii) Created solely for an internal audience; or

(iii) Created solely for the business needs of the person who created the digital good, including business email communications, but not including the type of digital good that is offered for sale.

(b) This subsection (4) does not apply to the use of any digital goods purchased by the user, the user's donor, or anybody on the user's behalf.

(5) The provisions of this chapter do not apply in respect to the use of digital products or digital codes obtained by the end user free of charge.

(6) The provisions of this chapter do not apply to the use by a business of digital goods, and services rendered in respect to digital goods, where the digital goods and services rendered in respect to digital goods are used solely for business purposes. The exemption provided by this subsection (6) also applies to the use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes. For purposes of this subsection (6), the definitions in RCW 82.08.0208 apply.

(7)(a) A business or other organization subject to the tax imposed in RCW 82.12.020 on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c).

(b) No apportionment under this subsection (7) is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

(c) For purposes of this subsection (7), the following definitions apply:

(i) "Concurrently available for use within and outside this state" means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state; and

(ii) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) in the performance of his or her duties as an employee or other agent of the taxpayer.

(8)(a) Except as provided in (b) of this subsection (8), the provisions of this chapter do not apply to the use of audio or video programming provided by a radio or television broadcaster.

(b)(i) Except as provided in (b)(ii) of this subsection (8), the exemption provided in this subsection (8) does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(ii) The exemption provided in this subsection (8) applies to the sale of programming described in (b)(i) of this subsection (8) if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(c) For purposes of this subsection (8), "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, providers of subscription internet television, and persons who provide radio or television broadcasting to listeners or viewers for no charge. [2020 c 139 § 18; 2009 c 535 § 601.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02088 Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state—Apportionment. (1) A business or other organization subject to the tax imposed in RCW 82.12.020 on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c).

(2) No apportionment under this section is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

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

(a) "Concurrently available for use within and outside this state" means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or

more locations within this state and one or more locations outside this state.

(b) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) in the performance of his or her duties as an employee or other agent of the taxpayer. [2017 c 323 § 522; 2009 c 535 § 702.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (Contingent expiration date.) (1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

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

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

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

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

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

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

(7) The tax levied in this section does not apply to the use of natural or manufactured gas by a silicon smelter as that term is defined in RCW 82.16.315.

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

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

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

(2022 Ed.)

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

(10) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(11) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2017 3rd sp.s. c 37 § 707; (2017 3rd sp.s. c 37 § 706 expired January 1, 2018); 2017 c 135 § 27; 2015 3rd sp.s. c 6 § 506; 2014 c 216 § 304; 2011 c 174 § 304. Prior: 2010 1st sp.s. c 2 § 5; 2010 c 114 § 127; 2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Additional notes found at www.leg.wa.gov

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (Contingent effective date.) (1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

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

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

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

respect to the gas for which exemption is sought under this subsection.

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

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

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

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

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

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

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

(9) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(10) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2017 c 135 § 27; 2015 3rd sp.s. c 6 § 506; 2014 c 216 § 304; 2011 c 174 § 304. Prior: 2010 1st sp.s. c 2 § 5; 2010 c 114 § 127; 2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Additional notes found at www.leg.wa.gov

82.12.023 Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020. The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 10; 1989 c 384 § 5.]

[Title 82 RCW—page 176]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.12.024 Deferral of use tax on certain users of natural or manufactured gas. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001, and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, the tax levied in RCW 82.12.022 on the first sixty months' use of natural or manufactured gas by a direct service industrial customer that owns a facility shall be deferred. This deferral is limited to the tax on natural or manufactured gas used or consumed to generate electricity at the facility.

(3) Application for deferral shall be made by the direct service industrial customer before the first use of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first use of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and shall affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4)(a) The direct service industrial customer shall begin paying the deferred tax in the sixth calendar year following the calendar year in which the month of first use of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(2022 Ed.)

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the tax deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for deferred tax will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect deferral eligibility. However, the deferral is available to the successor only if the eligibility conditions of this section are met.

(5)(a) If the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of use of natural or manufactured gas to generate electricity at a facility is equal to or exceeds the six-year average annual employment stated on the application for deferral under this section, the tax deferred need not be paid. The direct service industrial customer shall certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first use of gas occurs the average annual employment for each of the five prior calendar years.

(b) If the five-year average calculated in (a) of this subsection is less than the average annual employment stated on the application for deferral under this section, the tax deferred under this section shall be paid in the amount as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Deferred Tax to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(c) Tax paid under this subsection shall be paid according to the schedule in subsection (4)(a) of this section and under the terms and conditions of subsection (4)(b) and (c) of this section.

(6) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(7) A person claiming this deferral shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility. [2001 c 214 § 10.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

82.12.0251 Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties. The provisions of this chapter do not apply in respect to the use:

(1) Of any article of tangible personal property or any digital good or digital code, and any services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, including digital goods, and digital codes, personal effects, private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2) (a) or (g). [2009 c 535 § 608; 2005 c 514 § 106; 2003 c 5 § 18; 1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.02525 Exemptions—Sale of copied public records by state and local agencies. The provisions of this chapter do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.56.010, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [2011 c 60 § 50; 2009 c 535 § 609; 1996 c 63 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.12.0253 Exemptions—Use of tangible personal property taxable under chapter 82.16 RCW. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property the sale of which is specifically taxable under chapter 82.16 RCW. [1980 c 37 § 53. Formerly RCW 82.12.030(3).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of vehicles in the transportation of persons or property across state boundaries—Conditions—Use of vehicle under trip permit to point outside state. (1) The provisions of this chapter do not apply in respect to the use of:

(a) Any airplane used primarily in (i) conducting interstate or foreign commerce by transporting property or persons for hire or by performing services under a contract with the United States government or (ii) providing intrastate air transportation by a commuter air carrier as defined in RCW 82.08.0262;

(b) Any locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting property or persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state;

(c) Tangible personal property that becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; and

(d) Labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter do not apply in respect to the use by a nonresident of this state of any vehicle used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such vehicle is registered in a foreign state and in respect to the use by a nonresident of this state of any vehicle so registered and used within this state for a period not exceeding fifteen consecutive days under such rules as the department must adopt. However, under circumstances determined to be justifiable by the department a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein includes a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents applies only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.

(3) The provisions of this chapter do not apply in respect to the use by the holder of a carrier permit issued by the interstate commerce commission or its successor agency of any vehicle whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any vehicle while being operated under the authority of a trip permit issued by the director of licensing pursuant to RCW 46.16A.320 and mov-

ing upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any vehicle used by the holder of a carrier permit issued by the interstate commerce commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such vehicle is owned by or leased with or without driver to the permit holder, in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving. [2015 c 86 § 306; 2010 c 161 § 905; 2009 c 503 § 2; 2003 c 5 § 3; 1998 c 311 § 7; 1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.0255 Exemptions—Nontaxable tangible personal property, warranties, and digital products. The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [2009 c 535 § 610; 2005 c 514 § 107; 2003 c 5 § 4; 1980 c 37 § 55. Formerly RCW 82.12.030(5).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. The provisions of this chapter do not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(1)(b); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1)(d) or 82.38.180(3)(a); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.38 RCW. However, the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained is not exempt under this subsection (2)(d) and the director of licensing must deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013. [2013 c 225 § 646; 2011 1st sp.s. c 16 § 5; 2007 c 223 § 10; 2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Intent—1983 1st ex.s. c 35: See note following RCW 82.08.0255.

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.12.865.

Additional notes found at www.leg.wa.gov

82.12.02565 Exemptions—Machinery and equipment used for manufacturing, research and development, or a testing operation. (1) The provisions of this chapter do not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) The definitions, conditions, and requirements in RCW 82.08.02565 apply to this section.

(3) This section does not apply to the use of (a) machinery and equipment used directly in the manufacturing, research and development, or testing of cannabis, useable cannabis, or cannabis-infused products, or (b) labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

(4) The exemptions in this section do not apply to an ineligible person as defined in RCW 82.08.02565. [2022 c 16 § 156; 2015 3rd sp.s. c 5 § 302. Prior: 2014 c 216 § 402; 2014 c 140 § 14; 2003 c 5 § 5; 1999 c 211 § 6; 1998 c 330 § 2; 1996 c 247 § 3; 1995 1st sp.s. c 3 § 3.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Application—Conflicting laws—2015 3rd sp.s. c 5: See notes following RCW 82.08.02565.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.12.025651 Exemptions—Use of machinery and equipment by public research institutions. (1) The provisions of this chapter do not apply in respect to the use by a public research institution of machinery and equipment used primarily in a research and development operation, or to the

(2022 Ed.)

use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) The definitions in RCW 82.08.025651 apply to this section.

(3) A public research institution receiving the benefit of the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 28; 2011 c 23 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Findings—2011 c 23: See note following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.12.02566 Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption. (1) The provisions of this chapter shall not apply with respect to the use of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or in respect to the use of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply in respect to the use of tangible personal property by any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.08.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 209; 1997 c 302 § 2; 1996 c 247 § 5.]

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Additional notes found at www.leg.wa.gov

82.12.025661 Exemptions—Aircraft maintenance repair—Building construction. (Expires January 1, 2027.)

(1) The provisions of this chapter do not apply with respect to the use of:

(a) Tangible personal property that will be incorporated as an ingredient or component in constructing new buildings for: (i) An eligible maintenance repair operator; or (ii) a port district, political subdivision, or municipal corporation, to be leased to an eligible maintenance repair operator; or

(b) Labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.025661 apply to this section, including the filing of a complete annual report with the department under RCW 82.32.534.

(3) This section expires January 1, 2027. [2016 c 191 § 3.]

Tax preference performance statement—2016 c 191 § 2 and 3: See note following RCW 82.08.025661.

Effective date—2016 c 191: See note following RCW 82.08.025661.

82.12.02568 Exemptions—Use of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. The provisions of this chapter shall not apply in respect to the use of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 2.]

Additional notes found at www.leg.wa.gov

82.12.02569 Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory. The provisions of this chapter shall not apply in respect to the use of tangible personal property by a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 2.]

Additional notes found at www.leg.wa.gov

82.12.0257 Exemptions—Use of personal property of the operating property of a public utility by state or political subdivision. The provisions of this chapter do not apply in respect to the use of any article of personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any public service business as defined in RCW 82.16.010. For the purposes of this section, "operating property" includes digital goods and digital codes. [2010 c 106 § 220; 2009 c 535 § 611; 1980 c 37 § 57. Formerly RCW 82.12.030(7).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.0258 Exemptions—Use of personal property previously used in farming and purchased from farmer at auction. The provisions of this chapter do not apply in respect to the use of personal property (including household goods) that has been used in conducting a farm activity, if such property was purchased from a farmer as defined in RCW 82.04.213 at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. The exemption in this section does not apply to personal property used by the seller in the production of cannabis, useable cannabis, or cannabis-infused products. [2022 c 16 § 157; 2014 c 140 § 16; 2009 c 535 § 612; 1980 c 37 § 58. Formerly RCW 82.12.030(8).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

[Title 82 RCW—page 180]

82.12.0259 Exemptions—Use of personal property, digital automated services, or certain other services by federal corporations providing aid and relief. The provisions of this chapter do not apply in respect to the use of personal property or the use of digital automated services or services defined in RCW 82.04.050 (2)(a) or (6)(c) by corporations that have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [2017 c 323 § 523; 2009 c 535 § 613; 2003 c 5 § 7; 1980 c 37 § 59. Formerly RCW 82.12.030(9).]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02595 Exemptions—Personal property and certain services donated to nonprofit organization or governmental entity. (1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services. [2015 c 169 § 7; 2009 c 535 § 615; 2004 c 155 § 1; 2003 c 5 § 11; 1998 c 182 § 1; 1995 c 201 § 1.]

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Additional notes found at www.leg.wa.gov

82.12.0261 Exemptions—Use of livestock. The provisions of this chapter shall not apply in respect to the use of livestock, as defined in RCW 16.36.005, for breeding purposes where said animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows

(2022 Ed.)

used on the farm. [2001 c 118 § 5; 1980 c 37 § 60. Formerly RCW 82.12.030(10).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0262 Exemptions—Use of poultry for producing poultry and poultry products for sale. The provisions of this chapter shall not apply in respect to the use of poultry in the production for sale of poultry or poultry products. [1980 c 37 § 61. Formerly RCW 82.12.030(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0263 Exemptions—Use of fuel by extractor or manufacturer thereof. The provisions of this chapter do not apply in respect to the use of biomass fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. For purposes of this section, "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes. [2017 3rd sp.s. c 28 § 107; 1980 c 37 § 62. Formerly RCW 82.12.030(12).]

Application—2017 3rd sp.s. c 28 §§ 107-109: "Sections 107 through 109 of this act apply with respect to fuel, other than biomass fuel, consumed within this state on or after *August 1, 2017, regardless of whether such fuel was produced or manufactured before *August 1, 2017. For purposes of this section, "consumed" means the use of fuel resulting in the release of usable energy." [2017 3rd sp.s. c 28 § 109.]

***Reviser's note:** 2017 3rd sp.s. c 28 § 605 was amended by 2018 c 92 § 2, changing the effective date of sections 107 through 109, chapter 28, Laws of 2017 3rd sp. sess. from August 1, 2017, to January 1, 2018.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0264 Exemptions—Use of dual-controlled motor vehicles by school for driver training. The provisions of this chapter shall not apply in respect to the use of motor vehicles, equipped with dual controls, which are loaned to and used exclusively by a school in connection with its driver training program: PROVIDED, That this exemption and the term "school" shall apply only to (1) the University of Washington, Washington State University, the regional universities, The Evergreen State College and the state community colleges or (2) any public, private or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station) or (3) any public vocational school meeting the standards, courses and requirements established and prescribed or approved in accordance with the Community College Act of 1967 (chapter 8, Laws of 1967 first extraordinary session). [1980 c 37 § 63. Formerly RCW 82.12.030(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0265 Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities. The provisions of this chapter shall not apply in respect to the use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such

articles by the bailor was not subject to the taxes imposed by chapter 82.08 RCW or chapter 82.12 RCW. [1980 c 37 § 64. Formerly RCW 82.12.030(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0266 Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state. The provisions of this chapter shall not apply in respect to the use by residents of this state of motor vehicles and trailers acquired and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption shall not apply to members of the armed services called to active duty for training purposes for periods of less than six months and shall not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of any person from the armed services. [1980 c 37 § 65. Formerly RCW 82.12.030(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0267 Exemptions—Use of semen in artificial insemination of livestock. The provisions of this chapter shall not apply in respect to the use of semen in the artificial insemination of livestock. [1980 c 37 § 66. Formerly RCW 82.12.030(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0268 Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers. The provisions of this chapter shall not apply in respect to the use of form lumber by any person engaged in the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: PROVIDED, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 67. Formerly RCW 82.12.030(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02685 Exemptions—Use of tangible personal property related to farmworker housing. (*Expires January 1, 2032.*) (1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures, in which at least 50 percent of housing units in the development are used as farmworker housing, during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for farmworker housing provided on a year-round basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any farmworker housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of a tax otherwise due shall be

immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time farmworker housing ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as farmworker housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) If during any agricultural season in the qualifying five years under subsection (3) of this section the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(6) The definitions in RCW 82.08.02745(6) apply to this section.

(7) This section expires January 1, 2032. [2022 c 56 § 7; 2021 c 250 § 2; 1997 c 438 § 2; 1996 c 117 § 2.]

Tax preference performance statement—Effective date—2021 c 250: See notes following RCW 82.08.02745.

Additional notes found at www.leg.wa.gov

82.12.0269 Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes. The provisions of this chapter shall not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 68. Formerly RCW 82.12.030(18).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0271 Exemptions—Use of wearing apparel only as a sample for display for sale. The provisions of this chapter shall not apply in respect to the use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample. [1980 c 37 § 69. Formerly RCW 82.12.030(19).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0272 Exemptions—Use of personal property in single trade shows. The provisions of this chapter do not apply in respect to the use of personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the

sale of products or services. [2009 c 535 § 616; 1980 c 37 § 70. Formerly RCW 82.12.030(20).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0273 Exemptions—Use of pollen. The provisions of this chapter shall not apply in respect to the use of pollen. [1980 c 37 § 71. Formerly RCW 82.12.030(21).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation. (Effective until January 1, 2030.) The provisions of this chapter do not apply in respect to:

(1) The use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation, merger, or incorporation of any part of the territory of one political subdivision by another; and

(2) The use of the personal property of one political subdivision by another political subdivision pursuant to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the personal property. [2019 c 188 § 2; 1980 c 37 § 72. Formerly RCW 82.12.030(22).]

Tax preference performance statement exemption—Expiration date—2019 c 188: See notes following RCW 82.08.0278.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation. (Effective January 1, 2030.) The provisions of this chapter shall not apply in respect to the use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 72. Formerly RCW 82.12.030(22).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02745 Exemptions—Use by free hospitals of certain items. (1) The provisions of this chapter shall not apply in respect to the use by free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 2.]

Additional notes found at www.leg.wa.gov

82.12.02747 Exemptions—Use of medical products by qualifying blood, tissue, or blood and tissue banks. (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.324 and 82.08.02805 apply to this section. [2004 c 82 § 3; 1995 2nd sp.s. c 9 § 5.]

Additional notes found at www.leg.wa.gov

82.12.02748 Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing. The provisions of this chapter shall not apply in respect to the use of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 2.]

Additional notes found at www.leg.wa.gov

82.12.02749 Exemptions—Use of medical supplies, chemicals, or materials by organ procurement organization. The tax levied by RCW 82.08.020 does not apply to the use of medical supplies, chemicals, or materials by an organ procurement organization exempt under RCW 82.04.326. The definitions of medical supplies, chemicals, and materials in RCW 82.08.02807 apply to this section. This exemption does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [2020 c 139 § 19; 2002 c 113 § 3.]

Additional notes found at www.leg.wa.gov

82.12.0275 Exemptions—Use of certain drugs or family planning devices. (1) The provisions of this chapter shall not apply in respect to the use of drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the drugs are for human use.

(2) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) As used in this section, "prescription" and "drug" have the same meanings as in RCW 82.08.0281. [2003 c 168 § 406; 1993 sp.s. c 25 § 309; 1980 c 37 § 73. Formerly RCW 82.12.030(23).]

Finding—1993 sp.s. c 25: See note following RCW 82.08.0281.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.0276 Exemptions—Use of returnable containers for beverages and foods. The provisions of this chapter shall not apply in respect to the use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 74. Formerly RCW 82.12.030(24).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0277 Exemptions—Certain medical items. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(2022 Ed.)

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(3) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283. [2007 c 6 § 1102; 2004 c 153 § 109. Prior: 2003 c 168 § 412; 2003 c 5 § 8; 2001 c 75 § 2; 1998 c 168 § 3; 1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof. The provisions of this chapter shall not apply in respect to the use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state, in respect to the use of tangible personal property which becomes a component part of any such ferry vessel, and in respect to the use of labor and services rendered in respect to improving such ferry vessels. [2003 c 5 § 9; 1980 c 37 § 77. Formerly RCW 82.12.030(27).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0282 Exemptions—Use of vans as ride-sharing vehicles. (1) The tax imposed by this chapter does not apply with respect to the use of passenger motor vehicles used primarily for ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning with the date of first use.

(2)(a) To qualify for the tax exemption, those passenger motor vehicles with three or more passengers, including the driver, used for ride sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70A.15 RCW, in other counties, or cities and towns within those

counties, that elect to adopt and implement a commute trip reduction plan, or in other counties where the vehicle is registered with or operated by a public transportation agency. Additionally at least one of the following conditions must apply: (i) The vehicle must be operated by a public transportation agency for the benefit of the general public; or (ii) the vehicle must be used by a major employer, as defined in RCW 70A.15.4010 as an element of its commute trip reduction program for their employees; or (iii) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

(b) Notwithstanding the ridership requirements under (a) of this subsection (2), unless the vehicle is operated by a public transportation agency, the vehicle must be used for ride sharing in the transport of at least five passengers. [2021 c 135 § 7; 2020 c 20 § 1477; 2014 c 97 § 504; 2001 c 320 § 5; 1999 c 358 § 11; 1996 c 88 § 4; 1993 c 488 § 4; 1980 c 166 § 2.]

Effective date—2021 c 135: See note following RCW 46.18.285.

Finding—Annual recertification rule—Report—1993 c 488: See notes following RCW 82.08.0287.

Ride-sharing vehicles—Special plates: RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.12.0283 Exemptions—Use of certain irrigation equipment. The provisions of this chapter do not apply to the use of irrigation equipment if:

- (1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;
- (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;
- (3) The irrigation equipment is attached to the land in whole or in part;
- (4) The irrigation equipment is not used in the production of cannabis; and
- (5) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [2022 c 16 § 158; 2014 c 140 § 21; 1983 1st ex.s. c 55 § 6.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Additional notes found at www.leg.wa.gov

82.12.0284 Exemptions—Use of computers or computer components, accessories, software, digital goods, or digital codes donated to schools or colleges. The provisions of this chapter do not apply in respect to the use of computers, computer components, computer accessories, computer software, digital goods, or digital codes, irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215. [2009 c 535 §

617; 2007 c 54 § 15; 2003 c 168 § 603; 1983 1st ex.s. c 55 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis. The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. [1998 c 183 § 2; 1997 c 386 § 57; 1995 c 346 § 2.]

Youth in crisis—Definition—Limited purpose: RCW 82.08.02917.

Additional notes found at www.leg.wa.gov

82.12.0293 Exemptions—Use of food and food ingredients. (1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. "Prepared food," "soft drinks," "bottled water," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

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

- (a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);
- (b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW; or
- (c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293. [2021 c 176 § 5250; 2017 3rd sp.s. c 28 § 102; 2011 c 2 § 303 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 903; 2009 c 483 § 4; 2003 c 168 § 303; 1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Additional notes found at www.leg.wa.gov

82.12.0294 Exemptions—Use of feed for cultivating or raising fish for sale. The provisions of this chapter shall not apply in respect to the use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 4.]

82.12.0296 Exemptions—Use of feed consumed by livestock at a public livestock market. The provisions of this chapter shall not apply with respect to the use of feed consumed by livestock at a public livestock market. [1986 c 265 § 2.]

82.12.0297 Exemptions—Use of food purchased under the supplemental nutrition assistance program. (1) The provisions of this chapter do not apply with respect to the use of eligible foods that are purchased with benefits under the supplemental nutrition assistance program or successor program, notwithstanding anything to the contrary in RCW 82.12.0293.

(2) The definitions in RCW 82.08.0297 apply to this section. [2011 c 174 § 104; 1998 c 79 § 19; 1987 c 28 § 2.]

Additional notes found at www.leg.wa.gov

82.12.0298 Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state. The provisions of this chapter shall not apply with respect to the use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 2.]

82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects. The provisions of this chapter shall not apply in respect to the use by artistic or cultural organizations of:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 5.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products. The provisions of this chapter shall not apply with respect to the use of materials and supplies directly used in the packing of fresh perish-

(2022 Ed.)

able horticultural products by any person entitled to a deduction under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 2.]

82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2) (a) or (g) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2) (a) or (g) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [2009 c 535 § 614; 2003 c 5 § 10; 1995 2nd sp.s. c 5 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Additional notes found at www.leg.wa.gov

82.12.0316 Exemptions—Sales of cigarettes by Indian retailers. The provisions of this chapter shall not apply in respect to the use of cigarettes sold by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465 or 43.06.466. [2008 c 228 § 4; 2005 c 11 § 4; 2001 c 235 § 5.]

Findings—Intent—Explanatory statement—Effective date—2005 c 11: See notes following RCW 43.06.465.

Intent—Finding—2001 c 235: See RCW 43.06.450.

Additional notes found at www.leg.wa.gov

82.12.0318 Exemptions—Use of vapor products sold by Indian retailers. (1) The provisions of this chapter do not apply in respect to the use of vapor products sold by an Indian retailer during the effective period of a vapor product tax contract subject to RCW 43.06.510 or a vapor product tax agreement under RCW 43.06.515.

(2) The definitions in RCW 43.06.505 apply to this section. [2019 c 445 § 306.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.12.032 Exemption—Use of used park model trailers. The provisions of this chapter shall not apply with respect to the use of used park model trailers, as defined in RCW 82.45.032. [2001 c 282 § 4.]

Intent—Effective date—2001 c 282: See notes following RCW 82.08.032.

82.12.033 Exemption—Use of certain used mobile homes. The tax imposed by RCW 82.12.020 shall not apply in respect to:

(1) The use of used mobile homes as defined in RCW 82.45.032.

(2) The use of a mobile home acquired by renting or leasing if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of the mobile home is not conducted jointly with the provision of short-term lodging for transients. [1986 c 211 § 3; 1979 ex.s. c 266 § 4.]

82.12.034 Exemption—Use of used floating homes. The provisions of this chapter shall not apply with respect to the use of used floating homes, as defined in RCW 82.45.032. [1984 c 192 § 4.]

82.12.0345 Exemptions—Use of newspapers. The tax imposed by RCW 82.12.020 does not apply in respect to the use of:

(1) Printed newspapers as defined in RCW 82.08.0253; and

(2) Newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(a) Shares content with the printed newspaper; and
(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper. [2009 c 535 § 618; 1994 c 124 § 11.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.0347 Exemptions—Use of academic transcripts. The provisions of this chapter do not apply in respect to the use of academic transcripts, including academic transcripts transferred electronically. [2009 c 535 § 619; 1996 c 272 § 3.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Additional notes found at www.leg.wa.gov

82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used. A credit is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), in the amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [2017 c 323 § 524; 2015 c 169 § 8; 2009

c 535 § 1107; 2007 c 6 § 1203; 2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.12.036 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.12.037 Credits and refunds—Bad debts. (1) A seller is entitled to a credit or refund for use taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt;

(c) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and

(d) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department must allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller. [2010 1st sp.s. c 23 § 1503; 2007 c 6 § 103; 2004 c 153 § 304; 1982 1st ex.s. c 35 § 36.]

Intent—Application—2010 1st sp.s. c 23 §§ 1502 and 1503: See notes following RCW 82.08.037.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.
Additional notes found at www.leg.wa.gov

82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined. The provisions of this chapter shall not apply: (1) To the value of core deposits or credits in a retail or wholesale sale; or (2) to the fees imposed under RCW 70A.205.405 upon the sale of a new replacement vehicle tire. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [2020 c 20 § 1478; 1989 c 431 § 46.]

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

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

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

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

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

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

(7) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter. [2019 c 8 § 704; 2017 3rd sp.s. c 28 § 213; (2017 3rd sp.s. c 28 § 212 expired July 23, 2017); 2017 c 323 § 525; 2015 c 169 § 9; 2015 c 1 § 11 (Initiative Measure No. 594, approved November 4, 2014); 2011 1st sp.s. c 20 § 103; 2010 c 106 § 221; 2009 c 535 § 1108; 2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Effective date—2019 c 8 §§ 105, 301, 302, 401, and 704: See note following RCW 82.08.010.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Expiration date—2017 3rd sp.s. c 28 § 212: "Section 212 of this act expires July 23, 2017." [2017 3rd sp.s. c 28 § 606.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.0531.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—2003 c 76: See note following RCW 82.08.050.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Project on exemption reporting requirements: RCW 82.32.440.

Additional notes found at www.leg.wa.gov

82.12.045 Collection of tax on vehicles by county auditor or director of licensing—Remittance. (1) In the collection of the use tax on vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at

the time an applicant applies for transfer of certificate of title to the vehicle, except when the applicant:

(a) Exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

(b) Presents a valid reseller permit issued to the vehicle owner by the department of revenue under the authority of RCW 82.32.780;

(c) Presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or

(d) Presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by the applicant on the vehicle in question.

(2) As used in this section, "vehicle" has the same meaning as in RCW 46.04.670.

(3) It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon the application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor.

(4) Each county auditor who acts as agent of the department of revenue shall at the time of remitting vehicle license fee receipts on vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as a collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

(5) Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he or she has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050(4). Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180, and 82.32.190.

(6) The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 through 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

(7) The use tax revenue collected on the rate provided in RCW 82.08.020(3) shall be deposited in the multimodal transportation account under RCW 47.66.070. [2020 c 11 § 1; 2010 c 161 § 904; 2003 c 361 § 303; 1996 c 149 § 19; 1983 c 77 § 2; 1979 c 158 § 222; 1969 ex.s. c 10 § 1; 1963 c 21 § 1; 1961 c 15 § 82.12.045. Prior: 1951 c 37 § 1.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—2003 c 361: See note following RCW 82.38.030.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.12.060 Installment sales or leases. In the case of installment sales and leases of personal property, the department, by rule, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [2003 c 168 § 216; 1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Additional notes found at www.leg.wa.gov

82.12.070 Cash receipts taxpayers—Bad debts. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his or her cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.12.037. [2013 c 23 § 319; 2004 c 153 § 305; 1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.

Additional notes found at www.leg.wa.gov

82.12.080 Administration. The provisions of chapter 82.32 RCW, insofar as applicable, shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.12.080. Prior: 1949 c 228 § 9, part; 1945 c 249 § 8, part; 1943 c 156 § 10, part; 1939 c 225 § 18, part; 1937 c 191 § 4, part; 1935 c 180 § 35, part; Rem. Supp. 1949 § 8470-35, part.]

82.12.145 Delivery charges. When computing the tax levied by RCW 82.12.020, if a shipment consists of taxable tangible personal property and nontaxable tangible personal property, and delivery charges are included in the purchase price, the consumer must remit tax or the retailer must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to remit or collect and remit tax on the percentage allocated to exempt tangible personal property. The consumer or retailer may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total purchase price of the taxable tangible personal property compared to the total purchase price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 802.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.12.195 Bundled transactions—Tax imposed. (1) Except as provided in subsection (5) of this section, the use of each product acquired in a bundled transaction is subject to the tax imposed by RCW 82.12.020 if the use of any of its component products is subject to the tax imposed by RCW 82.12.020.

(2) The use of each product acquired in a transaction described in RCW 82.08.190(4) (a) or (b) is subject to the tax imposed by RCW 82.12.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.12.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.12.020, the use of each product acquired in the transaction is not subject to the tax imposed by RCW 82.12.020.

(3) The use of each product acquired in a transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.12.020.

(4) The use of each product in a transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.12.020.

(5) The tax imposed by RCW 82.12.020 does not apply in respect to the use of each product acquired in a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the products are provided to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

(6) The definitions in RCW 82.08.190 apply to this section. [2009 c 483 § 5; 2007 c 6 § 1403.]

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.12.207 Investment data for investment firms. (Expires July 1, 2031.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of standard financial information by qualifying international investment management companies or persons affiliated, as defined in RCW 82.04.293, with a qualifying international investment management company. The exemption provided in this section applies regardless of whether the standard financial information is in a tangible format or resides on a tangible storage medium or is a digital product transferred electronically to the qualifying international investment management company.

(2) The definitions, conditions, and requirements in RCW 82.08.207 apply to this section.

(3) This section expires July 1, 2031. [2019 c 426 § 7; 2013 2nd sp.s. c 13 § 703.]

Findings—Intent—Tax preference performance statement—2019 c 426 §§ 6 and 7: See notes following RCW 82.08.207.

(2022 Ed.)

Findings—Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.207.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.215 Exemptions—Large private airplanes. (Expires July 1, 2031.) (1)(a) The tax levied by RCW 82.12.020 does not apply to the use of:

(i) Large private airplanes owned by nonresidents of this state; and

(ii) Labor and services rendered in respect to repairing, cleaning, altering, or improving large private airplanes owned by nonresidents of this state.

(b) The exemption provided by this section applies only when the large private airplane is not required to be registered with the department of transportation, or its successor, under chapter 47.68 RCW. The airplane owner or lessee claiming an exemption under this section must provide the department, upon request, a copy of the written statement required under *RCW 47.68.250(5)(c)(ii) documenting the airplane's registration exemption and any additional information the department may require.

(2) Upon request, the department of transportation must provide to the department of revenue information needed by the department of revenue to verify eligibility under this section.

(3) For purposes of this section, the conditions, limitation, and definitions in RCW 82.08.215 apply to this section.

(4) This section expires July 1, 2031. [2020 c 304 § 2; 2013 2nd sp.s. c 13 § 1104.]

***Reviser's note:** RCW 47.68.250 was amended by 2021 c 131 § 2, changing subsection (5)(c)(ii) to subsection (6)(c)(ii).

Intent—Findings—Tax preference review—2020 c 304 §§ 1-5; 2013 2nd sp.s. c 13 §§ 1101-1105: See note following RCW 47.68.250.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.215.

82.12.225 Exemptions—Nonprofit fund-raising activities. (1) The provisions of this chapter do not apply in respect to the use of any article of personal property, valued at less than twelve thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library, if the gross income the nonprofit organization or library receives from the sale is exempt under RCW 82.04.3651.

(2)(a) Beginning December 2020, and each December thereafter, the department must adjust the value limit for the exemption under subsection (1) of this section by multiplying the current value limit for the exemption under subsection (1) of this section by the greater of one or one plus the percentage change in the consumer price index for the most recent twelve-month period available as of December 1st of the current calendar year, and rounding the result to the nearest ten dollars. If an adjustment under this subsection (2) would reduce the value limit for the exemption under subsection (1) of this section, the department may not adjust the value limit for use in the following year. The department must promptly publish the adjusted value limit for the next calendar year on its public website. Each adjusted value limit calculated under this subsection takes effect on the following January 1st.

(b) For purposes of this subsection (2):

(i) "Consumer price index" means the consumer price index for all urban consumers, all items, (CPI-U) for the Seattle area as calculated by the United States bureau of labor statistics or successor agency. If the United States bureau of labor statistics or successor agency ceases to calculate a CPI-U for the Seattle area, "consumer price index" means a successor index as determined by the department consistent with the purpose of this subsection (2); and

(ii) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas. [2020 c 159 § 1; 2015 3rd sp.s. c 32 § 2; 2013 2nd sp.s. c 13 § 1402.]

Automatic expiration date and tax preference performance statement exemption—2020 c 159: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2020 c 159 § 2.]

Tax preference performance statement—2015 3rd sp.s. c 32 § 2: "(1) This section is the tax preference performance statement for the tax preference in section 2 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt.

(4) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objective described in [subsection] (3) of this section, the joint legislative audit and review committee must evaluate this tax preference." [2015 3rd sp.s. c 32 § 1.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part XIV of this act to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt. It is also the intent of the legislation to provide this tax preference in a fiscally responsible manner by capping the exemption for articles of personal property that are valued at ten thousand dollars or less." [2013 2nd sp.s. c 13 § 1401.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.700 Exemptions—Vessels sold to nonresidents.

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

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

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

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

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

after the use permit issued under RCW 82.08.700 expires. All other requirements and conditions, not inconsistent with the provisions of this section, relating to use permits in RCW 82.08.700, apply to use permits under this section. A person may not claim an exemption under RCW 82.12.0251(1) within twenty-four months after a use permit, issued under this section or RCW 82.08.700, for the same vessel, has expired.

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

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

(4) Any vessel dealer that issues a use permit to an individual who does not hold valid identification establishing out-of-state residency, and any dealer that fails to maintain records for each use permit issued that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any, is personally liable for the amount of tax due. [2007 c 22 § 2.]

Additional notes found at www.leg.wa.gov

82.12.798 Exemptions—Use of feminine hygiene products. (1) The tax levied by RCW 82.12.020 does not apply to the use of feminine hygiene products.

(2) "Feminine hygiene products" has the same meaning as provided in RCW 82.08.798. [2020 c 350 § 4.]

Tax preference performance statement—Findings—Intent—Exemption from automatic expiration date of new tax preference—Effective date—2020 c 350: See notes following RCW 82.08.798.

82.12.799 Exemptions—Vessels exempt from registration. (Expires January 1, 2029.) (1) Except as otherwise provided in this section, the provisions of this chapter do not apply to the use of a vessel exempt from registration under RCW 88.02.570(12).

(2) The use of a vessel exempt from registration under RCW 88.02.570(12) for chartering with a captain or crew is subject to the tax imposed in RCW 82.12.020 based on the reasonable bare rental value of the vessel as provided in RCW 82.12.010(7)(c).

(3) This section expires January 1, 2029. [2021 c 150 § 6.]

82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer. (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.310, by the manufacturer of the vessel:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, to include performance, endurance, and sink testing, if the vessel is to be held for sale;

(b) Training activities of a manufacturer's employees, agents, or subcontractors involved in the development and manufacturing of the manufacturer's vessels, if the vessel is to be held for sale;

(c) Activities to promote the sale of the manufacturer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from vessel promotional events for the express purpose of displaying a manufacturer's vessels;

(d) Any vessels loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [2011 c 171 § 121; 1997 c 293 § 1.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

82.12.801 Exemptions—Uses of vessel, vessel's trailer by dealer. (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.310, by a vessel dealer registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

(b) Training activity of a dealer's employees, agents, or subcontractors involved in the sale of the dealer's vessels, if the vessel is held for sale;

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel that it is, in fact, for sale and the identification of the registered vessel dealer offering the vessel for sale is also displayed on the vessel;

(d) Any vessel loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(2022 Ed.)

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [2011 c 171 § 122; 1997 c 293 § 2.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

82.12.802 Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules. If a vessel held in inventory is used by a vessel dealer or vessel manufacturer for personal use, use tax shall be due based only on the reasonable rental value of the vessel used, but only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. The department may by rule require dealers and manufacturers to provide vessel logs or other documentation showing that vessels are truly held for sale. [1997 c 293 § 3.]

82.12.803 Exemptions—Nebulizers. (1) The provisions of this chapter shall not apply in respect to the use of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" has the same meaning as in RCW 82.08.803.

(2) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1104; 2004 c 153 § 105.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.12.804 Exemptions—Ostomic items. The provisions of this chapter shall not apply in respect to the use of ostomic items by colostomy, ileostomy, or urostomy patients. "Ostomic items" has the same meaning as in RCW 82.08.804. [2004 c 153 § 107.]

Additional notes found at www.leg.wa.gov

82.12.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must

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

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

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

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2027. [2017 c 135 § 29; 2015 3rd sp.s. c 6 § 505; 2011 c 174 § 305. Prior: 2010 1st sp.s. c 2 § 4; 2010 c 114 § 128; 2009 c 535 § 620; 2006 c 182 § 4; 2004 c 24 § 11.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.12.806 Exemptions—Use of computer equipment parts and services by printer or publisher. (1) The provisions of this chapter do not apply in respect to the use, by a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.12.02565.

(2) For the purposes of this section, the definitions in RCW 82.08.806 apply. [2004 c 8 § 3.]

Findings—Intent—2004 c 8: See note following RCW 82.08.806.

82.12.807 Exemptions—Direct mail delivery charges. (1) The tax levied by this chapter does not apply to the value of delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 116.]

Additional notes found at www.leg.wa.gov

82.12.808 Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers. (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a comprehensive cancer center. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.4265 and 82.08.808 apply to this section. [2005 c 514 § 403.]

Additional notes found at www.leg.wa.gov

82.12.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers. (1)(a) Except as provided in subsection (4) of this section, the provisions of this chapter do not apply in respect to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, which (i) are exclusively powered by a clean alternative fuel or (ii) use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least thirty miles using only battery power.

(b) Beginning with purchases made or lease agreements signed on or after July 1, 2016, the exemption in this section is only applicable for up to thirty-two thousand dollars of a vehicle's purchase price or the total lease payments made plus the purchase price of the leased vehicle if the original lessee purchases the leased vehicle before the expiration of the exemption as described in RCW 82.08.809(6).

(2) The definitions in RCW 82.08.809 apply to this section.

(3) A taxpayer is not liable for the tax imposed in RCW 82.12.020 on the use, on or after the expiration of the exemption as described in RCW 82.08.809(6), of a passenger car, light duty truck, or medium duty passenger vehicle that is exclusively powered by a clean alternative fuel or uses at least one method of propulsion that is capable of being reenergized by an external source of electricity and is capable of traveling at least thirty miles using only battery power, if the taxpayer used such vehicle in this state before the expiration of the exemption as described in RCW 82.08.809(6), and the use was exempt under this section from the tax imposed in RCW 82.12.020.

(4)(a) For vehicles identified in subsection (1)(a) of this section purchased on or after July 1, 2016, and before the expiration of the exemption as described in RCW 82.08.809(6), or for leased vehicles identified in subsection (1)(a) of this section for which the lease agreement was signed on or after July 1, 2016, and before the expiration of the exemption as described in RCW 82.08.809(6), a vehicle is not exempt from use tax as described under subsection (1)(b) of this section if, at the time the tax is imposed for purchased vehicles or at the inception of the lease for leased vehicles, the lowest manufacturer's suggested retail price, as determined in rule by the department of licensing pursuant to chapter 34.05 RCW, for the base model is more than forty-two thousand five hundred dollars.

(b) For vehicles identified in subsection (1)(a) of this section purchased on or after July 15, 2015, and before July 1, 2016, or for leased vehicles identified in subsection (1)(a) of this section for which the lease agreement was signed on or after July 15, 2015, and before July 1, 2016, a vehicle is not exempt from use tax if the fair market value of the vehicle exceeds thirty-five thousand dollars at the time the tax is imposed for purchased vehicles, or at the inception of the lease for leased vehicles.

(c) For leased vehicles for which the lease agreement was signed before July 1, 2015, lease payments are exempt from use tax as described under subsection (1)(a) of this section regardless of the vehicle's fair market value at the inception of the lease.

(5) On the last day of January, April, July, and October of each year, the state treasurer, based upon information pro-

vided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data. For purposes of this section, the first transfer for the calendar quarter after July 15, 2015, must be calculated assuming only those revenues that should have been deposited into the general fund beginning July 1, 2015.

(6)(a) The exemption provided under this section does not apply to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, or lease payments due on such vehicles, if the date of sale of the vehicle from the seller to the buyer occurred or the lease agreement was signed after the expiration of the exemption as provided in RCW 82.08.809(6).

(b) All leased vehicles that qualified for the exemption before the expiration of the exemption must continue to receive the exemption as described under subsection (1)(b) of this section on lease payments due through the remainder of the lease.

(c) Nothing in this subsection (6) may be construed to allow an exemption under this section for the purchase of a qualifying vehicle by the original lessee of the vehicle after the expiration of the exemption. [2016 sp.s. c 32 § 3; 2015 3rd sp.s. c 44 § 409; 2010 1st sp.s. c 11 § 3; 2005 c 296 § 3.]

Effective date—Tax preference performance statement—2016 sp.s. c 32: See notes following RCW 82.08.809.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Tax preference performance statement—2015 3rd sp.s. c 44 §§ 408 and 409: See note following RCW 82.08.809.

Additional notes found at www.leg.wa.gov

82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation. (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The provisions of this chapter do not apply in respect to:

(a) The use of air pollution control facilities installed and used by a light and power business, as defined in RCW 82.16.010, in generating electric power; or

(b) The use of labor and services performed in respect to the installing of air pollution control facilities.

(3) The exemption provided under this section applies only to air pollution control facilities that are:

(a) Constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975; and

(b) Constructed or installed to meet applicable regulatory requirements established under state or federal law, (2022 Ed.)

including the Washington clean air act, chapter 70A.15 RCW.

(4) This section does not apply to the use of tangible personal property for maintenance or repairs of the pollution control equipment or to labor and services performed in respect to such maintenance or repairs.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due according to the schedule provided in RCW 82.08.810(5).

(6) *RCW 82.32.393 applies to this section. [2020 c 20 § 1479; 2003 c 5 § 12; 1997 c 368 § 3.]

*Reviser's note: RCW 82.32.393 expired December 31, 2015.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation. (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the provisions of this chapter do not apply in respect to the use of coal to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70A.15 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control authority or the department of ecology, the department of

ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) *RCW 82.32.393 applies to this section. [2020 c 20 § 1480; 1997 c 368 § 6.]

*Reviser's note: RCW 82.32.393 expired December 31, 2015.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

82.12.816 Exemptions—Electric vehicle batteries and fuel cells—Labor and services—Infrastructure. (Expires July 1, 2025.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of:

(a) Electric vehicle batteries or fuel cells, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) Labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) Tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(d) Zero emissions buses.

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

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities.

(d) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(e) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(f) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(g) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(h) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

(3) This section expires July 1, 2025. [2022 c 292 § 402; 2022 c 182 § 310; 2019 c 287 § 12; 2009 c 459 § 5.]

Reviser's note: This section was amended by 2022 c 182 § 310 and by 2022 c 292 § 402, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2022 c 292: See note following RCW 43.330.565.

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Effective date—2019 c 287: See note following RCW 82.29A.125.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

82.12.817 Exemptions—Fuel cell electric vehicles. (Expires June 30, 2029.) (1) Subject to the limitations in this subsection and RCW 82.08.993(1)(c), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, 50 percent of the tax levied by RCW 82.12.020 does not apply to sales or leases of new electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(2)(a) Subject to the limitations in this subsection (2), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, the entire tax levied by RCW 82.12.020 does not apply to the sale or lease of used electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles. However, the maximum value amount eligible for the exemption under (a) of this subsection is the lesser of either \$16,000 or the fair market value of the vehicle.

(c) A person may not claim the exemption under this subsection (2) if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(3) The buyer must keep records necessary for the department to verify eligibility under this section. The buyer claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold

or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(4)(a) Sales of vehicles delivered to the buyer after the expiration of this section, or leased vehicles for which the lease agreement was signed after the expiration of this section, do not qualify for the exemptions under this section.

(b) All leased vehicles that qualified for the exemption under this section before the expiration of this section must continue to receive the exemption on any lease payments due through the remainder of the lease.

(5) The definitions in RCW 82.08.993 apply to this section.

(6) This section expires June 30, 2029. [2022 c 182 § 304; 2021 c 171 § 3.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—Effective date—2021 c 171: See notes following RCW 82.08.993.

82.12.820 Exemptions—Warehouse and grain elevators and distribution centers. (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction

meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [2006 c 354 § 13; 2005 c 513 § 12; 2003 c 5 § 13; 2000 c 103 § 9; 1997 c 450 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

Additional notes found at www.leg.wa.gov

82.12.832 Exemptions—Use of gun safes. The provisions of this chapter do not apply with respect to the use of gun safes as defined in RCW 82.08.832. [1998 c 178 § 2.]

Additional notes found at www.leg.wa.gov

82.12.834 Exemptions—Sales/leasebacks by regional transit authorities. This chapter does not apply to the use of tangible personal property by a seller/lessee under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property used by the seller/lessee, or to the use of tangible personal property under an exercise of an option to purchase at the end of the lease term, but only if the seller/lessee previously paid any tax otherwise due under this chapter or chapter 82.08 RCW at the time of acquisition of the tangible personal property. [2001 c 320 § 6; 2000 2nd sp.s. c 4 § 22.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Additional notes found at www.leg.wa.gov

82.12.845 Use of motorcycles loaned to department of licensing. This chapter does not apply to the use of motorcycles that are loaned to the department of licensing exclusively for the provision of motorcycle training under RCW 46.20.520, or to persons contracting with the department to provide this training. [2001 c 121 § 1.]

82.12.850 Exemptions—Conifer seed. The provisions of this chapter do not apply in respect to the use of conifer

seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This section applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country.

If the owner of conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed is exempt from tax under this section, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010. [2001 c 129 § 3.]

Finding—Intent—Retroactive application—2001 c 129: See notes following RCW 82.08.850.

82.12.855 Exemptions—Replacement parts for qualifying farm machinery and equipment. (1) The provisions of this chapter do not apply in respect to the use by an eligible farmer of:

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

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

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

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

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

(3) The definitions and recordkeeping requirements in RCW 82.08.855 apply to this section.

(4) If a person is an eligible farmer as defined in RCW 82.08.855(4)(b)(iv) who cannot prove income because the person is new to farming or newly returned to farming, the exemption under this section will apply only if one of the conditions in RCW 82.08.855(3)(b)(i) (A) or (B) is met. If neither of those conditions are met, any taxes for which an exemption under this section was claimed and interest on such taxes must be paid. Amounts due under this subsection shall be in accordance with RCW 82.08.855(3)(b)(ii).

(5) Except as provided in subsection (4) of this section, the department may not assess the tax imposed under this chapter against a person who no longer qualifies as an eligible farmer with respect to the use of any articles or services exempt under subsection (1) of this section, if the person was an eligible farmer when the person first put the articles or ser-

vices to use in this state. [2014 c 97 § 603; 2007 c 332 § 2; 2006 c 172 § 2.]

Additional notes found at www.leg.wa.gov

82.12.860 Exemptions—Property and services acquired from a federal credit union. (1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital good, digital code, digital automated service, service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

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

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state. [2017 c 323 § 526; 2015 c 169 § 10; 2009 c 535 § 621; 2006 c 11 § 1.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users. (1) The provisions of this chapter do not apply with respect to the use of diesel fuel, biodiesel fuel, or aircraft fuel, by a farm fuel user for agricultural purposes. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were acquired as separate products.

(2) The definitions in RCW 82.08.865 apply to this section. [2010 c 106 § 222; 2007 c 443 § 2; 2006 c 7 § 2.]

Additional use tax exemption for fuel: RCW 82.12.0256.

Additional notes found at www.leg.wa.gov

82.12.875 Automotive adaptive equipment. (Expires July 1, 2028.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of prescribed add-on automotive adaptive equipment or to labor and services rendered in respect to the installation and repairing of such equipment. The exemption under this section only applies if the sale of the prescribed add-on automotive adaptive equipment or labor and services was exempt from sales tax under RCW 82.08.875 or would have been exempt from sales tax under RCW 82.08.875 if the equipment or labor and services had been purchased in this state.

(2) For purposes of this section, "prescribed add-on automotive adaptive equipment" has the same meaning as provided in RCW 82.08.875.

(3) This section expires July 1, 2028. [2018 c 130 § 4; 2013 c 211 § 3.]

Findings—Intent—Tax preference performance statement—2018 c 130: See notes following RCW 82.08.875.

Findings—Intent—Effective date—2013 c 211: See notes following RCW 82.08.875.

82.12.880 Exemptions—Animal pharmaceuticals.

(1) The provisions of this chapter do not apply with respect to the use by farmers or by veterinarians of animal pharmaceuticals approved by the United States department of agriculture or by the United States food and drug administration, if the pharmaceutical is administered to an animal that is raised by a farmer for the purpose of producing for sale an agricultural product.

(2) The definitions in RCW 82.08.880 apply to this section. [2001 2nd sp.s. c 17 § 2.]

Additional notes found at www.leg.wa.gov

82.12.890 Exemptions—Livestock nutrient management equipment and facilities. (1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The definitions and recordkeeping requirements in RCW 82.08.890 apply to this section.

(4) The exemption under this section does not apply to the use of tangible personal property and services if first use of the property or services in this state occurs from July 1, 2010, through June 30, 2013. [2014 c 97 § 604; 2010 1st sp.s. c 23 § 602; 2009 c 469 § 602; 2006 c 151 § 3; 2003 c 5 § 15; 2001 2nd sp.s. c 18 § 3.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

(2022 Ed.)

Additional notes found at www.leg.wa.gov

82.12.900 Exemptions—Anaerobic digesters. The provisions of this chapter do not apply with respect to:

(1) Equipment necessary to process biogas from a landfill into marketable coproducts, including but not limited to biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(2) The use of anaerobic digesters, tangible personal property that becomes an ingredient or component of anaerobic digesters, or the use of services rendered in respect to installing, repairing, cleaning, altering, or improving eligible tangible personal property by an eligible person establishing or operating an anaerobic digester, as defined in RCW 82.08.900. [2018 c 164 § 6; 2006 c 151 § 5; 2003 c 5 § 16; 2001 2nd sp.s. c 18 § 5.]

Reviser's note: The tax preference enacted in section 6, chapter 164, Laws of 2018 expires January 1, 2029, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Tax preference performance statement—Effective date—2018 c 164: See notes following RCW 82.08.900.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

Additional notes found at www.leg.wa.gov

82.12.910 Exemptions—Propane or natural gas to heat chicken structures. (1) The provisions of this chapter do not apply with respect to the use by a farmer of propane or natural gas to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures used to house chickens. The structures must be used exclusively to house chickens that are sold as agricultural products.

(2) The exemption certificate, recordkeeping requirements, and definitions of RCW 82.08.910 apply to this section. [2001 2nd sp.s. c 25 § 4.]

Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25: See notes following RCW 82.04.260.

82.12.920 Exemptions—Chicken bedding materials. (1) The provisions of this chapter do not apply with respect to the use by a farmer of bedding materials used to accumulate and facilitate the removal of chicken manure. The farmer must be raising chickens that are sold as agricultural products.

(2) The exemption certificate, recordkeeping requirements, and definitions of RCW 82.08.920 apply to this section. [2001 2nd sp.s. c 25 § 6.]

Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25: See notes following RCW 82.04.260.

82.12.925 Exemptions—Dietary supplements. The provisions of this chapter shall not apply to the use of dietary supplements dispensed or to be dispensed to patients, pursuant to a prescription, if the dietary supplements are for human use. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 304.]

Additional notes found at www.leg.wa.gov

82.12.930 Exemptions—Watershed protection or flood prevention. The provisions of this chapter do not apply with respect to the use by municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services as defined in RCW 82.04.050(2)(a) rendered in respect to contracts for watershed protection and/or flood prevention. This exemption is limited to that portion of the selling price that is reimbursed by the United States government according to the provisions of the watershed protection and flood prevention act (68 Stat. 666; 16 U.S.C. Sec. 1001 et seq.). [2020 c 139 § 20; 2003 c 5 § 17.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

82.12.935 Exemptions—Disposable devices used to deliver prescription drugs for human use. The provisions of this chapter shall not apply to the use of disposable devices used to deliver drugs for human use, pursuant to a prescription. Disposable devices means the same as provided in RCW 82.08.935. [2003 c 168 § 407.]

Additional notes found at www.leg.wa.gov

82.12.940 Exemptions—Over-the-counter drugs for human use. The provisions of this chapter shall not apply to the use of over-the-counter drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the over-the-counter drugs are for human use. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 408.]

Additional notes found at www.leg.wa.gov

82.12.945 Exemptions—Kidney dialysis devices. The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices. [2004 c 153 § 111; 2003 c 168 § 411.]

Additional notes found at www.leg.wa.gov

82.12.950 Exemptions—Steam, electricity, electrical energy. The provisions of this chapter shall not apply in respect to the use of steam, electricity, or electrical energy. [2003 c 168 § 704.]

Additional notes found at www.leg.wa.gov

82.12.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (Expires June 30, 2024.) (1) The provisions of this chapter do not apply with respect to the use of hog fuel for production of electricity, steam, heat, or biofuel.

(2) For the purposes of this section:

(a) "Hog fuel" has the same meaning as provided in RCW 82.08.956; and

(b) "Biofuel" has the same meaning as provided in RCW 82.08.956.

(3) This section expires June 30, 2024. [2021 c 145 § 14; 2013 2nd sp.s. c 13 § 1003; 2009 c 469 § 302.]

Intent—Effective date—2013 2nd sp.s. c 13: See notes following RCW 82.08.956.

Additional notes found at www.leg.wa.gov

82.12.962 Exemptions—Use of machinery and equipment in generating electricity. (Expires January 1, 2030.)

(1)(a) Subject to the requirements of this section, the tax imposed by RCW 82.12.020 does not apply to machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, or to labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts AC of electricity. Except as otherwise provided in this section, the consumer must pay the state and local use tax on the use of such machinery and equipment and labor and services, and apply to the department for a remittance of the tax paid.

(b) Beginning on July 1, 2011, through December 31, 2019, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local use tax paid. The consumer is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

(c) Beginning January 1, 2020, through December 31, 2029, the purchaser is entitled to an exemption, in the form of a remittance, under this subsection (1)(c) in an amount equal to:

(i) Fifty percent of the state and local use tax paid, if:

(A) The exempt purchase is for machinery and equipment or labor and services rendered in respect to installing such machinery and equipment in (a) of this subsection, excluding qualified purchases under (c)(i)(B) of this subsection, and the department of labor and industries certifies that the project includes: Procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the project is being constructed. In the event that a project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard; or

(B) The exempt purchase is for machinery and equipment that is used directly in the generation of electricity by a solar energy system capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or labor and services rendered in respect to installing such machinery and equipment, and the department of labor and industries certifies that the project has met the requirements of (c)(i)(A) of this subsection, and the purchaser has provided the following documentation to the department as part of the application for a remittance:

(I) A copy of the contractor's certificate of registration in compliance with chapter 18.27 RCW;

(II) The contractor's current state unified business identifier number;

(III) A copy of the contractor's proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(IV) Documentation of the contractor's history of compliance with federal and state wage and hour laws and regulations, consistent with (e)(ii)(D) of this subsection;

(ii) Seventy-five percent of the state and local use tax paid, if the department of labor and industries certifies that the project complies with (c)(i)(A) of this subsection and compensates workers at prevailing wage rates determined by local collective bargaining as determined by the department of labor and industries. This subsection (1)(c)(ii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection; or

(iii) One hundred percent of the state and local use tax paid, if the department of labor and industries certifies that the project is developed under a community workforce agreement or project labor agreement. This subsection (1)(c)(iii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection.

(d) In order to qualify for the remittance under (c) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than January 1, 2020, and be completed by December 31, 2029.

(e) Beginning July 1, 2019, and through December 31, 2029, the consumer is entitled to an exemption under this subsection (1)(e) in an amount equal to one hundred percent of the state and local use tax due on:

(i) Machinery and equipment that is used directly in the generation of electricity by a solar energy system that is capable of generating no more than one hundred kilowatts AC of electricity; or

(ii) Labor and services rendered in respect to installing machinery and equipment exempt under (e)(i) of this subsection, and the seller meets the following requirements at the time of the purchase for which the exemption is claimed:

(A) Has obtained a certificate of registration in compliance with chapter 18.27 RCW;

(B) Has obtained a current state unified business identifier number;

(C) Possesses proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(D) Has had no findings of violations of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the past twenty-four months.

(f) In order to qualify for the exemption under (e)(ii) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than July 1, 2019, and be completed by December 31, 2029.

(2) The department of labor and industries must initiate an emergency rule making on May 7, 2019, to be completed by December 1, 2019, to:

(a) Define and set minimum requirements for all labor standards identified in subsection (1)(c) of this section; and

(b) Set requirements for all good faith efforts under subsection (1)(c)(i) and (ii) of this section, as well as documentation requirements and a certification process. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with said standards and could include: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; participating in community job fairs, conferences, and trade shows; and other measures. The certification process and timeline must be designed to prevent undue delay to project development.

(3)(a)(i) A person claiming an exemption in the form of a remittance under subsection (1)(b) and (c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(ii) The application for remittance must include a copy of the certificate issued for the project by the department of labor and industries under subsection (1) of this section.

(b) The department must determine eligibility for remittances under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(4) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(5) The definitions in RCW 82.08.962 apply to this section.

(6) The exemption provided in subsection (1) of this section does not apply:

(a) To machinery and equipment used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts AC of electricity, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after September 30, 2017, and before January 1, 2020, except as otherwise provided in subsection (7) of this section; and

(b) To any other machinery and equipment described in subsection (1)(a) of this section, or to sales of or charges made for labor and services rendered in respect to installing such machinery or equipment, when first use within this state

of such machinery and equipment, or labor and services, occurs after December 31, 2029.

(7)(a) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if first use within the state of the machinery and equipment commences on or after January 1, 2020.

(b) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating no more than one hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if first use within the state of the machinery and equipment commences on or after July 1, 2019.

(8) This section expires January 1, 2030. [2019 c 288 § 19; 2018 c 164 § 7; 2017 3rd sp.s. c 36 § 16; 2013 2nd sp.s. c 13 § 1505; 2009 c 469 § 102.]

Tax preference performance statement—2019 c 288 §§ 18 and 19: See note following RCW 82.08.962.

Findings—Intent—Effective date—2019 c 288: See RCW 19.405.010 and 19.405.901.

Effective date—2018 c 164: See note following RCW 82.08.900.

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—Effective date—2013 2nd sp.s. c 13: See notes following RCW 82.08.962.

Additional notes found at www.leg.wa.gov

82.12.964 Use of machinery and equipment used in generating electricity—Effect of exemption expiration.

(1) Except as provided in subsection (2) of this section, the expiration of RCW 82.12.02567 and 82.12.962 do not require the payment of, or authorize the department to assess, use tax imposed by or under the authority of RCW 82.12.020, 81.104.170, and chapter 82.14 RCW, on the use of machinery and equipment, and labor and services rendered in respect to installing such machinery and equipment, if such use qualified for the exemption under RCW 82.12.02567 or 82.12.962 immediately preceding the expiration date of the applicable exemption under RCW 82.12.02567 or 82.12.962.

(2) Subsection (1) of this section does not prohibit the department from assessing, subject to the limitations period in RCW 82.32.050, state and local use taxes on the use of machinery and equipment, and labor and services rendered in respect to installing such machinery and equipment, if, before the expiration of the applicable exemption provided in RCW 82.12.02567 or 82.12.962, the machinery and equipment was put to a use that is outside of the scope of the applicable exemption in RCW 82.12.02567 or 82.12.962. [2009 c 469 § 109.]

Additional notes found at www.leg.wa.gov

82.12.965 Exemptions—Semiconductor materials manufacturing. (Contingent effective date; contingent expiration date.)

(1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor

materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section, including the filing of a complete annual tax performance report with the department under RCW 82.32.534.

(3) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 512; (2017 3rd sp.s. c 37 § 511 expired January 1, 2018); 2017 c 135 § 30; 2010 c 114 § 129; 2003 c 149 § 6.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Expires December 1, 2028.)

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the exemption under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if the number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the exemption is claimed.

(5) This section expires December 1, 2028. [2021 c 145 § 15; 2020 c 139 § 22; 2017 3rd sp.s. c 37 § 508; (2017 3rd sp.s. c 37 § 507 expired January 1, 2018); 2017 c 135 § 31;

2014 c 97 § 406; 2010 c 114 § 130; 2009 c 469 § 503; 2006 c 84 § 4.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 505-508: See note following RCW 82.08.9651.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Contingent effective date; contingent expiration date.*) (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 522; (2017 3rd sp.s. c 37 § 521 expired January 1, 2018); 2017 c 135 § 32; 2010 c 114 § 131; 2003 c 149 § 8.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.975 Computer parts and software related to the manufacture of commercial airplanes. (*Expires July 1, 2040.*) (1) The provisions of this chapter do not apply in respect to the use of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.12.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to the use of labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2022 Ed.)

(2) As used in this section, "peripherals," "aerospace products," and "aerospace services" have the same meanings as provided in RCW 82.08.975.

(3) This section expires July 1, 2040. [2013 3rd sp.s. c 2 § 12; 2008 c 81 § 3; 2003 2nd sp.s. c 1 § 10.]

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes. (*Expires July 1, 2040.*) (1) The provisions of this chapter do not apply with respect to the use of:

(a) Tangible personal property that will be incorporated as an ingredient or component in constructing new buildings for (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes; or

(b) Labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section, including the filing of a complete annual tax performance report with the department under RCW 82.32.534.

(3) This section expires July 1, 2040. [2017 c 135 § 33; 2013 3rd sp.s. c 2 § 4; 2010 c 114 § 132; 2003 2nd sp.s. c 1 § 12.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.12.983 Exemptions—Wax and ceramic materials. The provisions of this chapter do not apply with respect to the use of wax and ceramic materials used to create molds consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications. [2010 c 225 § 2.]

Reviser's note: Chapter 6, Laws of 2015 3rd sp.s. was signed by the governor on July 1, 2015. 2015 3rd sp.s. c 6 § 1202 removed the expiration date of 2010 c 225 §§ 1 and 2 by repealing 2010 c 225 § 4.

Tax preference performance statement—Tax preference intended to be permanent—2015 3rd sp.s. c 6: See notes following RCW 82.08.983.

Additional notes found at www.leg.wa.gov

82.12.985 Exemptions—Insulin. The provisions of this chapter shall not apply in respect to the use of insulin by humans. [2004 c 153 § 103.]

Additional notes found at www.leg.wa.gov

82.12.986 Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers. (Expires July 1, 2053.) (1)(a) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses or qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center for which an exemption certificate under RCW 82.08.986 has been issued, and to the use of labor and services rendered in respect to installing such server equipment.

(b) Until July 1, 2048, this exemption also applies to the use by a qualifying business or qualifying tenant of eligible power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure at an eligible computer data center for which an exemption certificate under RCW 82.08.986 has been issued.

(c) The exemptions provided in this section expire July 1, 2048.

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

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

(4) The exemption provided in subsection (1) of this section does not apply to the use of eligible server equipment and eligible power infrastructure, and the labor and services provided in subsection (1) of this section, if first used by qualifying businesses or qualifying tenants on or after July 1, 2048.

(5) This section expires July 1, 2053. [2022 c 267 § 4; 2015 3rd sp.s. c 6 § 303; 2012 2nd sp.s. c 6 § 304; 2010 1st sp.s. c 23 § 1602; 2010 1st sp.s. c 1 § 3.]

Tax preference performance statement—2022 c 267 §§ 3-6: See note following RCW 82.08.986.

Findings—Intent—2022 c 267: See note following RCW 82.08.986.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 302 and 303: See note following RCW 82.08.986.

Intent—Finding—2012 2nd sp.s. c 6 §§ 302, 303, and 304: See note following RCW 82.08.986.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—Finding—Effective date—2010 1st sp.s. c 1: See notes following RCW 82.08.986.

Additional notes found at www.leg.wa.gov

82.12.9861 Exemptions—Eligible server equipment—Eligible power infrastructure—Computer data centers in counties with populations over 800,000. (Expires July 1, 2043.) (1) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses or qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to the use of labor and services rendered in respect to installing such server equipment. The exemption also applies to the use by a qualifying busi-

ness or qualifying tenant of eligible power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure.

(2) The exemption provided in this section does not apply to any person for whom the exemption under RCW 82.08.9861 does not apply.

(3) A qualifying business or a qualifying tenant claiming an exemption under this section must complete an annual tax performance report as required in RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(4) The definitions and requirements in RCW 82.08.9861 apply to this section.

(5) The exemption provided in subsection (1) of this section does not apply to the use of eligible server equipment and eligible power infrastructure, and the labor and services provided in subsection (1) of this section, if first used by qualifying businesses or qualifying tenants on or after July 1, 2038.

(6) This section expires July 1, 2043. [2022 c 267 § 6.]

Tax preference performance statement—2022 c 267 §§ 3-6: See note following RCW 82.08.986.

Findings—Intent—2022 c 267: See note following RCW 82.08.986.

82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities. (1) The provisions of this chapter do not apply with respect to the use of personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2009 c 535 § 622; 2007 c 381 § 3.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.996 Exemptions—Battery-powered electric marine propulsion systems—Qualifying vessels. (Expires July 1, 2030.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of:

(a) New battery-powered electric marine propulsion systems with continuous power greater than fifteen kilowatts;

(b) New vessels equipped with propulsion systems that qualify under (a) of this subsection;

(c)(i) Batteries and battery packs used to exclusively power electric marine propulsion systems or hybrid electric marine propulsion systems, if such systems operate with a continuous power greater than fifteen kilowatts;

(ii) Labor and services rendered in respect to installing, repairing, altering, or improving batteries or battery packs that qualify under (c)(i) of this subsection; and

(d)(i) New shoreside batteries purchased and installed for the purpose of reducing grid demand when charging electric and hybrid vessels;

(ii) Labor and services rendered in respect to installing, altering, or improving shoreside batteries; and

(iii) Tangible personal property that will become a component of shoreside batteries infrastructure.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in RCW 82.08.996 apply to this section.

(4) This section expires July 1, 2030. [2020 c 341 § 2; 2019 c 287 § 22.]

Effective date—2020 c 341: See note following RCW 82.08.996.

Tax preference performance statement—2020 c 341 §§ 1 and 2; 2019 c 287 §§ 21 and 22: See note following RCW 82.08.996.

Effective date—2019 c 287: See note following RCW 82.29A.125.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

82.12.998 Exemptions—Weatherization of a residence. (1) The provisions of this chapter do not apply to the use of tangible personal property used in the weatherization of a residence under the weatherization assistance program under chapter 70A.35 RCW. The exemption only applies to tangible personal property that becomes a component of the residence.

(2) "Residence" and "weatherization" have the meanings provided in RCW 70A.35.020. [2020 c 20 § 1481; 2008 c 92 § 2.]

82.12.999 Exemptions—Joint municipal utility services authorities. The tax levied by RCW 82.12.020 shall not apply to any sales, or uses by, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.106 RCW and any of its members. [2011 c 258 § 13.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.12.9994 Exemptions—Bottled water—Prescription use. (1) The provisions of this chapter do not apply in respect to the use of bottled water dispensed or to be dispensed to patients pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition.

(2) For the purposes of this section, "prescription" has the same meaning as provided in RCW 82.08.9994. [2017 3rd sp.s. c 28 § 104.]

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

82.12.99941 Exemptions—Bottled water—Primary water source unsafe. The provisions of this chapter do not apply in respect to the use of bottled water by persons whose primary source of drinking water is unsafe as provided in RCW 82.08.99941. [2017 3rd sp.s. c 28 § 106.]

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

82.12.9995 Exemptions—Restaurant employee meals. (1) The provisions of this chapter do not apply in respect to a meal provided without specific charge by a restaurant to its employees.

(2) For the purposes of this section, the definitions in RCW 82.08.9995 apply. [2015 c 86 § 304; 2011 c 55 § 3.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.12.9996 Exemptions—Vessel deconstruction. (1) This chapter does not apply to the use of vessel deconstruction services performed at:

(a) A qualified vessel deconstruction facility; or

(b) An area over water that has been permitted under section 402 of the federal clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel deconstruction.

(2) The definitions in RCW 82.08.9996(2) apply to this section. [2014 c 195 § 302.]

Reviser's note: Section 302, chapter 195, Laws of 2014 expires January 1, 2025, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Effective date—2014 c 195 §§ 301 and 302: See note following RCW 82.08.9996.

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

82.12.9997 Exemptions—Cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by cannabis agreement between state and tribe. The taxes imposed by this chapter do not apply to the use of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products covered by an agreement entered into under RCW 43.06.490. "Cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as defined in RCW 69.50.101. The provisions of RCW 82.32.805 and 82.32.808 do not apply to this section. [2022 c 56 § 8; 2022 c 16 § 159; 2015 c 207 § 5.]

Reviser's note: This section was amended by 2022 c 16 § 159 and by 2022 c 56 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—Finding—2015 c 207: See note following RCW 43.06.490.

82.12.9998 Exemptions—Cannabis concentrates, useable cannabis, or cannabis-infused products—Products containing low amounts of THC. (1) The provisions of this chapter do not apply to:

(a) The use of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department of health in rules adopted under RCW 69.50.375(4) in chapter 246-70 WAC as being a compliant cannabis product, by qualifying patients or designated providers who have been issued recognition cards and have obtained such products from a cannabis retailer with a medical cannabis endorsement.

(b) The use of products containing THC with a THC concentration of 0.3 percent or less by qualifying patients or designated providers who have been issued recognition cards and have obtained such products from a cannabis retailer with a medical cannabis endorsement.

(c)(i) Cannabis retailers with a medical cannabis endorsement with respect to:

(A) Cannabis concentrates, useable cannabis, or cannabis-infused products; or

(B) Products containing THC with a THC concentration of 0.3 percent or less;

(ii) The exemption in this subsection (1)(c) applies only if such products are provided at no charge to a qualifying patient or designated provider who has been issued a recognition card. Each such retailer providing such products at no charge must maintain information establishing eligibility for

this exemption in the form and manner required by the department.

(d) The use of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, purchased from cannabis retailers with a medical cannabis endorsement.

(e) Health care professionals with respect to the use of products containing THC with a THC concentration of 0.3 percent or less provided at no charge by the health care professionals under RCW 69.51A.280. Each health care professional providing such products at no charge must maintain information establishing eligibility for this exemption in the form and manner required by the department.

(f) The use of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by qualifying patients when purchased from or provided at no charge by a health care professional under RCW 69.51A.280.

(g) The use of:

(i) Cannabis, cannabis concentrates, useable cannabis, cannabis-infused products, or products containing THC with a THC concentration of 0.3 percent or less, by a cooperative and its members, when produced by the cooperative; and

(ii) Any nonmonetary resources and labor by a cooperative when contributed by its members. However, nothing in this subsection (1)(g) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.12.020 on the use of any property or services purchased by the member and contributed to the cooperative.

(2) The definitions in RCW 82.08.9998 apply to this section. [2022 c 16 § 160; 2019 c 393 § 5; 2015 2nd sp.s. c 4 § 208.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2019 c 393: See note following RCW 69.50.345.

Intent—2019 c 393: See note following RCW 69.50.346.

Applicability—2015 2nd sp.s. c 4 §§ 207 and 208: See note following RCW 82.08.9998.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

82.12.9999 Exemptions—Vehicles using clean alternative fuels and electric vehicles. (Expires August 1, 2028.)

(1) Beginning August 1, 2019, beginning with sales made or lease agreements signed on or after the qualification period start date:

(a) The provisions of this chapter do not apply as provided in (b) of this subsection in respect to the use of new or used passenger cars, light duty trucks, and medium duty passenger vehicles that:

(i) Are exclusively powered by a clean alternative fuel; or

(ii) Use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least 30 miles using only battery power; and

(iii)(A) Have a fair market value at the time use tax is imposed for purchased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$30,000; or

(B) Have a fair market value at the inception of the lease for leased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed \$30,000;

(b)(i) The exemption in this section is only applicable for up to the amounts specified in (b)(ii) or (iii) of this subsection of:

(A) The total amount of the vehicle's purchase price, for sales made; or

(B) The total lease payments made plus any additional purchase price of the leased vehicle if the original lessee purchases the leased vehicle before the qualification period end date, for lease agreements signed.

(ii) Based on the purchase date or the date the lease agreement was signed of the vehicle if the vehicle is a new vehicle at the time of the purchase date or the date the lease agreement was signed:

(A) From the qualification period start date until July 31, 2021, the maximum amount eligible under (b)(i) of this subsection is \$25,000;

(B) From August 1, 2021, until July 31, 2023, the maximum amount eligible under (b)(i) of this subsection is \$20,000;

(C) From August 1, 2023, until July 31, 2025, the maximum amount eligible under (b)(i) of this subsection is \$15,000.

(iii) If the vehicle is a used vehicle at the time of the purchase date or the date the lease agreement was signed, the maximum amount eligible under (b)(i) of this subsection is \$16,000.

(2)(a) The seller must keep records necessary for the department to verify eligibility under this section, except as provided in (b) of this subsection. A person claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; fair market value of the vehicle; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(b) (a) of this subsection applies only if the seller or person claiming the exemption is a vehicle dealer, as defined under RCW 46.70.011. When the seller is not a vehicle dealer, the department of licensing must establish a process for granting the tax exemption under this section for use tax otherwise collected at the time the ownership of a vehicle is transferred when the vehicle qualifies for the use tax exemption under subsection (1)(a) of this section, and must provide any information required under (a) of this subsection that it obtains as part of the vehicle titling and registration process

for these vehicles to the department on at least a quarterly basis.

(3)(a) Vehicles purchased or leased vehicles for which the lease agreement was signed after the qualification period end date do not qualify for the exemption under this section.

(b) All leased vehicles that qualified for the exemption under this section before the qualification period end date must continue to receive the exemption as described under subsection (1)(b) of this section on any lease payments due through the remainder of the lease before August 1, 2028.

(4) The definitions in RCW 82.08.9999 apply to this section.

(5) This section is supported by the revenues generated in RCW 46.17.324, and therefore takes effect only if RCW 46.17.324 is enacted by June 30, 2019.

(6) This section expires August 1, 2028. [2022 c 182 § 306; 2019 c 287 § 10.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

82.12.99991 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1706.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

Sections

82.14.010	Legislative finding—Purpose.
82.14.020	Definitions.
82.14.030	Sales and use taxes authorized—Additional taxes authorized—Maximum rates.
82.14.032	Alteration of tax rate pursuant to government service agreement.
82.14.034	Alteration of county's share of city's tax receipts pursuant to government service agreement.
82.14.036	Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method.
82.14.040	County ordinance to contain credit provision.
82.14.045	Sales and use taxes for public transportation systems.
82.14.0455	Sales and use tax for transportation benefit districts.
82.14.048	Sales and use taxes for public facilities districts—Definitions.
82.14.0485	Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined.
82.14.0486	State contribution for baseball stadium limited.
82.14.049	Sales and use tax for public sports facilities—Tax upon retail rental car rentals.
82.14.0494	Sales and use tax for stadium and exhibition center—Deduction from tax otherwise required—Transfer and deposit of revenues.
82.14.050	Administration and collection—Local sales and use tax account.
82.14.055	Tax changes.
82.14.060	Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect.
82.14.070	Uniformity—Rule making—Model ordinance.
82.14.080	Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects.
82.14.090	Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted.

(2022 Ed.)

82.14.212	Transfer of funds pursuant to government service agreement.
82.14.215	Apportionment and distribution—Withholding revenue for noncompliance.
82.14.230	Natural or manufactured gas—Cities may impose use tax.
82.14.300	Local government criminal justice assistance—Finding.
82.14.310	County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations.
82.14.320	Municipal criminal justice assistance account—Transfers from general fund—Distributions criteria and formula—Limitations.
82.14.330	Municipal criminal justice assistance account—Transfers from general fund—Distributions based on crime rate, population, and innovation—Limitations.
82.14.340	Additional sales and use tax for criminal justice purposes—Referendum—Expenditures.
82.14.350	Sales and use tax for juvenile detention facilities and jails—Colocation.
82.14.360	Special stadium sales and use taxes.
82.14.370	Sales and use tax for public facilities in rural counties.
82.14.390	Sales and use tax for regional centers.
82.14.400	Sales and use tax for zoo, aquarium, and wildlife facilities—Authorizing proposition—Distributions.
82.14.410	Sales of lodging tax rate changes.
82.14.415	Sales and use tax for cities to offset municipal service costs to newly annexed areas.
82.14.420	Sales and use tax for emergency communication systems and facilities.
82.14.430	Sales and use tax for regional transportation investment district.
82.14.440	Sales and use tax for passenger-only ferry service.
82.14.445	Sales and use tax for passenger-only ferry service districts.
82.14.450	Sales and use tax for counties and cities.
82.14.455	Exemptions—Machinery and equipment used in generating electricity.
82.14.457	Sales and use tax for digital goods—Apportionment.
82.14.460	Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.
82.14.465	Hospital benefit zones—Sales and use tax—Definitions.
82.14.470	Hospital benefit zones—Local public sources dedicated to finance public improvements—Reporting requirements.
82.14.475	Sales and use tax for the local infrastructure financing tool program.
82.14.480	Sales and use tax for health sciences and services authorities.
82.14.485	Sales and use taxes for regional centers.
82.14.490	Sourcing—Sales and use taxes.
82.14.505	Local revitalization financing—Demonstration projects.
82.14.510	Sales and use tax for local revitalization financing.
82.14.515	Use of sales and use tax funds—Local revitalization financing.
82.14.525	Sales and use tax.
82.14.530	Sales and use tax for housing and related services.
82.14.532	Sales and use tax remittance—Qualifying projects—Requirements—Department to determine eligibility.
82.14.540	Affordable and supportive housing—Sales and use tax.
82.14.545	Mitigation payments.
82.14.550	Manufacturing and warehousing job centers account.
82.14.820	Warehouse and grain elevators and distribution centers—Exemption does not apply.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Direct pay permits: RCW 82.32.087.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

82.14.010 Legislative finding—Purpose. The legislature finds that the several counties and cities of the state lack adequate sources of revenue to carry out essential county and municipal purposes. The legislature further finds that the most efficient and appropriate methods of deriving revenues for such purposes is to vest additional taxing powers in the governing bodies of counties and cities which they may or may not implement. The legislature intends, by enacting this chapter, to provide the means by which essential county and municipal purposes can be financially served should they choose to employ them. [1970 ex.s. c 94 § 1.]

82.14.020 Definitions. For purposes of this chapter:

(1) "City" means a city or town;

(2) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, has full force and effect with respect to taxes imposed under authority of this chapter. However, the terms "retail sale" and "sale at retail" have only the meaning provided in RCW 82.08.010 for the purposes of this chapter, unless the context clearly requires that a different definition apply;

(3) "Taxable event" means any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended. However, the term does not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended; and

(4) "Treasurer or other legal depository" means the treasurer or legal depository of a county or city. [2010 c 106 § 223; 2007 c 6 § 502; (2005 c 514 § 112 repealed by 2007 c 54 § 2); 2005 c 514 § 111; (2003 c 168 § 503 repealed by 2007 c 54 § 2); 2003 c 168 § 502. Prior: 2002 c 367 § 6; 2002 c 67 § 7; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Finding—Purpose—Effective date—2001 c 186: See notes following RCW 82.08.0202.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Additional notes found at www.leg.wa.gov

82.14.030 Sales and use taxes authorized—Additional taxes authorized—Maximum rates. (1) The governing body of any county or city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, impose a sales and use tax in accordance with the terms of this chapter. Such tax must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city as the case may be. This sales and use tax does not apply to natural or manufactured gas, except for natural gas that is used as a transportation fuel as defined in RCW 82.16.310 and is taxable by the state under chapters 82.08 and 82.12 RCW. The rate of such tax imposed by a county is five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax imposed by a city may not exceed five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). However, in the event a county imposes a sales and use tax under this subsection, the rate of such tax imposed under this subsection by any city therein may not exceed four hundred and twenty-five one-thousandths of one percent.

(2) In addition to the tax authorized in subsection (1) of this section, the governing body of any county or city may by resolution or ordinance impose an additional sales and use tax in accordance with the terms of this chapter. Such additional tax must be collected upon the same taxable events upon which the tax imposed under subsection (1) of this section is imposed. The rate of such additional tax imposed by a county is up to five-tenths of one percent of the selling price

(in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such additional tax imposed by a city is up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). However, in the event a county imposes a sales and use tax under the authority of this subsection at a rate equal to or greater than the rate imposed under the authority of this subsection by a city within the county, the county must receive fifteen percent of the city tax. In the event that the county imposes a sales and use tax under the authority of this subsection at a rate which is less than the rate imposed under this subsection by a city within the county, the county must receive that amount of revenues from the city tax equal to fifteen percent of the rate of tax imposed by the county under the authority of this subsection. The authority to impose a tax under this subsection is intended in part to compensate local government for any losses from the phaseout of the property tax on business inventories. [2014 c 216 § 307; 2008 c 86 § 101; 1989 c 384 § 6; 1982 1st ex.s. c 49 § 17; 1970 ex.s. c 94 § 4.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional tax for high capacity transportation service: RCW 81.104.170.

Imposition of additional tax on sale of real property in lieu of tax under RCW 82.14.030(2): RCW 82.46.010(3).

Additional notes found at www.leg.wa.gov

82.14.032 Alteration of tax rate pursuant to government service agreement. The rate of sales and use tax imposed by a city under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 11.]

82.14.034 Alteration of county's share of city's tax receipts pursuant to government service agreement. The percentage of a city's sales and use tax receipts that a county receives under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 12.]

82.14.036 Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method. Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.14.030(2) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The

petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29A.04.321 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or altering the rate under RCW 82.14.030(2) to a referendum vote.

Any county or city tax authorized under RCW 82.14.030(2) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [2015 c 53 § 97; 1983 c 99 § 2.]

82.14.040 County ordinance to contain credit provision. (1) Any county ordinance adopted under RCW 82.14.030(1) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(1) for the full amount of any city sales or use tax imposed under RCW 82.14.030(1) upon the same taxable event.

(2) Any county ordinance adopted under RCW 82.14.030(2) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(2) for the full amount of any city sales or use tax imposed under RCW 82.14.030(2) upon the same taxable event up to the additional tax imposed by the county under RCW 82.14.030(2). [1982 1st ex.s. c 49 § 18; 1970 ex.s. c 94 § 5.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.045 Sales and use taxes for public transportation systems. (1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a county with a population of one million or more pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems or public transportation limited to persons with special needs under RCW 36.57.130 and 36.57A.180, and in lieu

of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation or public transportation limited to persons with special needs under RCW 36.57.130 and 36.57A.180, and if approved by a majority of persons voting thereon, impose a sales and use tax in accordance with the terms of this chapter. Where an authorizing proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without additional approval of the voters of such county as otherwise required by this section.

The tax authorized by this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, six-tenths, seven-tenths, eight-tenths, or nine-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2)(a) In the event a metropolitan municipal corporation imposes a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to impose and/or collect taxes under RCW 35.95.040 or this section, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority imposes a sales and use tax under this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to impose or collect taxes under RCW 35.95.040 or this section.

(c) In the event a public transportation benefit area imposes a sales and use tax under this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to impose or collect taxes under RCW 35.95.040 or this section.

(3) The legislative body of a public transportation benefit area located in a county with a population of seven hundred thousand or more that also contains a city with a population

of seventy-five thousand or more operating a transit system pursuant to chapter 35.95 RCW or the legislative body of a public transportation benefit area located in a county with a population of more than two hundred fifty thousand but fewer than four hundred thousand that also contains two or more cities with a population of forty thousand or more may submit an authorizing proposition to the voters and, if approved by a majority of persons voting on the proposition, impose a sales and use tax in accordance with the terms of this chapter of one-tenth, two-tenths, or three-tenths of one percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax, in addition to the rate in subsection (1) of this section. [2018 c 53 § 1; 2015 3rd sp.s. c 44 § 312; 2008 c 86 § 102; 2001 c 89 § 3; 2000 2nd sp.s. c 4 § 16; 1998 c 321 § 7 (Referendum Bill No. 49, approved November 3, 1998); 1991 c 363 § 158. Prior: 1984 c 112 § 1; 1983 c 3 § 216; 1980 c 163 § 1; 1975 1st ex.s. c 270 § 6; 1971 ex.s. c 296 § 2.]

Effective date—2018 c 53: "This act takes effect August 1, 2018." [2018 c 53 § 2.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Purpose—1998 c 321: "The purpose of this act is to reallocate the general fund portion of the state's motor vehicle excise tax revenues among the taxpayers, local governments, and the state's transportation programs. By reallocating motor vehicle excise taxes, the state revenue portion can be dedicated to increased transportation funding purposes. Since the general fund currently has a budget surplus, due to a strong economy, the legislature feels that this reallocation is an appropriate short-term solution to the state's transportation needs and is a first step in meeting longer-term transportation funding needs. These reallocated funds must be used to provide relief from traffic congestion, improve freight mobility, and increase traffic safety.

In reallocating general fund resources, the legislature also ensures that other programs funded from the general fund are not adversely impacted by the reallocation of surplus general fund revenues. The legislature also adopts this act to continue the general fund revenue and expenditure limitations contained in chapter 43.135 RCW after this one-time transfer of funds.

In order to develop a long-term and comprehensive solution to the state's transportation problems, a joint committee will be created to study the state's transportation needs and the appropriate sources of revenue necessary to implement the state's long-term transportation needs as provided in *section 22 of this act." [1998 c 321 § 1 (Referendum Bill No. 49, approved November 3, 1998).]

***Reviser's note:** Section 22 of this act was vetoed by the governor.

Purpose—Captions now law—1991 c 363: See notes following RCW 2.32.180.

Legislative finding, declaration—1971 ex.s. c 296: "The legislature finds that adequate public transportation systems are necessary to the economic, industrial and cultural development of the urban areas of this state and the health, welfare and prosperity of persons who reside or are employed in such areas or who engage in business therein and such systems are increasingly essential to the functioning of the urban highways of the state. The legislature further finds and declares that fares and tolls for the use of public transportation systems cannot maintain such systems in solvent financial conditions and at the same time meet the need to serve those who cannot reasonably afford or use other forms of transportation. The legislature further finds and declares that additional and alternate means of financing adequate public transportation service are necessary for the cities, metropolitan municipal corporations and counties of this state which provide such service." [1971 ex.s. c 296 § 1.]

Additional notes found at www.leg.wa.gov

82.14.0455 Sales and use tax for transportation benefit districts. (1) Subject to the provisions in RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose a sales and use tax in accordance with the terms of this chapter. The tax authorized in

this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the district. The rate of tax shall not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. Except as provided in subsection (2) of this section, the tax may not be imposed for a period exceeding 10 years unless renewed with an affirmative vote of the voters voting at an election or a majority vote of the governing board of the district. Each renewal by the voters may extend the tax for additional periods not exceeding 10 years. The governing board of the district may only fix, impose, or extend a sales and use tax of up to one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The voter-approved sales tax initially imposed under this section after July 1, 2010, may be imposed for a period exceeding 10 years if the moneys received under this section are dedicated for the repayment of indebtedness incurred in accordance with the requirements of chapter 36.73 RCW.

(3) Money received from the tax imposed under this section must be spent in accordance with the requirements of chapter 36.73 RCW. [2022 c 182 § 407; 2010 c 105 § 3; 2006 c 311 § 16; 2005 c 336 § 15.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Findings—2006 c 311: See note following RCW 36.120.020.

Additional notes found at www.leg.wa.gov

82.14.048 Sales and use taxes for public facilities districts—Definitions. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Distressed public facilities district" means a public facilities district that has defaulted on bond anticipation notes or bonds in excess of forty million dollars on or before April 1, 2012; and

(b) "Anchor jurisdiction" means a city that has entered into an agreement to form a public facilities district under RCW 35.57.010(1)(c) that constitutes a distressed public facilities district under this chapter and in which the largest asset of such public facilities district is located.

(2)(a) The governing board of a public facilities district under chapter 36.100 or 35.57 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter.

(b) In addition to the tax authorized pursuant to (a) of this subsection and in addition to any other authority conferred by law, the legislative authority of an anchor jurisdiction may impose a sales and use tax within the geographical boundaries of the anchor jurisdiction in accordance with the terms of this chapter without submitting an authorizing proposition to the voters of the anchor jurisdiction or the distressed public facilities district.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax may

not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. A public facilities district formed under RCW 35.57.010(1)(e) may not impose the tax authorized under this section at a rate that exceeds two-tenths of one percent minus the rate of the highest tax authorized by this section that is imposed by any other public facilities district within its boundaries. An anchor jurisdiction may impose the tax authorized by subsection (2)(b) of this section at a rate not to exceed two-tenths of one percent, regardless of whether any other public facilities district (including a distressed public facilities district) within its boundaries imposes the tax authorized by this section or the rate of such tax imposed by the public facilities district. If a public facilities district formed under RCW 35.57.010(1)(e) has imposed a tax under this section and issued or incurred obligations pledging that tax, so long as those obligations are outstanding no other public facilities district within its boundaries may thereafter impose a tax under this section at a rate that would reduce the rate of the tax that was pledged to the repayment of those obligations. A public facilities district that imposes a tax under this section is responsible for the payment of any costs incurred for the purpose of administering the provisions of this section, RCW 35.57.010(1)(e), and 35.57.020(1)(b), including any administrative costs associated with the imposition of the tax under this section incurred by either the department of revenue or local government, or both.

(4)(a) Moneys received by a public facilities district from any tax imposed by the public facilities district under the authority of this section must be used for the purpose of providing funds for the costs associated with the financing, refinancing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities.

(b) Moneys received by an anchor jurisdiction from any tax imposed by the anchor jurisdiction under the authority of this section must be used for the purpose of providing funds for the costs associated with the financing, refinancing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of the public facilities of the distressed public facilities district, and for all litigation, investigation, and related costs and expenses incurred by the anchor jurisdiction toward resolving matters related to the defaults of the distressed public facilities district. To the extent the distressed public facilities district owes money to an anchor jurisdiction, the anchor jurisdiction may apply money from the sales tax imposed under this section to any such obligations. Any sales tax imposed by an anchor jurisdiction under this section must terminate no later than thirty years after it is first imposed. [2012 c 4 § 6; 2009 c 533 § 3; 2008 c 86 § 103; 1999 c 165 § 12; 1995 c 396 § 6; 1991 c 207 § 1.]

Findings—2012 c 4 § 6: "In enacting section 6 of this act, the legislature finds that providing local tools to enable solutions for public facilities districts that are in default on bond anticipation notes or bonds is in the best interest of the state, its municipalities, and its citizens as a whole. The legislature further finds it is necessary to act swiftly to provide the tools necessary to address any defaults on debt issued by public facilities districts." [2012 c 4 § 5.]

Effective date—2012 c 4 §§ 5 and 6: "Sections 5 and 6 of this act are necessary for the immediate preservation of the public peace, health, or (2022 Ed.)

safety, or support of the state government and its existing public institutions, and take effect immediately [March 1, 2012]." [2012 c 4 § 8.]

Additional notes found at www.leg.wa.gov

82.14.0485 Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined. (1) The legislative authority of a county with a population of one million or more may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.017 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium.

(4) No tax may be collected under this section before January 1, 1996, and no tax may be collected under this section unless the taxes under RCW 82.14.360 are being collected. The tax imposed in this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax is first collected.

(5) As used in this section, "baseball stadium" means a baseball stadium with natural turf and a retractable roof or canopy, together with associated parking facilities, constructed in the largest city in a county with a population of one million or more. [1995 3rd sp.s. c 1 § 101.]

Baseball stadium construction agreement: RCW 36.100.037.

State contribution for baseball stadium limited: RCW 82.14.0486.

Additional notes found at www.leg.wa.gov

82.14.0486 State contribution for baseball stadium limited. Sections 101 through 105, chapter 1, Laws of 1995 3rd sp. sess. constitute the entire state contribution for a baseball stadium, as defined in RCW 82.14.0485. The state will not make any additional contributions based on revised cost or revenue estimates, cost overruns, unforeseen circumstances, or any other reason. [1995 3rd sp.s. c 1 § 106.]

Additional notes found at www.leg.wa.gov

82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals. (1) The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax is one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax may not be used to subsidize any professional sports team and must be used solely for the following purposes:

- (a) Acquiring, constructing, maintaining, or operating public sports stadium facilities;
- (b) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities;
- (c) Youth or amateur sport activities or facilities; or
- (d) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

(2) In a county of one million or more, at least seventy-five percent of the tax imposed under this section must be used to retire the debt on the stadium under RCW 67.28.180(2)(b)(i)(B), until that debt is fully retired. [2020 c 139 § 23; 2011 c 174 § 107; 2008 c 264 § 4; 1997 c 220 § 502 (Referendum Bill No. 48, approved June 17, 1997); 1992 c 194 § 3.]

Findings—Intent—Effective date—2008 c 264: See notes following RCW 67.28.180.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Additional notes found at www.leg.wa.gov

82.14.0494 Sales and use tax for stadium and exhibition center—Deduction from tax otherwise required—Transfer and deposit of revenues. (1) The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may impose a sales and use tax in accordance with this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall be 0.016 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Before the issuance of bonds in RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be transferred to the public stadium authority. After bonds are issued under RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(4) The definitions in RCW 36.102.010 apply to this section.

(5) This section expires on the earliest of the following dates:

(a) December 31, 1999, if the conditions for issuance of bonds under RCW 43.99N.020 have not been met before that date;

(b) The date on which all bonds issued under RCW 43.99N.020 have been retired; or

(c) Twenty-three years after the date the tax under this section is first imposed. [1997 c 220 § 204 (Referendum Bill No. 48, approved June 17, 1997).]

Reviser's note: The contingency in subsection (5)(c) of this section appears to have occurred August 1, 2020, causing this section to expire August 1, 2020.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

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

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

(b) Making refunds of taxes imposed under the authority of this chapter and RCW 81.104.170 and exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, or 82.12.025661.

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

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

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

(5) Beginning January 1, 2013, the state treasurer must determine the amount of earnings on investments that would have been credited to the local sales and use tax account if the collections had been deposited in the account over the prior month. When distributions are made under subsection (1)(a) of this section, the state treasurer must transfer this amount from the state general fund to the local sales and use tax

account and must distribute such sums to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts.

(6) Repayment of deferred local sales and use taxes due under RCW 82.32.558 is subject to the requirements of RCW 82.32.559. [2021 c 178 § 2; 2016 c 191 § 4; 2014 c 216 § 403; 2012 1st sp.s. c 9 § 1; 2009 c 469 § 107; 2005 c 336 § 20. Prior: 2003 c 168 § 201; 2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Effective date—2016 c 191: See note following RCW 82.08.025661.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.055 Tax changes. (1) Except as provided in subsections (2), (3), and (4) of this section, a local sales and use tax change may take effect (a) no sooner than seventy-five days after the department receives notice of the change and (b) only on the first day of January, April, or July.

(2) In the case of a local sales and use tax that is a credit against the state sales tax or use tax, a local sales and use tax change may take effect (a) no sooner than thirty days after the department receives notice of the change and (b) only on the first day of a month.

(3)(a) A local sales and use tax rate increase imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A local sales and use tax rate decrease imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

(4) For the purposes of this section, "local sales and use tax change" means enactment or revision of local sales and use taxes under this chapter or any other statute, including changes resulting from referendum or annexation. [2016 c 46 § 1; 2003 c 168 § 206; 2001 c 320 § 7; 2000 c 104 § 2.]

Findings—Intent—2000 c 104: "The legislature finds that retailers have an important role in the state's tax system by collecting sales or use tax from consumers and remitting it to the state. Frequent changes to the tax system place a burden on these businesses. To alleviate that burden and to improve the accuracy of tax collection, it is the intent of the legislature to provide that changes to sales and use tax may be made four times a year and that the department of revenue be provided adequate time to give advance notice to retailers of any such change. Changes in sales and use tax rates that are the result of annexation are also restricted to this time period, for uniformity and simplification. Additionally, retailers who rely on technology developed and provided by the department of revenue, such as the department's geographic information system, to calculate tax rates shall be held harmless from errors resulting from such use." [2000 c 104 § 1.]

Statewide sales and use tax changes: RCW 82.08.064.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.14.060 Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect.

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

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

(ii) The amount of any refunds of local sales and use taxes exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, or 82.12.025661, which must be made without appropriation.

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

(2) In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution may not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [2016 c 191 § 5; 2014 c 216 § 404; 2009 c 469 § 108; 2005 c 336 § 21; 1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Effective date—2016 c 191: See note following RCW 82.08.025661.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.070 Uniformity—Rule making—Model ordinance. It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be identical to the state sales and use tax, unless otherwise prohibited by federal law, and with other local sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. [2003 c 168 § 202; 2000 c 104 § 5; 1970 ex.s. c 94 § 10.]

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

Additional notes found at www.leg.wa.gov

82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects. The taxes provided by this chapter may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED, That the taxpayer may with the concurrence of the legislative authority

designate a particular fund of such county or city against which such prepayment of tax or assessment is made. Such prepayment of taxes or assessments shall not be considered to be a debt for the purpose of the limitation of indebtedness imposed by law on a county or city.

By agreement made pursuant to chapter 39.34 RCW, counties or cities may utilize tax revenues received under the authority of this chapter in connection with large construction projects, including energy facilities as defined in RCW 80.50.020, for any purpose within their power or powers, privileges or authority exercised or capable of exercise by such counties or cities including, but not limited to, the purpose of the mitigation of socioeconomic impacts that may be caused by such large construction projects: PROVIDED, That the taxable event need not take place within the jurisdiction where the socioeconomic impact occurs if an intergovernmental agreement provides for redistribution. [1982 c 211 § 2.]

82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted. When permitted by resolution or ordinance, any tax authorized by this chapter may be paid prior to the taxable event to which it may be attributable. Such prepayment shall be made by deposit with the treasurer or other legal depository for the benefit of the funds to which they belong. They shall be credited by any county or city against any future tax that may become due from a taxpayer: PROVIDED, That the taxpayer with the concurrence of the legislative authority may designate a particular fund of such county or city against which such prepayment of tax is made. Prepayment of taxes under this section shall not relieve any taxpayer from remitting the full amount of any tax imposed under the authority of this chapter upon the occurrence of the taxable event. [1982 c 211 § 3.]

82.14.212 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties or cities pursuant to *RCW 82.14.200 or 82.14.210 may be transferred by the recipient county or city to another unit of local government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 13.]

*Reviser's note: RCW 82.14.200 and 82.14.210 were repealed by 2012 c 198 § 26.

82.14.215 Apportionment and distribution—Withholding revenue for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a county or city is found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 35.]

Additional notes found at www.leg.wa.gov

82.14.230 Natural or manufactured gas—Cities may impose use tax. (1) The governing body of any city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose on every person a use tax for the privilege of

using natural gas or manufactured gas in the city as a consumer.

(2) The tax is imposed in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the tax on natural gas businesses under RCW 35.21.870 in the city in which the article is used. The "value of the article used," does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this subsection if those amounts are subject to tax under RCW 35.21.870.

(3) The tax imposed under this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 35.21.870 with respect to the gas for which exemption is sought under this subsection.

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

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another municipality or other unit of local government with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another municipality or other unit of local government with respect to the gas for which a credit is sought under this subsection.

(5) The use tax imposed must be paid by the consumer. The administration and collection of the tax imposed is pursuant to RCW 82.14.050.

(6) The tax authorized by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310. [2014 c 216 § 305; 2010 c 127 § 5; 1989 c 384 § 2.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.14.300 Local government criminal justice assistance—Finding. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, public safety education, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems. [1995 c 312 § 83; 1990 2nd ex.s. c 1 § 1.]

Additional notes found at www.leg.wa.gov

82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations. (1)

The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the county criminal justice assistance account from the general fund the sum of \$23,200,000 divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsections (4) and (5) of this section, must be distributed at such times as distributions are made under *RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by 1,000, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each 1,000 in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city is as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each 1,000 in population;

(iii) The annual number of criminal cases filed in the county superior court must be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-1991 biennium must be based on 1988 figures for both the crime rate as described under (b)(ii) of this subsection and the annual number of criminal cases that are filed as described under (b)(iii) of this subsection. Future distributions must be based on the most recent figures for both the crime rate as described under (b)(ii) of this subsection and the annual number of criminal cases that are filed as described under (b)(iii) of this subsection.

(3) Moneys distributed under this section must be expended exclusively for criminal justice purposes. Except after May 13, 2021, through December 31, 2023, these funds may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is

(2022 Ed.)

defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) Each fiscal biennium, the sum of \$510,000, may be appropriated for the Washington state patrol to provide investigative assistance and report services to assist local law enforcement agencies to prosecute criminals. [2022 c 157 § 21. Prior: 2021 c 334 § 999; 2021 c 296 § 2; 2019 c 415 § 988; 2013 2nd sp.s. c 4 § 1004; 2011 1st sp.s. c 50 § 970; 2005 c 282 § 49; 2001 2nd sp.s. c 7 § 915; 1999 c 309 § 920; 1998 c 321 § 11 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

*Reviser's note: RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW 43.79.555.

Finding—Intent—2021 c 296: "The legislature finds that the COVID-19 pandemic, as recognized by emergency proclamations issued by the governor, has resulted in an unprecedented drop in local government revenues. The legislature intends to provide local governments with increased flexibility in the use of existing revenues in order to enable local governments to continue to provide essential services and to facilitate economic recovery through December 31, 2023." [2021 c 296 § 1.]

Effective date—2021 c 296: "Except for section 9 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2021]." [2021 c 296 § 19.]

Effective date—2019 c 415: See note following RCW 28B.20.476.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.320 Municipal criminal justice assistance account—Transfers from general fund—Distributions criteria and formula—Limitations. (1) The municipal criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of \$4,600,000 divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of 125 percent of the statewide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than 150 percent of the statewide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (7) of this section, must be distributed at such times as distributions are made under *RCW 82.44.150. The distributions must be made as follows:

(a) Unless reduced by this subsection, 30 percent of the moneys must be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than 175 percent of the statewide average crime rate. No city may receive more than 50 percent of any moneys distributed under this subsection [(3)](a) but, if a city distribution is reduced as a result of exceeding the 50 percent limitation, the amount not distributed must be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, must be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than 30 percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), must be made to the county in which the city is located.

(6) Moneys distributed under this section must be expended exclusively for criminal justice purposes. Except after May 13, 2021, through December 31, 2023, these funds may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond

the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(7) Not more than five percent of the funds deposited to the municipal criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(8) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the municipal criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent. [2021 c 296 § 3; 2011 1st sp.s. c 50 § 971; 1998 c 321 § 12 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1995 c 398 § 12; 1995 c 312 § 84; 1993 sp.s. c 21 § 2; 1992 c 55 § 1; prior: 1991 sp.s. c 26 § 1; 1991 sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.330 Municipal criminal justice assistance account—Transfers from general fund—Distributions based on crime rate, population, and innovation—Limitations. (1)(a) Beginning in fiscal year 2000, the state treasurer must transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of \$4,600,000 divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, must be distributed to the cities of the state as follows:

(i) 20 percent appropriated for distribution must be distributed to cities with a three-year average violent crime rate for each 1,000 in population in excess of 150 percent of the statewide three-year average violent crime rate for each 1,000 in population. The three-year average violent crime rate must be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys must be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year must be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with 10 or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is

enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(ii) 16 percent must be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than \$1,000.

(b) The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection (1) must be distributed at such times as distributions are made under *RCW 82.44.150.

(c) Moneys distributed under this subsection (1) must be expended exclusively for criminal justice purposes. Except after May 13, 2021, through December 31, 2023, these funds may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2)(a) In addition to the distributions under subsection (1) of this section:

(i) 10 percent must be distributed on a per capita basis to cities that contract with another governmental agency for the majority of the city's law enforcement services. Cities that subsequently qualify for this distribution must notify the department of commerce by November 30th of the upcoming calendar year. The department of commerce must provide a list of eligible cities to the state treasurer by December 31st. The state treasurer must modify the distribution of these funds in the following year. Cities have the responsibility to notify the department of commerce of any changes regarding these contractual relationships. Adjustments in the distribution formula to add or delete cities may be made only for the upcoming calendar year; no adjustments may be made retroactively.

(ii) The remaining 54 percent must be distributed to cities and towns by the state treasurer on a per capita basis. These funds must be used for: (A) Innovative law enforcement strategies; (B) programs to help at-risk children or child abuse victim response programs; and (C) programs designed to reduce the level of domestic violence or to provide counseling for domestic violence victims.

(b) The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection (2), less any moneys appropriated for purposes under subsection (4) of this section, must be distributed at the times as distributions are made under *RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year must be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with 10 or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is

(2022 Ed.)

enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(c) If a city is found by the state auditor to have expended funds received under this subsection (2) in a manner that does not comply with the criteria under which the moneys were received, the city is ineligible to receive future distributions under this subsection (2) until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), must be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the municipal criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent. [2021 c 296 § 4; 2011 1st sp.s. c 50 § 972; 2003 c 90 § 1; 1998 c 321 § 13 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

*Reviser's note: RCW 82.44.150 was repealed by 2003 c 1 (Initiative Measure No. 776, approved November 5, 2002).

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures. (1) The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax equals one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

(3) When distributing moneys collected under this section, the state treasurer must distribute 10 percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section must be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on popu-

lation, the county must receive that proportion that the unincorporated population of the county bears to the total population of the county and each city must receive that proportion that the city incorporated population bears to the total county population.

(4) Moneys received from any tax imposed under this section must be expended for criminal justice purposes. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. After May 13, 2021, through December 31, 2023, criminal justice purposes includes local government programs which have a reasonable relationship to reducing the numbers of people interacting with the criminal justice system including, but not limited to, reducing homelessness or improving behavioral health.

(5) In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, juvenile justice facilities, and services with ancillary benefits to the civil justice system. [2021 c 296 § 5; 2010 c 127 § 3; 1995 c 309 § 1; 1993 sp.s. c 21 § 6. Prior: 1991 c 311 § 5; 1991 c 301 § 16; 1990 2nd ex.s. c 1 § 901.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Finding—1991 c 301: See note following RCW 10.99.020.

Sales and use tax for high capacity transportation service limited by imposition of tax under RCW 82.14.340: RCW 81.104.170.

Additional notes found at www.leg.wa.gov

82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation. (1) A county legislative authority in a county with a population of less than one million may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails.

(4) Counties are authorized to develop joint ventures to colocate juvenile detention facilities and to colocate jails. [1995 2nd sp.s. c 10 § 1.]

82.14.360 Special stadium sales and use taxes. (1) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon the retail sale or use within the county by restaurants, taverns, and bars of food and beverages that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed five-tenths of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. The tax authorized under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event. As used in this section, "restaurant" does not include grocery stores, mini-markets, or convenience stores.

(2) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed two percent of the selling price in the case of a sales tax, or rental value of the vehicle in the case of a use tax. The tax imposed under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the taxes imposed under the authority of this section shall be used for the purpose of principal and interest payments on bonds, issued by the county, to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. Revenues from the taxes authorized in this section may be used for design and other preconstruction costs of the baseball stadium until bonds are issued for the baseball stadium. The county shall issue bonds, in an amount determined to be necessary by the public facilities district, for the district to acquire, construct, own, and equip the baseball stadium. The county shall have no obligation to issue bonds in an amount greater than that which would be supported by the tax revenues under this section, RCW 82.14.0485, and 36.38.010(4) (a) and (b). If the revenue from the taxes imposed under the authority of this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely:

(a) For early retirement of the bonds issued for the baseball stadium; and

(b) If the revenue from the taxes imposed under this section exceeds the amount needed for the purposes in (a) of this subsection in any year, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction.

(4) The proceeds of any bonds issued for the baseball stadium shall be provided to the district.

(5) As used in this section, "baseball stadium" means "baseball stadium" as defined in RCW 82.14.0485.

(6) The taxes imposed under this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the

taxes are first collected. [2008 c 86 § 104; 2000 c 103 § 10; 1995 3rd sp.s. c 1 § 201; 1995 1st sp.s. c 14 § 7.]

Additional notes found at www.leg.wa.gov

82.14.370 Sales and use tax for public facilities in rural counties. (1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax may not exceed 0.09 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between 60 and 100 persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section may only be used to finance public facilities serving economic development purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040, or provide affordable workforce housing infrastructure or facilities. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county, or provide affordable workforce housing infrastructure or facilities.

(b) In implementing this section, the county must consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section must report, as follows, to the office of the state auditor, within 150 days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged may not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth sta-

bilization, storm sewer facilities, railroads, electrical facilities, natural gas facilities, research, testing, training, and incubation facilities in innovation partnership zones designated under RCW 43.330.270, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, port facilities in the state of Washington, or affordable workforce housing infrastructure or facilities.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county, including affordable workforce housing infrastructure or facilities.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(iv) "Affordable workforce housing infrastructure or facilities" means housing infrastructure or facilities that a qualifying provider uses for housing for a single person, family, or unrelated persons living together whose income is no more than 120 percent of the median income, adjusted for housing size, for the county where the housing is located.

(v) "Qualifying provider" means a nonprofit entity as defined in RCW 84.36.560, a nonprofit entity or qualified cooperative association as defined in RCW 84.36.049, a housing authority created under RCW 35.82.030 or 35.82.300, a public corporation established under RCW 35.21.660 or 35.21.730, or a county or municipal corporation.

(4) No tax may be collected under this section before July 1, 1998.

(a) Except as provided in (b) of this subsection, no tax may be collected under this section by a county more than 25 years after the date that a tax is first imposed under this section.

(b) For counties imposing the tax at the rate of 0.09 percent before August 1, 2009, the tax expires on the date that is 25 years after the date that the 0.09 percent tax rate was first imposed by that county.

(5) For purposes of this section, "rural county" means a county with a population density of less than 100 persons per square mile or a county smaller than 225 square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2022 c 175 § 1; 2012 c 225 § 4; 2009 c 511 § 1. Prior: 2007 c 478 § 1; 2007 c 250 § 1; 2004 c 130 § 2; 2002 c 184 § 1; 1999 c 311 § 101; 1998 c 55 § 6; 1997 c 366 § 3.]

Intent—2004 c 130: "It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation, attraction, expansion, and retention of businesses and provide for family-wage jobs." [2004 c 130 § 1.]

Finding—Intent—1999 c 311: "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons: One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 311 § 1.]

Intent—1997 c 366: "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

- (1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;
- (2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;
- (3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and
- (4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

Additional notes found at www.leg.wa.gov

82.14.390 Sales and use tax for regional centers. (1)

Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commenced construction of at least one new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commenced construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commenced construction of a new regional center before January 1, 2009, or before January 1, 2011, in the case of a new regional center in a county designated by the president as a disaster area in December 2007, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax may not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this sec-

tion may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department must determine sales and use tax collection net losses under this section as provided in *RCW 82.14.500 (2) and (3). The department must provide written notice of its determinations to public facilities districts. Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the public facilities district. During the 2011-2013 fiscal biennium, distributions by the state to a public facilities district based on the additional rate authorized in subsection (2) of this section must be reduced by 3.4 percent.

(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section expires when bonds issued to finance or refinance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than forty years after the tax is first collected.

(5) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section; however, amounts generated from non-voter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW do not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section may not be greater than 0.037 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax

under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW must be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2017 c 164 § 1; 2011 1st sp.s. c 50 § 973; 2008 c 48 § 1. Prior: 2007 c 486 § 2; 2007 c 6 § 904; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

***Reviser's note:** RCW 82.14.500 was repealed by 2017 3rd sp.s. c 28 § 404, effective October 1, 2019.

Findings—Intent—2007 c 6: "(1) The legislature finds and declares that:

(a) Washington state's participation as a member state in the streamlined sales and use tax agreement benefits the state, all its local taxing jurisdictions, and its retailing industry, by increasing state and local revenues, improving the state's business climate, and standardizing and simplifying the state's tax structure;

(b) Participation in the streamlined sales and use tax agreement is a matter of statewide concern and is in the best interests of the state, the general public, and all local jurisdictions that impose a sales and use tax under applicable law;

(c) Participation in the streamlined sales and use tax agreement requires the adoption of the agreement's sourcing provisions, which change the location in which a retail sale of delivered tangible personal property occurs for local sales tax purposes from the point of origin to the point of destination;

(d) Changes in the local sales tax sourcing law provisions to conform with the streamlined sales and use tax agreement will cause sales tax revenues to shift among local taxing jurisdictions. The legislature finds that there will be an unintended adverse impact on local taxing jurisdictions that receive less revenues because local tax revenues will be redistributed, with revenue increases for some jurisdictions and reductions for others, due solely to changes in local sales tax sourcing rules to be implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, even though no local taxing jurisdiction has changed its tax rate or tax base;

(e) The purpose of providing mitigation to such jurisdictions is to mitigate the unintended revenue redistribution effect of the sourcing law changes among local governments;

(f) It is in the best interest of the state and all its subdivisions to mitigate the adverse effects of amending the local sales tax sourcing provisions to be in conformance with the streamlined sales and use tax agreement;

(g) Additionally, changes in sourcing laws may have negative implications for industry sectors such as warehousing and manufacturing, as well as jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land use policy decisions based on point of origin sales tax rules in place before July 1, 2008, and the mitigation provided by RCW *82.14.495, *82.14.500, 82.14.390, and **44.28.815 is intended to help offset those negative implications; and

(h) It is important that the state of Washington maintain its supply of industrial land for present and future economic development activities, and local governments taking advantage of the mitigation provided by RCW *82.14.495, *82.14.500, 82.14.390, and **44.28.815 should strive to maintain the supply of industrial land available for economic development efforts.

(2) The legislature intends that the streamlined sales and use tax mitigation account established in *RCW 82.14.495 have the sole objective of mitigating, for negatively affected local taxing jurisdictions, the net local sales tax revenue reductions incurred as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020." [2007 c 6 § 901.]

Reviser's note: *(1) RCW 82.14.495 and 82.14.500 was repealed by 2017 3rd sp.s. c 28 § 404, effective October 1, 2019.

** (2) RCW 44.28.815 expired July 1, 2011.

Additional notes found at www.leg.wa.gov

82.14.400 Sales and use tax for zoo, aquarium, and wildlife facilities—Authorizing proposition—Distribution.

(1) Upon the joint request of a metropolitan park dis-

trict, a city with a population of more than one hundred fifty thousand, and a county legislative authority in a county with a national park and a population of more than five hundred thousand and less than one million five hundred thousand, the county must submit an authorizing proposition to the county voters, fixing and imposing a sales and use tax in accordance with this chapter for the purposes designated in subsection (4) of this section and identified in the joint request. Such proposition must be placed on a ballot for a special or general election to be held no later than one year after the date of the joint request.

(2) The proposition is approved if it receives the votes of a majority of those voting on the proposition.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax must equal no more than one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(4) Moneys received from any tax imposed under this section must be used solely for the purpose of providing funds for:

(a) Costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, or improvement of zoo, aquarium, and wildlife preservation and display facilities that are currently accredited by the American zoo and aquarium association; or

(b) Those costs associated with (a) of this subsection and costs related to parks located within a county described in subsection (1) of this section.

(5) The department must perform the collection of such taxes on behalf of the county at no cost to the county. In lieu of the charge for the administration and collection of local sales and use taxes under RCW 82.14.050 from which the county is exempt under this subsection (5), a percentage of the tax revenues authorized by this section equal to one-half of the maximum percentage provided in RCW 82.14.050 must be transferred annually to the department of commerce, or its successor agency, from the funds allocated under subsection (6)(b) of this section for a period of twelve years from the first date of distribution of funds under subsection (6)(b) of this section. The department of commerce, or its successor agency, must use funds transferred to it pursuant to this subsection (5) to provide, operate, and maintain community-based housing under chapter 43.185 RCW for individuals with mental illness.

(6) If the joint request and the authorizing proposition include provisions for funding those costs included within subsection (4)(b) of this section, the tax revenues authorized by this section must be allocated annually as follows:

(a) Fifty percent to the zoo and aquarium advisory authority; and

(b) Fifty percent to be distributed on a per capita basis as set out in the most recent population figures for unincorporated and incorporated areas only within that county, as determined by the office of financial management, solely for parks, as follows: To any metropolitan park district, to cities and towns not contained within a metropolitan park district,

and the remainder to the county. Moneys received under this subsection (6)(b) by a county may not be used to replace or supplant existing per capita funding.

(7) Funds must be distributed annually by the county treasurer to the county, and cities and towns located within the county, in the manner set out in subsection (6)(b) of this section.

(8) Prior to expenditure of any funds received by the county under subsection (6)(b) of this section, the county must establish a process which considers needs throughout the unincorporated areas of the county in consultation with community advisory councils established by ordinance.

(9) By December 31, 2005, and thereafter, the county or any city with a population greater than eighty thousand must provide at least one dollar match for every two dollars received under this section.

(10) Properties subject to a memorandum of agreement between the federal bureau of land management, the advisory council on historic preservation, and the Washington state historic preservation officer have priority for funding from money received under subsection (6)(b) of this section for implementation of the stipulations in the memorandum of agreement.

(a) At least one hundred thousand dollars of the first four years of allocations under subsection (6)(b) of this section, to be matched by the county or city with one dollar for every two dollars received, must be used to implement the stipulations of the memorandum of agreement and for other historical, archaeological, architectural, and cultural preservation and improvements related to the properties.

(b) The amount in (a) of this subsection must come equally from the allocations to the county and to the city in which the properties are located, unless otherwise agreed to by the county and the city.

(c) The amount in (a) of this subsection may not be construed to displace or be offered in lieu of any lease payment from a county or city to the state for the properties in question. [2020 c 139 § 24; 2000 c 240 § 1; 1999 c 104 § 1.]

82.14.410 Sales of lodging tax rate changes. (1) A local sales and use tax change adopted after December 1, 2000, must provide an exemption for those sales of lodging for which, but for the exemption, the total sales tax rate imposed on sales of lodging would exceed the greater of:

(a) Twelve percent; or

(b) The total sales tax rate that would have applied to the sale of lodging if the sale were made on December 1, 2000.

(2) For the purposes of this section:

(a) "Local sales and use tax change" is defined as provided in RCW 82.14.055.

(b) "Sale of lodging" means the sale of or charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property.

(c) "Total sales tax rate" means the combined rates of all state and local taxes imposed under this chapter and chapters 36.100, 67.28, *67.40, and 82.08 RCW, and any other tax authorized after March 29, 2001, if the tax is in the nature of a sales tax collected from the buyer, but excluding taxes imposed under RCW 81.104.170 before December 1, 2000,

and taxes imposed under RCW 82.14.530. [2015 3rd sp.s. c 24 § 704; 2001 c 6 § 1.]

*Reviser's note: A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Additional notes found at www.leg.wa.gov

82.14.415 Sales and use tax for cities to offset municipal service costs to newly annexed areas. (1) The legislative authority of any city that is located in a county with a population greater than six hundred thousand that annexes an area consistent with its comprehensive plan required by chapter 36.70A RCW may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the city. The tax may only be imposed by a city if:

(a) The city has commenced annexation of an area having a population of at least ten thousand people, or four thousand in the case of a city described under subsection (3)(a)(i) of this section, prior to January 1, 2015; and

(b) The city legislative authority determines by resolution or ordinance that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the annexation area on an annual basis.

(2) The tax authorized under this section is a credit against the state tax under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the city at no cost to the city and must remit the tax to the city as provided in RCW 82.14.060.

(3)(a) Except as provided in (b) of this subsection, the maximum rate of tax any city may impose under this section is:

(i) 0.1 percent for each annexed area in which the population is greater than ten thousand and less than twenty thousand. The ten thousand population threshold in this subsection (3)(a)(i) is four thousand for a city with a population between one hundred fifteen thousand and one hundred forty thousand and located within a county with a population over one million five hundred thousand; and

(ii) 0.2 percent for an annexed area in which the population is greater than twenty thousand.

(b) Beginning July 1, 2011, the maximum rate of tax imposed under this section is 0.85 percent for an annexed area in which the population is greater than sixteen thousand if the annexed area was, prior to November 1, 2008, officially designated as a potential annexation area by more than one city, one of which has a population greater than four hundred thousand.

(4)(a) Except as provided in (b) of this subsection, the maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.2 percent for the total number of annexed areas the city may annex.

(b) The maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.3 percent, beginning July 1, 2011, if the city commenced annexation of an area, prior to January 1, 2010, that would have otherwise

allowed the city to increase the rate of tax imposed under this section absent the rate limit imposed in (a) of this subsection.

(c) The maximum cumulative rate of tax a city may impose under subsection (3)(b) of this section is 0.85 percent for the single annexed area the city may annex and the amount of tax distributed to a city under subsection (3)(b) of this section may not exceed seven million seven hundred twenty-five thousand dollars per fiscal year.

(5)(a) Except as provided in (b) of this subsection, the tax imposed by this section may only be imposed at the beginning of a fiscal year and may continue for no more than ten years from the date that each increment of the tax is first imposed. Tax rate increases due to additional annexed areas are effective on July 1st of the fiscal year following the fiscal year in which the annexation occurred, provided that notice is given to the department as set forth in subsection (9) of this section.

(b) The tax imposed under subsection (3)(b) of this section may only be imposed at the beginning of a fiscal year and may continue for no more than six years from the date that each increment of the tax is first imposed.

(6) All revenue collected under this section may be used solely to provide, maintain, and operate municipal services for the annexation area.

(7) The revenues from the tax authorized in this section may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area and the general revenues that the cities would otherwise expect to receive from the annexation during a year. If the revenues from the tax authorized in this section and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the city must notify the department and the tax distributions authorized in this section must be suspended for the remainder of the year.

(8) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the legislative authority of a city must adopt an ordinance that includes the following:

(a) A certification that the amount needed to provide municipal services to the annexed area reflects the city's true and actual costs;

(b) The rate of tax under this section that is imposed within the city; and

(c) The threshold amount for the first fiscal year following the annexation and passage of the ordinance.

(9) The tax must cease to be distributed to the city for the remainder of the fiscal year once the threshold amount has been reached. No later than March 1st of each year, the city must provide the department with a certification of the city's true and actual costs to provide municipal services to the annexed area, a new threshold amount for the next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under this section must begin again on July 1st of the next fiscal year and continue until the new threshold amount has been reached or June 30th, whichever is sooner. Any revenue generated by the tax in excess of the threshold amount belongs to the state of Washington. Any amount resulting from the threshold amount less the total fiscal year distribu-

tions, as of June 30th, may not be carried forward to the next fiscal year.

(10) The tax must cease to be distributed to a city imposing the tax under subsection (3)(b) of this section for the remainder of the fiscal year, if the total distributions to the city imposing the tax exceed seven million seven hundred twenty-five thousand dollars for the fiscal year. A city may not impose tax under subsection (3)(b) of this section unless the annexation is approved by a vote of the people residing within the annexed area. A city may not impose tax under subsection (3)(b) of this section if it provides sewer service in the annexed area.

(11) The resident population of the annexation area must be determined in accordance with chapter 35.13 or 35A.14 RCW.

(12) The following definitions apply throughout this section unless the context clearly requires otherwise:

(a) "Annexation area" means an area that has been annexed to a city under chapter 35.13 or 35A.14 RCW. "Annexation area" includes all territory described in the city resolution.

(b) "Commenced annexation" means the initiation of annexation proceedings has taken place under the direct petition method or the election method under chapter 35.13 or 35A.14 RCW.

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

(d) "Municipal services" means those services customarily provided to the public by city government.

(e) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(f) "Potential annexation area" means one or more geographic areas that a city has officially designated for potential future annexation, as part of its comprehensive plan adoption process under the state growth management act, chapter 36.70A RCW.

(g) "Threshold amount" means the maximum amount of tax distributions as determined by the city in accordance with subsection (7) of this section that the department must distribute to the city generated from the tax imposed under this section in a fiscal year. [2016 c 5 § 1; 2011 c 353 § 10; 2009 c 550 § 1; 2006 c 361 § 1.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

82.14.420 Sales and use tax for emergency communication systems and facilities. (1) A county legislative authority may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax may not exceed two-tenths of one percent of the selling price in the case of sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section must be used solely for the purpose of providing funds for costs associated with financing, design, acquisition,

construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of emergency communication systems and facilities.

(4) Counties are authorized to develop joint ventures to collocate emergency communication systems and facilities.

(5) Prior to submitting the tax authorization in subsection (2) of this section to the voters in a county that provides emergency communication services to a governmental agency pursuant to a contract, the parties to the contract must review and negotiate or affirm the terms of the contract.

(6)(a) A county imposing the tax authorized in subsection (2) of this section, with a population of more than one million five hundred thousand, in which any city over fifty thousand operates emergency communication systems and facilities either independently or as a member of a regional emergency communication agency must enter into an interlocal agreement with the city either independently or as a member of a regional emergency communications agency to determine distribution of the revenue provided in this section as follows:

(i) Within 12 months of meeting the population thresholds in this subsection (6) or within 12 months of July 25, 2021, whichever is later; or

(ii) Prior to submitting the tax to the voters, for counties not currently imposing the tax.

(b) City representation in the interlocal agreement process must include a representative from the mayor's office and the city council president. In a city that operates under a council-manager form of government under chapter 35.18 or 35A.13 RCW, city representation must include the city manager or the city manager's designee.

(c) The time frame provided in (a)(i) of this subsection may be extended for an additional three months with the agreement of the county and the city.

(7)(a) A county imposing the tax authorized in subsection (2) of this section, with a population of more than five hundred thousand but less than one million five hundred thousand, in which any city over fifty thousand operates emergency communication systems and facilities must enter into an interlocal agreement with the city to determine distribution of the revenue provided in this section as follows:

(i) Within 12 months of meeting the population thresholds in this subsection (7) or within 12 months of July 25, 2021, whichever is later; or

(ii) Prior to submitting the tax to the voters, for counties not currently imposing the tax.

(b) The time frame established in (a)(i) of this subsection may be extended for an additional three months with the agreement of the county and the city.

(8) If a county and a city that are required to enter into an interlocal agreement under subsection (6) or (7) of this section fail to enter into an interlocal agreement within the allotted time frame or the extended time frame as provided in subsection (6)(a)(i) or (c) or (7)(a)(i) or (b) of this section, then the city or county may seek equitable apportionment of the tax authorized under this section in the county's superior court. Equitable apportionment must be provided retroactively beginning from when the county and city met the population thresholds under subsection (6) or (7) of this section or July 25, 2021, whichever is later.

(9) A county imposing the tax authorized under this section on July 28, 2019, must submit an authorizing proposition to the voters as provided under this section to increase the rate of tax.

(10) The Washington state patrol must enter into an intergovernmental agreement, with a county, city, or regional communications agency that operates emergency communications systems, for purposes of interoperable communications, if the following conditions are met:

(a) The intergovernmental agreement is requested by the county, city, or regional communications agency for this purpose; and

(b) The terms and conditions are mutually agreeable. [2021 c 297 § 1; 2019 c 281 § 1; 2002 c 176 § 1.]

82.14.430 Sales and use tax for regional transportation investment district. (1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.1 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.1 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller must collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(i) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of cannabis;

(ii) Off-road vehicles as defined in RCW 46.04.365;

(iii) Nonhighway vehicles as defined in RCW 46.09.310; and

(iv) Snowmobiles as defined in RCW 46.04.546.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of this chapter, and this chapter applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district must provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected. [2022 c 16 § 161; 2014 c 140 § 24; 2011 c 171 § 123; 2006 c 311 § 17; 2002 c 56 § 405.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2006 c 311: See note following RCW 36.120.020.

82.14.440 Sales and use tax for passenger-only ferry service. Public transportation benefit areas providing passenger-only ferry service as provided in RCW 36.57A.200 whose boundaries (1) are on the Puget Sound, but (2) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing passenger-only ferry service.

The tax authorized by this section is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of a taxable event within the taxing district. The maximum rate of the tax must be approved by the voters and may not exceed four-tenths of one percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. [2003 c 83 § 207.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

82.14.445 Sales and use tax for passenger-only ferry service districts. (1) Passenger-only ferry service districts providing passenger-only ferry service as provided in RCW 36.57A.222 may submit an authorizing proposition to the voters and, if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing passenger-only ferry service and associated services to support and augment passenger-only ferry service operation.

(2) The tax authorized under this section is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of a taxable event within the taxing district. The maximum rate of the tax must be approved by the voters and may not exceed three-tenths of one percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. [2015 3rd sp.s. c 44 § 315.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

82.14.450 Sales and use tax for counties and cities. (1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this section may not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2)(a) A city legislative authority may submit an authorizing proposition to the city voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this subsection may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. A city may not begin imposing a tax approved by the voters under this subsection prior to January 1, 2011.

(b) If a county adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under subsection (1) of this section prior to a city within the county adopting an ordinance or resolution to submit a ballot proposition to the voters to impose the tax under this subsection, the rate of tax by the city under this subsection may not exceed an amount that would cause the total county and city tax rate under this section to exceed three-tenths of one percent. This subsection (2)(b) also applies if the county and city adopt an ordinance or resolution to impose sales and use taxes under this section on the same date.

(c) If the city adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under this subsection prior to the county in which the city is located, the county must provide a credit against its tax under subsection (1) of this section for the city tax under this subsection to the extent the total county and city tax rate under this section would exceed three-tenths of one percent.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(4) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(5) One-third of all money received under this section must be used solely for criminal justice purposes, fire protection purposes, or both. For the purposes of this subsection, "criminal justice purposes" has the same meaning as provided in RCW 82.14.340, except that from May 13, 2021, through December 31, 2023, "criminal justice purposes" includes local government programs which have a reasonable relationship to reducing the numbers of people interacting with the criminal justice system including, but not limited to, reducing homelessness or improving behavioral health.

(6) Money received by a county under subsection (1) of this section must be shared between the county and the cities as follows: 60 percent must be retained by the county and 40

percent must be distributed on a per capita basis to cities in the county.

(7) Tax proceeds received by a city imposing a tax under this section must be shared between the county and city as follows: 15 percent must be distributed to the county and 85 percent is retained by the city. [2021 c 296 § 6; 2010 c 127 § 1; 2009 c 551 § 1; 2007 c 380 § 1; 2003 1st sp.s. c 24 § 2.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Finding—Intent—2003 1st sp.s. c 24: "The legislature finds that local governments in the state of Washington face enormous challenges in the area of criminal justice and public health. It is the legislature's intent to allow general local governments to raise revenues in order to better protect the health and safety of Washington state and its residents. It is further the intent of the legislature to provide such local governments relief from regulatory burdens that do not harm the public health and safety of the citizens of the state as a means of minimizing the need to generate new revenues authorized under this act." [2003 1st sp.s. c 24 § 1.]

Additional notes found at www.leg.wa.gov

82.14.455 Exemptions—Machinery and equipment used in generating electricity. The exemptions in RCW 82.08.962, 82.12.962, *82.08.963, and *82.12.963 are for the state and local sales and use taxes and include the sales and use taxes imposed under the authority of this chapter. [2009 c 469 § 105.]

*Reviser's note: RCW 82.08.963 and 82.12.963 expired June 30, 2018.

Additional notes found at www.leg.wa.gov

82.14.457 Sales and use tax for digital goods—Apportionment. (1) A business or other organization that is entitled under RCW 82.12.0208(7) to apportion the amount of state use tax on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) is also entitled to apportion the amount of local use taxes imposed under the authority of this chapter and RCW 81.104.170 on the use of such products or services.

(2) To ensure that the tax base for state and local use taxes is identical, the measure of local use taxes apportioned under this section must be the same as the measure of state use tax apportioned under RCW 82.12.0208(7).

(3) This section does not affect the sourcing of local use taxes. [2020 c 139 § 25; 2017 c 323 § 527; 2009 c 535 § 703.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.14.460 Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.

(1)(a) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(b) If a county with a population over eight hundred thousand has not imposed the tax authorized under this subsection by January 1, 2011, any city with a population over thirty thousand located in that county may authorize, fix, and impose the sales and use tax in accordance with the terms of this chapter. The county must provide a credit against its tax for the full amount of tax imposed under this subsection

(1)(b) by any city located in that county if the county imposes the tax after January 1, 2011.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax. The rate of tax equals one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section must be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. Moneys collected by cities under this section may also be used for modifications to existing facilities to address health and safety needs necessary for the provision, operation, or delivery of chemical dependency or mental health treatment programs or services otherwise funded with moneys collected in this section. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, transportation, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service. Every county that authorizes the tax provided in this section shall, and every other county may, establish and operate a therapeutic court component for dependency proceedings designed to be effective for the court's size, location, and resources.

(4) All moneys collected under this section must be used solely for the purpose of providing new or expanded programs and services as provided in this section, except as follows:

(a) For a county with a population larger than twenty-five thousand or a city with a population over thirty thousand, which initially imposed the tax authorized under this section prior to January 1, 2012, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to fifty percent may be used to supplant existing funding in calendar years 2011-2012; up to forty percent may be used to supplant existing funding in calendar year 2013; up to thirty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year 2015; and up to ten percent may be used to supplant existing funding in calendar year 2016;

(b) For a county with a population larger than twenty-five thousand or a city with a population over thirty thousand, which initially imposes the tax authorized under this section after December 31, 2011, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to fifty percent may be used to supplant existing funding for up to the first three calendar years following adoption; and up to twenty-five percent may be used to supplant existing funding for the fourth and fifth years after adoption;

(c) For a county with a population of less than twenty-five thousand, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to eighty percent may be used to supplant existing funding in calendar years 2011-2012; up to

sixty percent may be used to supplant existing funding in calendar year 2013; up to forty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year 2015; and up to ten percent may be used to supplant existing funding in calendar year 2016; and

(d) Notwithstanding (a) through (c) of this subsection, moneys collected under this section may be used to support the cost of the judicial officer and support staff of a therapeutic court.

(5) Nothing in this section may be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section. [2021 c 296 § 7; 2015 c 291 § 5; 2012 c 180 § 1; 2011 c 347 § 1; 2010 c 127 § 2; 2009 c 551 § 2; 2008 c 157 § 2; 2005 c 504 § 804.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Conflict with federal requirements—2015 c 291: See note following RCW 2.30.010.

Findings—Intent—2008 c 157: "The legislature finds it necessary to clarify the original intent regarding eligible expenditures of the sales and use tax provided in RCW 82.14.460. The legislature intended that upon the original effective date of RCW 82.14.460, the moneys collected under RCW 82.14.460 would be permitted to be used for the purposes as provided in RCW 82.14.460 as clarified by section 2, chapter 157, Laws of 2008." [2008 c 157 § 1.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

82.14.465 Hospital benefit zones—Sales and use tax—Definitions. (1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax may not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate may be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department must perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section expires on the earlier of the date: (a) The

tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued to finance or refinance the improvements are no longer outstanding, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section must provide that:

(a) The tax is first imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year may not exceed the amount of the state contribution;

(c) The tax must cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs, or used to pay for other bonds issued to pay for public improvements. Revenues from local public sources, including hospital sources identified in RCW 82.14.465(7)(k), dedicated in the preceding calendar year that are in excess of the project award may be carried forward and used in later years for the purpose of this subsection; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax must be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county is credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county is credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town is credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department must determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and must advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and may not be used to challenge the validity of any tax imposed under this section. The department must remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who must deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from the state-subsidized portion of any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds. Local public sources may include amounts expended by a hospital in the zone since the date of formation of the zone and may be applied to the year or years designated by the local government. [2011 c 363 § 3; 2009 c 535 § 1109; 2007 c 266 § 7; 2006 c 111 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Additional notes found at www.leg.wa.gov

82.14.470 Hospital benefit zones—Local public sources dedicated to finance public improvements—Reporting requirements. (1)(a)(i) Moneys collected from the taxes imposed under RCW 82.14.465 may be used only for the following purposes:

(A) Principal and interest payments on bonds issued to finance or refinance public improvements in a benefit zone under the authority of RCW 39.100.060;

(B) Principal and interest payments on other bonds issued by the local government to finance public improvements; or

(C) Payments for public improvement costs.

(ii) Moneys collected and used as provided in (a)(i) of this subsection must be matched with an amount from local public sources dedicated, as further provided in RCW 82.14.465 (4)(c)(ii) and (7)(k), through December 31st of the previous calendar year to finance public improvements authorized under chapter 39.100 RCW.

(b) Local public sources are dedicated to finance public improvements if they: (i) Are actually expended to pay public improvement costs or debt service on bonds issued for public improvements; or (ii) are required by law or an agreement to be used exclusively to pay public improvement costs or debt service on bonds issued for public improvements.

(c) A city, town, or county is not required to expend taxes imposed under RCW 82.14.465 in the fiscal year in which the taxes are received.

(2) A local government must inform the department by the first day of March of the amount of local public sources allocated to the preceding calendar year to finance public improvements authorized under chapter 39.100 RCW.

(3) If a local government fails to comply with subsection (2) of this section, no tax may be imposed under RCW 82.14.465 in the subsequent fiscal year.

(4)(a) A local government must provide a report to the department and the state auditor by March 1st of each year. A local government must make a good faith effort to provide information required for the report.

(b) The report must contain the following information:

(i) The amount of tax allocation revenues, taxes under RCW 82.14.465, and local public sources received by the local government during the preceding calendar year, and a summary of how these revenues were expended; and

(ii) The names of any businesses known to the local government that have located within the benefit zone as a result of the public improvements undertaken by the local government and financed in whole or in part with hospital benefit zone financing.

(5) The department must make a report available to the public and the legislature by June 1st of each year. The report must include a list of public improvements undertaken by local governments and financed in whole or in part with hospital benefit zone financing, and it must also include a summary of the information provided to the department by local governments under subsection (4) of this section. [2011 c 363 § 4; 2007 c 266 § 8; 2006 c 111 § 8.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Additional notes found at www.leg.wa.gov

82.14.475 Sales and use tax for the local infrastructure financing tool program. (Expires June 30, 2044.) (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and must remit the taxes as provided in RCW 82.14.060.

(3) The aggregate rate of tax imposed by the sponsoring local government, and any cosponsoring local government, must not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1) less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and this section that are authorized to be imposed on the same taxable events but have not yet been imposed by a sponsoring local government or cosponsoring local government that has been approved by the department or the community economic revitalization board to receive a state contribution under chapter 39.100 or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the sponsoring local government, and any cosponsoring local government, in consultation with the department, reasonably necessary to receive the state contribution over ten months.

(4) Sponsoring local governments that have been approved before October 1, 2008, by the community economic revitalization board for a state contribution must select the rate of tax under this section no later than September 1, 2009.

(5) The department, upon request, must assist a sponsoring local government and cosponsoring local government in establishing their tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected, it may not be increased.

(6)(a) No tax may be imposed under the authority of this section:

(i) Before July 1st of the second calendar year following the year approval by the board under RCW 39.102.040 was made; and

(ii) Until a sponsoring local government reports to the board and the department as required by RCW 39.102.140 that the state has benefited through the receipt of state excise

tax allocation revenues or state property tax allocation revenues, or both.

(b) The tax imposed under this section expires when all indebtedness issued under the authority of RCW 39.102.150 is retired and all other contractual obligations relating to the financing of public improvements under chapter 39.102 RCW are satisfied, but not more than twenty-five years after the tax is first imposed.

(7) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section must provide that:

(a) The tax is first imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year may not exceed the amount of the state contribution;

(c) The tax will cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in *RCW 39.102.020(29)(b). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax must be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection belongs to the state of Washington.

(8) If a county and city cosponsor a revenue development area, the combined amount of distributions received by both the city and county may not exceed the state contribution.

(9) The department must determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (11) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and may not be used to challenge the validity of any tax imposed under this section. The department must remit any tax receipts in excess of the amounts specified in subsection (7)(c) of this section to the state treasurer who must deposit the money in the general fund.

(10) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(11) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year must be equal to the state contribution and may be no more than the total local funds as described in *RCW 39.102.020(29)(b). The department must consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. The department's determination of the amount of the state contribution is final and conclusive, and may not be changed once such determination is made and such contribution is distributed to the sponsoring or cosponsoring local government, unless the department subsequently determines that local revenue information contained in a report described in RCW 39.102.140 differs from the actual dedicated local revenue. If a discrepancy is found, the department must adjust its determination accordingly. A sponsoring or cosponsoring local government may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department may not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (7) of this section.

(12) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(13) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(14) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section must be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(15) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(16) The tax imposed under the authority of this section must cease to be imposed if the sponsoring local government or cosponsoring local government fails to commence construction on public improvements by June 30, 2017.

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

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or **67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the tax imposed in RCW 82.08.020(1) and the tax imposed in RCW 82.12.020 at the rate provided in RCW 82.08.020(1).

(18) This section expires June 30, 2044. [2013 2nd sp.s. c 21 § 3; 2010 c 164 § 12; 2009 c 267 § 8; 2007 c 229 § 8; 2006 c 181 § 401.]

Reviser's note: *(1) RCW 39.102.020 was amended by 2020 c 280 § 2, changing subsection (29)(b) to subsection (30)(b).

***(2) A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

82.14.480 Sales and use tax for health sciences and services authorities. (Expires January 1, 2038.) (1) The legislative authority of a local jurisdiction that has created a health sciences and services authority under RCW 35.104.030, prior to January 1, 2010, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the local jurisdiction. The rate of the tax may not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of the tax on behalf of the authority at no cost to the authority.

(3) The amounts received under this section may only be used in accordance with RCW 35.104.060 or to finance and retire the indebtedness incurred pursuant to RCW 35.104.070, in whole or in part.

(4) This section expires January 1, 2038. [2019 c 464 § 1; 2010 1st sp.s. c 33 § 3; 2007 c 251 § 11.]

Additional notes found at www.leg.wa.gov

82.14.485 Sales and use taxes for regional centers. (1) In a county with a population under three hundred thousand, the governing body of a public facilities district, which is created before August 1, 2001, under chapter 35.57 RCW or before January 1, 2000, under chapter 36.100 RCW, in which the total population in the public facilities district is greater than ninety thousand and less than one hundred thousand that commences improvement or rehabilitation of an existing regional center, to be used for community events, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances and having two thousand or fewer permanent seats, before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax for a public facilities district created prior to August 1, 2001, under chapter 35.57 RCW, may not exceed 0.025 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. The rate of tax, for a public facilities district created prior to January 1, 2000, under chapter 36.100 RCW, may not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter

82.08 or 82.12 RCW. The department must perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(3) The tax imposed in this section expires when bonds issued to finance or refinance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than forty years after the tax is first collected.

(4) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter-approved taxes authorized under chapter 35.57 RCW may not constitute a public or private source. For the purpose of this section, public or private sources include, but are not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district. [2017 c 164 § 2; 2007 c 486 § 3.]

82.14.490 Sourcing—Sales and use taxes. Sales and use taxes authorized under this chapter shall be sourced in accordance with RCW 82.32.730. [2007 c 6 § 503.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.14.505 Local revitalization financing—Demonstration projects. (1) Demonstration projects are designated to determine the feasibility of local revitalization financing. For the purpose of this section, "annual state contribution limit" means four million two hundred thousand dollars state-wide per fiscal year.

(a) Notwithstanding RCW 39.104.100, the department must approve each demonstration project for 2009 as follows:

(i) The Whitman county Pullman/Moscow corridor improvement project award may not exceed two hundred thousand dollars;

(ii) The University Place improvement project award may not exceed five hundred thousand dollars;

(iii) The Tacoma international financial services area/Tacoma dome project award may not exceed five hundred thousand dollars;

(iv) The Bremerton downtown improvement project award may not exceed three hundred thirty thousand dollars;

(v) The Auburn downtown redevelopment project award may not exceed two hundred fifty thousand dollars;

(vi) The Vancouver Columbia waterfront/downtown project award may not exceed two hundred twenty thousand dollars; and

(vii) The Spokane University District project award may not exceed two hundred fifty thousand dollars.

(b) Notwithstanding RCW 39.104.100, the department must approve each demonstration project for 2010 meeting the requirements in subsection (2)(c) of this section as follows:

(i) The Richland revitalization area for industry, science and education project award may not exceed three hundred thirty thousand dollars;

(ii) The Lacey gateway town center project award may not exceed five hundred thousand dollars;

(iii) The Mill Creek east gateway planned urban village revitalization area project award may not exceed three hundred thirty thousand dollars;

(iv) The Puyallup river road revitalization area project award may not exceed two hundred fifty thousand dollars;

(v) The Renton south Lake Washington project award may not exceed five hundred thousand dollars; and

(vi) The New Castle downtown project award may not exceed forty thousand dollars.

(2)(a) Local government sponsors of demonstration projects under subsection (1)(a) of this section must submit to the department no later than September 1, 2009, documentation that substantiates that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009.

(b) Sponsoring local government of demonstration projects under subsection (1)(b) of this section must update and resubmit to the department no later than September 1, 2010, the application already on file with the department to substantiate that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009 and chapter 164, Laws of 2010 and the project is substantially the same as the project in the original application submitted to the department in 2009.

(c) The department must not approve any resubmitted application unless an economic analysis by a qualified researcher at the department of economics at the University of Washington confirms that there is an eighty-five percent probability that the application's assumptions and estimates of jobs created and increased tax receipts will be achieved by the project and determines that net state tax revenue will increase as a result of the project by an amount that equals or exceeds the award authorized in subsection (1)(b) of this section.

(3) Within ninety days of such submittal, the economic analysis in subsection (2)(c) of this section must be completed and the department must either approve demonstration projects that have met these conditions, limitations, and requirements or deny resubmitted applications that have not met these conditions, limitations, and requirements.

(4) Local government sponsors of demonstration projects may elect to decline the project awards as designated in this section, and may elect instead to submit applications according to the process described in RCW 39.104.100.

(5) If a demonstration project listed in subsection (1)(b) of this section does not update and resubmit its application to the department by the deadline specified in subsection (2)(b) of this section or if the demonstration project withdraws its application, the associated dollar amounts may not be approved for another project and may not be considered part of the annual state contribution limit under RCW 39.104.020(1). [2014 c 112 § 120; 2010 c 164 § 8; 2009 c 270 § 402.]

82.14.510 Sales and use tax for local revitalization financing. (1) Any city or county that has been approved for

a project award under RCW 39.104.100 may impose a sales and use tax under the authority of this section in accordance with the terms of this chapter. Except as provided in this section, the tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city or county.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the city or county at no cost to the city or county. The taxes must be distributed to cities and counties as provided in RCW 82.14.060.

(3) The rate of tax imposed by a city or county may not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1), less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and 82.14.475 and this section that are authorized but have not yet been imposed on the same taxable events by a city or county that has been approved to receive a state contribution by the department, the department of commerce, or the community economic revitalization board under chapter 39.104, 39.100, or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the city or county in consultation with the department, reasonably necessary to receive the project award under RCW 39.104.100 over ten months.

(4) The department, upon request, must assist a city or county in establishing its tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected through the application process and approved under RCW 39.104.100, it may not be increased.

(5)(a) Except as provided in (c) and (d) of this subsection, no tax may be imposed under the authority of this section before:

(i) July 1, 2011;

(ii) July 1st of the second calendar year following the year in which the application was approved under RCW 39.104.100;

(iii) The state sales and use tax increment and state property tax increment for the preceding calendar year equal or exceed the amount of the project award approved under RCW 39.104.100; and

(iv) Bonds have been issued according to RCW 39.104.110.

(b) The tax imposed under this section expires the earlier of the date that the bonds issued under the authority of RCW 39.104.110 are retired or twenty-five years after the tax is first imposed.

(c) For a demonstration project described in RCW 82.14.505(1)(a) except as provided in (d) of this subsection (5), no tax may be imposed under the authority of this section before:

(i) July 1, 2010; and

(ii) Bonds have been issued according to RCW 39.104.110.

(d) The requirement to issue bonds in (a)(iv) or (c)(ii) of this subsection (5) does not apply to demonstration projects authorized by RCW 82.14.505(1)(a)(iii), or any city receiving a project award under RCW 39.104.100 of less than one hundred fifty thousand dollars.

(6) An ordinance or resolution adopted by the legislative authority of the city or county imposing a tax under this section must provide that:

(a) The tax will first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the city or county, in any fiscal year, may not exceed the amount approved by the department under subsection (10) of this section;

(c) The department must cease distributing the tax for the remainder of any fiscal year in which either:

(i) The amount of tax received by the city or county equals the amount of distributions approved by the department for the fiscal year under subsection (10) of this section; or

(ii) The amount of revenue distributed to all sponsoring and cosponsoring local governments from taxes imposed under this section equals the annual state contribution limit;

(d) The tax will be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) The state is entitled to any revenue generated by the tax in excess of the amounts specified in (c) of this subsection.

(7) If a city or county receives approval for more than one revitalization area within its jurisdiction, the city or county may impose a sales and use tax under this section for each revitalization area.

(8) The department must determine the amount of tax receipts distributed to each city and county imposing a sales and use tax under the authority of this section and must advise a city or county when tax distributions for the fiscal year equal the amount determined by the department in subsection (10) of this section. Determinations by the department of the amount of tax distributions attributable to a city or county are not appealable. The department must remit any tax receipts in excess of the amounts specified in subsection (6)(c) of this section to the state treasurer who must deposit the money in the general fund.

(9) If a city or county fails to comply with RCW 82.32.765, no tax may be distributed in the subsequent fiscal year until such time as the city or county complies and the department calculates the state contribution amount according to subsection (10) of this section for the fiscal year.

(10)(a) For each fiscal year that a city or county imposes the tax under the authority of this section, the department must approve the amount of taxes that may be distributed to the city or county. The amount approved by the department under this subsection is the lesser of:

(i) The state contribution;

(ii) The amount of project award granted as provided in RCW 39.104.100; or

(iii) The total amount of revenues from local public sources dedicated or, in the case of carry forward revenues, deemed dedicated in the preceding calendar year, as reported in the required annual report under RCW 82.32.765.

(b) A city or county may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department.

(11) The amount of tax distributions received from taxes imposed under the authority of this section by all cities and counties is limited annually to not more than the amount of annual state contribution limit.

(12) The definitions in RCW 39.104.020 apply to this section subject to subsection (13) of this section and unless the context clearly requires otherwise.

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

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the taxes imposed in RCW 82.08.020(1) and 82.12.020. [2016 c 207 § 4; 2015 c 112 § 1; 2010 c 164 § 9; 2009 c 270 § 601.]

82.14.515 Use of sales and use tax funds—Local revitalization financing. (1) Money collected from the taxes imposed under RCW 82.14.510 may be used only for the purpose of paying debt service on bonds issued under the authority in RCW 39.104.110.

(2) Subsection (1) of this section does not apply to cities that qualify for the bond issuance exemption established in RCW 82.14.510(5)(d). [2015 c 112 § 2; 2009 c 270 § 602.]

82.14.525 Sales and use tax. (1) The legislative authority of a county or a city may impose a sales and use tax of up to one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax, for the purposes authorized under chapter 36.160 RCW. The legislative authority of the county or city may impose the sales and use tax by ordinance and must condition its imposition on the specific authorization of a majority of the voters voting on a proposition submitted at a special or general election held after June 30, 2016. The ordinance and ballot proposition may provide for the tax to apply for a period of up to seven consecutive years.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event.

(3) The legislative authority of a county or city may reimpose a tax imposed under this section for one or more additional periods of up to seven consecutive years. The legislative authority of the county or city may only reimpose the sales and use tax by ordinance and on the prior specific authorization of a majority of the voters voting on a proposition submitted at a special or general election.

(4) Moneys collected under this section may only be used for the purposes set forth in RCW 36.160.110.

(5) The department must perform the collection of taxes under this section on behalf of a county or city at no cost to the county or city, and the state treasurer must distribute those taxes as available on a monthly basis to the county or city or, upon the direction of the county or city, to its treasurer or a fiscal agent, paying agent, or trustee for obligations issued or incurred by the program.

(6) The definitions in RCW 36.160.020 apply to this section. [2015 3rd sp.s. c 24 § 402.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

82.14.530 Sales and use tax for housing and related services. (1)(a)(i) A county legislative authority may submit an authorizing proposition to the county voters at a special or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(ii) As an alternative to the authority provided in (a)(i) of this subsection, a county legislative authority may impose, without a proposition approved by a majority of persons voting, a sales and use tax in accordance with the terms of this chapter. The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(b)(i) If a county does not impose the full tax rate authorized under (a) of this subsection by September 30, 2020, any city legislative authority located in that county may:

(A) Submit an authorizing proposition to the city voters at a special or general election and, if the proposition is approved by a majority of persons voting, impose the whole or remainder of the sales and use tax rate in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used; or

(B) Impose, without a proposition approved by a majority of persons voting, the whole or remainder of the sales and use tax rate in accordance with the terms of this chapter.

(ii) The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(iii) A county with a population of greater than one million five hundred thousand may impose the tax authorized under (a)(ii) of this subsection only if the county plans to spend at least thirty percent of the moneys collected under this section that are attributable to taxable activities or events within any city with a population greater than sixty thousand located in that county within that city's boundaries.

(c) If a county imposes a tax authorized under (a) of this subsection after a city located in that county has imposed the tax authorized under (b) of this subsection, the county must provide a credit against its tax for the full amount of tax imposed by a city.

(d) The taxes authorized in this subsection are in addition to any other taxes authorized by law and must be collected from persons who are taxable by the state under chapters

82.08 and 82.12 RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax.

(2)(a) Notwithstanding subsection (4) of this section, a minimum of sixty percent of the moneys collected under this section must be used for the following purposes:

(i) Constructing or acquiring affordable housing, which may include emergency, transitional, and supportive housing and new units of affordable housing within an existing structure, and facilities providing housing-related services, or acquiring land for these purposes; or

(ii) Constructing or acquiring behavioral health-related facilities, or acquiring land for these purposes; or

(iii) Funding the operations and maintenance costs of new units of affordable housing and facilities where housing-related programs are provided, or newly constructed evaluation and treatment centers.

(b) The affordable housing and facilities providing housing-related programs in (a)(i) of this subsection may only be provided to persons within any of the following population groups whose income is at or below sixty percent of the median income of the county imposing the tax:

(i) Persons with behavioral health disabilities;

(ii) Veterans;

(iii) Senior citizens;

(iv) Persons who are homeless or at-risk of being homeless, including families with children;

(v) Unaccompanied homeless youth or young adults;

(vi) Persons with disabilities; or

(vii) Domestic violence survivors.

(c) The remainder of the moneys collected under this section must be used for the operation, delivery, or evaluation of behavioral health treatment programs and services or housing-related services.

(3)(a) A county that imposes the tax under this section must consult with a city before the county may construct or acquire any of the facilities authorized under subsection (2)(a) of this section within the city limits.

(b) Among other priorities, a county that acquires a facility under subsection (2)(a) of this section must provide an opportunity for 15 percent of the units provided at that facility to be provided to individuals who are living in or near the city in which the facility is located, or have ties to that community. The provisions of this subsection (3)(b) do not apply if the county is unable to identify sufficient individuals within the city in need of services that meet the criteria provided in subsection (2)(b) of this section. This prioritization must not jeopardize United States department of housing and urban development funding for the continuum of care program.

(4) A county that has not imposed the tax authorized under RCW 82.14.460 prior to October 9, 2015, but imposes the tax authorized under this section after a city in that county has imposed the tax authorized under RCW 82.14.460 prior to October 9, 2015, must enter into an interlocal agreement with that city to determine how the services and provisions described in subsection (2) of this section will be allocated and funded in the city.

(5) To carry out the purposes of subsection (2)(a) and (b) of this section, the legislative authority of the county or city imposing the tax has the authority to issue general obligation

or revenue bonds within the limitations now or hereafter prescribed by the laws of this state, and may use, and is authorized to pledge, up to fifty percent of the moneys collected under this section for repayment of such bonds, in order to finance the provision or construction of affordable housing, facilities where housing-related programs are provided, or evaluation and treatment centers described in subsection (2)(a)(iii) of this section.

(6)(a) Moneys collected under this section may be used to offset reductions in state or federal funds for the purposes described in subsection (2) of this section.

(b) No more than ten percent of the moneys collected under this section may be used to supplant existing local funds. [2021 c 27 § 1; 2020 c 222 § 1; 2015 3rd sp.s. c 24 § 701.]

Effective date—2021 c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2021]." [2021 c 27 § 3.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

82.14.532 Sales and use tax remittance—Qualifying projects—Requirements—Department to determine eligibility. (1) Subject to the requirements of chapter 35.107 RCW and RCW 81.104.170, a project is eligible for a sales and use tax remittance under the authority of this chapter on:

(a) The sale of or charge made for labor and services rendered in respect to construction or rehabilitation of a qualifying project located in a city; and

(b) The sales or use of tangible personal property that will be incorporated as an ingredient or component of a qualifying project located in a city during the course of the constructing or rehabilitating.

(2)(a) A qualifying project owner claiming a remittance under this section must pay all applicable state and local sales and use taxes imposed or authorized under RCW 82.08.020, 82.12.020, and this chapter on all purchases and uses qualifying for the remittance.

(b) The amount of the remittance is one hundred percent of the local sales and use taxes paid on purchases and uses qualifying under subsection (1) of this section, with respect to taxes imposed by the city and any other taxing authorities that have authorized the use of the remittance as provided under RCW 35.107.040. A city authorizing a remittance under this subsection must notify the department of an approved qualifying project within 60 days of the city's approval of the project. Such notice must include the information required under RCW 35.107.040(2) (a) through (c).

(3) After the qualifying project has been operationally complete for eighteen months, but not more than thirty-six months, and after all state and local sales and use taxes for purchases and uses qualifying under subsection (1) of this section have been paid, a qualifying project owner who submits an application for a building permit for that qualifying project prior to July 1, 2027, may apply to the department for a remittance of local sales and use taxes.

(4) A qualifying project owner requesting a remittance under this section must obtain certification from the governing authority of a city verifying that the qualifying project has satisfied the criteria in RCW 35.107.050.

(5) A qualifying project owner must specify the amount of exempted tax claimed and the qualifying purchases or uses for which the exemption is claimed. The qualifying project owner must retain, in adequate detail, records to enable the department to determine whether the qualifying project owner is entitled to an exemption under this section, including invoices, proof of tax paid, and construction contracts.

(6) The department must determine eligibility under this section based on information provided by the qualifying project owner, which is subject to audit verification by the department.

(7)(a) A person otherwise eligible for a remittance under this section that transfers the ownership of the qualifying project before the requirements in subsection (3) of this section are met may assign the right to the remittance under this section to the subsequent owner of the qualifying project.

(b) Persons applying for the remittance as an assignee must provide the department the following documentation in a form and manner as provided by the department:

(i) The agreement that transfers the right to the remittance to the assignee;

(ii) Proof of payment of sales and use tax on the qualifying project; and

(iii) Any other documentation the department requires.

(8) The definitions in RCW 35.107.020 apply to this section. [2021 c 145 § 16; 2019 c 273 § 11.]

82.14.540 Affordable and supportive housing—Sales and use tax. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonparticipating city" is a city that does not impose a sales and use tax in accordance with the terms of this section.

(b) "Nonparticipating county" is a county that does not impose a sales and use tax in accordance with the terms of this section.

(c) "Participating city" is a city that imposes a sales and use tax in accordance with the terms of this section.

(d) "Participating county" is a county that imposes a sales and use tax in accordance with the terms of this section.

(e) "Qualifying local tax" means the following tax sources, if the tax source is instated no later than twelve months after July 28, 2019:

(i) The affordable housing levy authorized under RCW 84.52.105;

(ii) The sales and use tax for housing and related services authorized under RCW 82.14.530, provided the city has imposed the tax at a minimum or [of] at least half of the authorized rate;

(iii) The sales tax for chemical dependency and mental health treatment services or therapeutic courts authorized under RCW 82.14.460 imposed by a city; and

(iv) The levy authorized under RCW 84.55.050, if used solely for affordable housing.

(2)(a) A county or city legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this section.

(b) The tax under this section is assessed on the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(c) The rate of the tax under this section for an individual participating city and an individual participating county may not exceed:

(i) Beginning on July 28, 2019, until twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city, unless the participating city levies a qualifying local tax; and

(II) Participating county, within the limits of nonparticipating cities within the county and within participating cities that do not currently levy a qualifying tax;

(B) 0.0146 percent for a:

(I) Participating city that currently levies a qualifying local tax;

(II) Participating city if the county in which it is located declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section; and

(III) Participating county within the unincorporated areas of the county and any city that declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section;

(ii) Beginning twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city that is located within a participating county if the participating city is not levying a qualifying local tax; and

(II) Participating county, within the limits of a participating city if the participating city is not levying a qualifying local tax;

(B) 0.0146 percent within the limits of a:

(I) Participating city that is levying a qualifying local tax; and

(II) Participating county within the unincorporated area of the county and within the limits of any nonparticipating city that is located within the county.

(d) A county may not levy the tax authorized under this section within the limits of a participating city that levies a qualifying local tax.

(e)(i) In order for a county or city legislative authority to impose the tax under this section, the authority must adopt:

(A) A resolution of intent to adopt legislation to authorize the maximum capacity of the tax in this section within six months of July 28, 2019; and

(B) Legislation to authorize the maximum capacity of the tax in this section within one year of July 28, 2019.

(ii) Adoption of the resolution of intent and legislation requires simple majority approval of the enacting legislative authority.

(iii) If a county or city has not adopted a resolution of intent in accordance with the terms of this section, the county or city may not authorize, fix, and impose the tax.

(3) The tax imposed under this section must be deducted from the amount of tax otherwise required to be collected or paid to the department of revenue under chapter 82.08 or 82.12 RCW. The department must perform the collection of such taxes on behalf of the county or city at no cost to the county or city.

(4) By December 31, 2019, or within thirty days of a county or city authorizing the tax under this section, whichever is later, the department must calculate the maximum

amount of tax distributions for each county and city authorizing the tax under this section as follows:

(a) The maximum amount for a participating county equals the taxable retail sales within the county in state fiscal year 2019 multiplied by the tax rate imposed under this section. If a county imposes a tax authorized under this section after a city located in that county has imposed the tax, the taxable retail sales within the city in state fiscal year 2019 must be subtracted from the taxable retail sales within the county for the calculation of the maximum amount; and

(b) The maximum amount for a city equals the taxable retail sales within the city in state fiscal year 2019 multiplied by the tax rate imposed under subsection (1) of this section.

(5) The tax must cease to be distributed to a county or city for the remainder of any fiscal year in which the amount of tax exceeds the maximum amount in subsection (4) of this section. The department must remit any annual tax revenues above the maximum to the state treasurer for deposit in the general fund. Distributions to a county or city meeting the maximum amount must resume at the beginning of the next fiscal year.

(6)(a) If a county has a population greater than four hundred thousand or a city has a population greater than one hundred thousand, the moneys collected or bonds issued under this section may only be used for the following purposes:

(i) Acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385; or

(ii) Funding the operations and maintenance costs of new units of affordable or supportive housing.

(b) If a county has a population of four hundred thousand or less or a city has a population of one hundred thousand or less, the moneys collected under this section may only be used for the purposes provided in (a) of this subsection or for providing rental assistance to tenants.

(7) The housing and services provided pursuant to subsection (6) of this section may only be provided to persons whose income is at or below sixty percent of the median income of the county or city imposing the tax.

(8) In determining the use of funds under subsection (6) of this section, a county or city must consider the income of the individuals and families to be served, the leveraging of the resources made available under this section, and the housing needs within the jurisdiction of the taxing authority.

(9) To carry out the purposes of this section including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities, the legislative authority of the county or city imposing the tax has the authority to issue general obligation or revenue bonds within the limitations now or hereafter prescribed by the laws of this state, and may use, and is authorized to pledge, the moneys collected under this section for repayment of such bonds.

(10) A county or city may enter into an interlocal agreement with one or more counties, cities, or public housing authorities in accordance with chapter 39.34 RCW. The agreement may include, but is not limited to, pooling the tax receipts received under this section, pledging those taxes to bonds issued by one or more parties to the agreement, and allocating the proceeds of the taxes levied or the bonds issued

in accordance with such interlocal agreement and this section.

(11) Counties and cities imposing the tax under this section must report annually to the department of commerce on the collection and use of the revenue. The department of commerce must adopt rules prescribing content of such reports. By December 1, 2019, and annually thereafter, and in compliance with RCW 43.01.036, the department of commerce must submit a report annually to the appropriate legislative committees with regard to such uses.

(12) The tax imposed by a county or city under this section expires twenty years after the date on which the tax is first imposed. [2019 c 338 § 1.]

82.14.545 Mitigation payments. (Expires July 1, 2026.) (1) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer, on July 1, 2021, and each July 1st thereafter through July 1, 2026, must transfer into the manufacturing and warehousing job centers account from the general fund the sum required to provide mitigation payments to qualifying jurisdictions as described under this section.

(2) The department shall provide each qualified local taxing district a quarterly mitigation payment from the warehousing and manufacturing job center assistance program equal to the streamlined sales tax mitigation payment that was provided to that qualified local taxing district on June 30, 2020. Starting on July 1, 2022, the amount of the quarterly mitigation payment shall be reduced by 20 percent of the previous year's payment for that same quarter.

(3) "Qualified local taxing district" means a city that received a quarterly streamlined sales tax mitigation payment from the state on June 30, 2020, of at least \$60,000.

(4) This section expires July 1, 2026. [2021 c 83 § 2.]

Findings—2021 c 83: "The legislature recognizes that changes in sales tax sourcing laws created a significant negative fiscal impact on communities with a concentration of warehousing, manufacturing, and shipping. These communities are vital job centers to our state economy and are some of the most diverse communities in our state.

Furthermore, the infrastructure demands to support these industries are significant. The legislature hereby creates the warehousing and manufacturing job center assistance program to provide these communities with revenue to mitigate for the negative fiscal impact of changes in sales tax sourcing laws, and fund important infrastructure to maintain these key job centers." [2021 c 83 § 1.]

Effective date—2021 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021." [2021 c 83 § 4.]

82.14.550 Manufacturing and warehousing job centers account. The manufacturing and warehousing job centers account is created in the state treasury. All receipts from RCW 82.14.545 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of the streamlined sales and use tax agreement under this title. [2021 c 83 § 3.]

Findings—Effective date—2021 c 83: See notes following RCW 82.14.545.

82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply. The exemptions in RCW 82.08.820, 82.12.820, 82.08.0207, and 82.12.0207 are for the state portion of the sales and use tax and do not extend to the tax imposed in this chapter. [2017 c 176 § 4; 1997 c 450 § 4.]

Findings—Intent—Application—2017 c 176: See notes following RCW 82.08.0207.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

Chapter 82.14A RCW

CITIES AND TOWNS—LICENSE FEES AND TAXES ON FINANCIAL INSTITUTIONS

Sections

- 82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates.
- 82.14A.020 Division of gross income of business between cities, towns and unincorporated areas.
- 82.14A.030 Effective date of resolutions or ordinances.
- 82.14A.900 Effective date—1972 ex.s. c 134.

82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates. The governing body of any city or town which imposes a license fee or tax, by ordinance or resolution, may pursuant to RCW 82.14A.010 through 82.14A.030 only, fix and impose a license fee or tax on national banks, state banks, trust companies, mutual savings banks, building and loan associations, savings and loan associations, and other financial institutions for the act or privilege of engaging in business: PROVIDED, That the definitions, deductions and exemptions set forth in chapter 82.04 RCW, insofar as they shall be applicable shall be applied to a license fee or tax imposed by any city or town, if such fee or tax is measured by the gross income of the business: PROVIDED, FURTHER, That the rate of such license fee or tax shall not exceed the rate imposed upon other service type business activity: AND PROVIDED FURTHER, That nothing in RCW 82.14A.010 through 82.14A.030 shall extend the regulatory power of any city or town. [1972 ex.s. c 134 § 2.]

82.14A.020 Division of gross income of business between cities, towns and unincorporated areas. For purposes of RCW 82.14A.010, the state department of revenue is hereby authorized and directed to promulgate, pursuant to the provisions of chapter 34.05 RCW, rules establishing uniform methods of division of gross income of the business of a single taxpayer between those cities, towns and unincorporated areas in which such taxpayer has a place of business. [1972 ex.s. c 134 § 3.]

82.14A.030 Effective date of resolutions or ordinances. No resolution or ordinance or any amendment thereto adopted pursuant to RCW 82.14A.010 shall be effective, except on the first day of a calendar month. [1972 ex.s. c 134 § 5.]

82.14A.900 Effective date—1972 ex.s. c 134. Sections 2 through 5 of this 1972 amendatory act shall take effect July 1, 1972. [1972 ex.s. c 134 § 8.]

(2022 Ed.)

Chapter 82.14B RCW

COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

- 82.14B.010 Findings.
- 82.14B.020 Definitions.
- 82.14B.030 County 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State 911 excise tax—Amount.
- 82.14B.035 Tax preferences—Expiration dates.
- 82.14B.040 Collection of tax.
- 82.14B.042 Payment and collection of taxes—Penalties for violations.
- 82.14B.050 Use of proceeds.
- 82.14B.055 Use of funds voluntarily remitted.
- 82.14B.060 County imposition of tax—Ordinance—Department notice.
- 82.14B.061 Administration by department—Extending reporting periods.
- 82.14B.063 Administration and collection by department—County 911 excise tax account created.
- 82.14B.065 County 911 excise tax account distributions—911 excise tax imposed in excess of maximum allowable.
- 82.14B.150 Filing of tax returns—Credit or refund for bad debts.
- 82.14B.160 Exemption—Activities immune from taxation under constitutions.
- 82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions.
- 82.14B.210 Personal liability upon termination, dissolution, or abandonment of business—Exemptions—Notice—Applicability—Collections.

82.14B.010 Findings. The legislature finds that the state and counties should be provided with an additional revenue source to fund 911 emergency communications systems throughout the state on a multicounty or countywide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to impose an excise tax on the use of switched access lines, radio access lines, and interconnected voice over internet protocol service lines. [2022 c 203 § 19; 2010 1st sp.s. c 19 § 1; 1991 c 54 § 9; 1981 c 160 § 1.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Additional notes found at www.leg.wa.gov

- 82.14B.020 Definitions.** As used in this chapter:
- (1) "911 emergency communications system" means a public 911 communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 voice and data at the appropriate public safety answering point.
 - (2) "Consumer" means a person who purchases a prepaid wireless telecommunications service in a retail transaction.
 - (3) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced or next generation 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.
 - (4) "Enhanced 911 emergency communications system" means a public communications system consisting of a net-

work, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 voice or data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 voice or data at the appropriate public safety answering point. "Enhanced 911 emergency communications system" includes the modernization to next generation 911 systems.

(5) "Interconnected voice over internet protocol service" has the same meaning as provided by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(6) "Interconnected voice over internet protocol service line" means an interconnected voice over internet protocol service that offers an active telephone number or successor dialing protocol assigned by a voice over internet protocol provider to a voice over internet protocol service customer that has inbound and outbound calling capability, which can directly access a public safety answering point when such a voice over internet protocol service customer has a place of primary use in the state.

(7) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(8) "Next generation 911 emergency communications system" means a public communications system consisting of networks, databases, and public safety answering point 911 hardware, software, and technology that is accessed by the public in the state through 911. The system includes the capability to: Route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area; answer incoming 911 voice and data; and receive and display incoming 911 voice and data, including automatic location identification and automatic number identification, at a public safety answering point. "Next generation 911 emergency communications system" includes future modernizations to the 911 system.

(9) "Place of primary use" means the street address representative of where the subscriber's use of the radio access line or interconnected voice over internet protocol service line occurs, which must be:

(a) The residential street address or primary business street address of the subscriber; and

(b) In the case of radio access lines, within the licensed service area of the home service provider.

(10) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

(11) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(12) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines

include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(13) "Radio communications service company" means every corporation, company, association, joint stock, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), or cellular communications services for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio paging providers.

(14) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(15) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(16) "Subscriber" means the retail purchaser of telecommunications service, a competitive telephone service, or interconnected voice over internet protocol service. "Subscriber" does not include a consumer, as defined in this section.

(17) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office. [2022 c 203 § 20; 2013 2nd sp.s. c 8 § 102. Prior: 2010 1st sp.s. c 19 § 2; prior: 2007 c 54 § 16; 2007 c 6 § 1009; 2002 c 341 § 7; 1998 c 304 § 2; 1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—1998 c 304: "The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to enhance the 911 telephone system for switched access lines statewide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030." [1998 c 304 § 1.]

Finding—Intent—1994 c 96: "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the *study of such funding as detailed in the report." [1994 c 96 § 1.]

*Reviser's note: See 1992 c 218 and 1994 c 96 § 6.

Additional notes found at www.leg.wa.gov

82.14B.030 County 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State 911 excise tax—Amount. Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) The legislative authority of a county may impose a county 911 excise tax on the use of switched access lines in an amount not exceeding seventy cents per month for each switched access line. The amount of tax must be uniform for each switched access line. Each county must provide notice of the tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. The tax must be deposited in the county 911 excise tax account as provided in RCW 82.14B.063.

(2)(a) The legislative authority of a county may also impose a county 911 excise tax on the use of radio access lines:

(i) By subscribers whose place of primary use is located within the county in an amount not exceeding seventy cents per month for each radio access line. The amount of tax must be uniform for each radio access line under this subsection (2)(a)(i); and

(ii) By consumers whose retail transaction occurs within the county in an amount not exceeding seventy cents per retail transaction. The amount of tax must be uniform for each retail transaction under this subsection (2)(a)(ii).

(b) The county must provide notice of the tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications services, on a tax return provided by the department. The tax must be deposited in the county 911 excise tax account as provided in RCW 82.14B.063.

(3)(a) The legislative authority of a county may impose a county 911 excise tax on the use of interconnected voice over

internet protocol service lines in an amount not exceeding seventy cents per month for each interconnected voice over internet protocol service line. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network.

(b) The interconnected voice over internet protocol service company must use the place of primary use of the subscriber to determine which county's 911 excise tax applies to the service provided to the subscriber.

(c) The tax imposed under this section must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department.

(d) The tax must be deposited in the county 911 excise tax account as provided in RCW 82.14B.063.

(e) To the extent that a local exchange carrier and an interconnected voice over internet protocol service company contractually jointly provide a single service line, only one service company is responsible for remitting the 911 excise taxes, and nothing in this section precludes service companies who jointly provide service from agreeing by contract which of them must remit the taxes collected.

(4) Counties imposing a county 911 excise tax must provide an annual update to the 911 coordinator detailing the proportion of their county 911 excise tax that is being spent on:

(a) Efforts to modernize their existing 911 communications system; and

(b) 911 operational costs.

(5) A state 911 excise tax is imposed on all switched access lines in the state. The amount of tax may not exceed twenty-five cents per month for each switched access line. The tax must be uniform for each switched access line. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the 911 account created in RCW 38.52.540.

(6)(a) A state 911 excise tax is imposed on the use of all radio access lines:

(i) By subscribers whose place of primary use is located within the state in an amount of twenty-five cents per month for each radio access line. The tax must be uniform for each radio access line under this subsection (6)(a)(i); and

(ii) By consumers whose retail transaction occurs within the state in an amount of twenty-five cents per retail transaction. The tax must be uniform for each retail transaction under this subsection (6)(a)(ii). Until July 1, 2018, a seller of prepaid wireless telecommunications service may charge an additional five cents per retail transaction as compensation for the cost of collecting and remitting the tax.

(b) The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications service, on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(7) For purposes of the state and county 911 excise taxes imposed by subsections (2) and (6) of this section, the retail transaction is deemed to occur at the location where the transaction is sourced to under RCW 82.32.520(3)(c).

(8) A state 911 excise tax is imposed on all interconnected voice over internet protocol service lines in the state. The amount of tax may not exceed twenty-five cents per month for each interconnected voice over internet protocol service line whose place of primary use is located in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the 911 account created in RCW 38.52.540.

(9) For calendar year 2011, the taxes imposed by subsections (5) and (8) of this section must be set at their maximum rate. By August 31, 2011, and by August 31st of each year thereafter, the state 911 coordinator must recommend the level for the next year of the state 911 excise tax imposed by subsections (5) and (8) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission must by the following October 31st determine the level of the state 911 excise taxes imposed by subsections (5) and (8) of this section for the following year. [2022 c 203 § 21; 2013 2nd sp.s. c 8 § 105; 2010 1st sp.s. c 19 § 3. Prior: 2007 c 54 § 17; 2007 c 6 § 1024; prior: 2002 c 341 § 8; 2002 c 67 § 8; 1998 c 304 § 3; 1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.035 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1707.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.14B.040 Collection of tax. Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Except as provided otherwise in subsection (2) of this section:

(a) The state 911 excise tax and the county 911 excise tax on switched access lines must be collected from the subscriber by the local exchange company providing the switched access line.

(b) The state 911 excise tax and the county 911 excise tax on radio access lines must be collected from the subscriber by the radio communications service company, including those companies that resell radio access lines, providing the radio access line to the subscriber, and the seller of prepaid wireless telecommunications service.

(c) The state and county 911 excise taxes on interconnected voice over internet protocol service lines must be collected from the subscriber by the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line to the subscriber.

(d) The amount of the tax must be stated separately on the billing statement which is sent to the subscriber.

(2)(a) The state and county 911 excise taxes imposed by this chapter must be collected from the consumer by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state.

(b) The department must transfer all tax proceeds remitted by a seller under this subsection (2) as provided in RCW 82.14B.030 (2) and (6).

(c) The taxes required by this subsection to be collected by the seller must be separately stated in any sales invoice or instrument of sale provided to the consumer. [2022 c 203 § 22; 2013 2nd sp.s. c 8 § 103; 2010 1st sp.s. c 19 § 6; 2002 c 341 § 9; 1998 c 304 § 4; 1994 c 96 § 4; 1991 c 54 § 12; 1981 c 160 § 4.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Intent—2013 2nd sp.s. c 8: "(1) The legislature finds that:

(a) The communications industry is undergoing rapid change due to technological advances and deregulation. The legislature further finds that an industry that began with the telephone now includes cable, wireless, and satellite communications, as well as the internet;

(b) Washington's tax system has not kept pace with this industry;

(c) There are a vast array of state taxes and other charges on communications services in Washington that were established for a far different technological, legal, and structural landscape than what exists today;

(d) Many taxes and fees remain targeted to a specific technology (e.g., telephone taxes or cable franchise fees), despite the blurring of distinctions between technologies that provide similar services (e.g., the telephone and internet telephony); and

(e) The convergence of formerly distinct communications technologies renders the existing tax structure difficult to justify in terms of economic efficiency or equity.

(2) It is the legislature's intent to address the vast disparity in tax policy for communications services in an effort to minimize the existing inequity, inefficiency, and administrative complexity while preserving revenue sufficiency.

(3) With respect to section 107 of this act, the legislature further finds that:

(a) The department of revenue has consistently interpreted the phrase "a residential class of telephone service" as it would have been understood when the residential telephone service exemption was enacted in 1983;

(b) In 1983, all telephone service was divided into separate "local" and "toll" services for "residential" and "business" classifications, as defined by regulatory tariffs filed with the utilities and transportation commission. As a result, the department of revenue has consistently restricted the residential telephone service exemption in RCW 82.08.0289 to nontoll telephone service provided under a residential customer regulatory tariff. This includes traditional landline telephone service but excludes cellular telephone service and voice over internet protocol telephone services, which are not subject to regulatory tariffs;

(c) The department of revenue's interpretation of the residential telephone service exemption has been upheld by the board of tax appeals but was rejected by the Thurston county superior court in a 2011 decision; and

(d) Further litigation would be costly and could result in the unintended expansion of the exemption to all telephone services that a carrier treats as residential, such as cellular and voice over internet protocol telephone services provided to nonbusiness customers, and to long-distance service provided to residential customers for a flat rate. This could result in extremely large and devastating revenue impacts for the state and local governments.

(4) The legislature intends section 107 of this act to clarify retroactively that, prior to this act, the residential telephone service exemption in RCW 82.08.0289 has always applied only to residential nontoll telephone service offered under a tariff filed with the utilities and transportation commission, consistent with the department of revenue's long-standing interpretation of the exemption." [2013 2nd sp.s. c 8 § 101.]

Effective dates—2013 2nd sp.s. c 8: "(1) Except as provided otherwise in this section, part I of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2013.

(2) Sections 102 through 106 of this act take effect January 1, 2014." [2013 2nd sp.s. c 8 § 301.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.042 Payment and collection of taxes—Penalties for violations. Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1)(a) The state and county 911 excise taxes imposed by this chapter must be paid by:

(i) The subscriber to the local exchange company providing the switched access line, the radio communications service company providing the radio access line, or the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line; or

(ii) The consumer to the seller of prepaid wireless telecommunications service.

(b) Each local exchange company, each radio communications service company, and each interconnected voice over internet protocol service company must collect from the subscriber, and each seller of prepaid wireless telecommunications service must collect from the consumer, the full amount of the taxes payable. The state and county 911 excise taxes required by this chapter to be collected by a company or seller, are deemed to be held in trust by the company or seller until paid to the department. Any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company fails to collect the state or county 911 excise tax or, after collecting the tax, fails to pay it to the

(2022 Ed.)

department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the company or seller is personally liable to the state for the amount of the tax, unless the company or seller has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or consumer or is otherwise not liable for the state or county 911 excise tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, the interconnected voice over internet protocol service company, or to the department, or until paid by the consumer to the seller of prepaid wireless telecommunications service, or to the department, constitutes a debt from the subscriber to the company, or from the consumer to the seller. Any company or seller that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber or consumer who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state and county 911 excise taxes required by this chapter to be collected by the local exchange company, radio communications service company, or interconnected voice over internet protocol service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company, radio communications service company, or interconnected voice over internet protocol service company, or a consumer has failed to pay to the seller of prepaid wireless telecommunications service, the state or county 911 excise taxes imposed by this chapter and the company or seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber or consumer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber or consumer to pay the tax to the company or seller, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061. [2022 c 203 § 23; 2013 2nd sp.s. c 8 § 104; 2010 1st sp.s. c 19 § 7; 2009 c 563 § 208; 2002 c 341 § 10; 2000 c 106 § 2; 1998 c 304 § 9.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.050 Use of proceeds. The proceeds of any tax collected under this chapter shall be used by the state or county only for the 911 emergency communications system and its administrative and operational costs. [2022 c 203 § 24; 1981 c 160 § 5.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

82.14B.055 Use of funds voluntarily remitted. For the time period from July 1, 2007, until January 1, 2011, counties

and the state are authorized to accept and use funds and any accrued interest voluntarily remitted by interconnected voice over internet protocol service companies. [2010 1st sp.s. c 19 § 24.]

Additional notes found at www.leg.wa.gov

82.14B.060 County imposition of tax—Ordinance—Department notice. A county legislative authority imposing a tax under this chapter must establish by ordinance all necessary and appropriate procedures for the administration of the county 911 excise taxes by the department. A county legislative authority imposing a tax under this chapter must provide the department notification of the imposition of the tax or a change in the tax no less than seventy-five days before the effective date of the imposition of the tax or the change in the tax. [2022 c 203 § 25; 2010 1st sp.s. c 19 § 8; 1998 c 304 § 5; 1981 c 160 § 6.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.061 Administration by department—Extending reporting periods. (1) The department must administer and adopt rules as may be necessary to enforce and administer the state and county 911 excise taxes imposed or authorized by this chapter. Chapter 82.32 RCW, with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the administration, collection, and enforcement of the state and county 911 excise taxes.

(2) The state and county 911 excise taxes imposed or authorized by this chapter, along with reports and returns on forms prescribed by the department, are due at the same time the taxpayer reports other taxes under RCW 82.32.045. If no other taxes are reported under RCW 82.32.045, the taxpayer must remit tax on an annual basis in accordance with RCW 82.32.045.

(3) The department may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year.

(4) The state and county 911 excise taxes imposed or authorized by this chapter are in addition to any taxes imposed upon the same persons under chapters 82.08, 82.12, and 82.14 RCW.

(5) Returns must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize as provided in RCW 82.32.080. [2022 c 203 § 26; 2010 1st sp.s. c 19 § 9; 2002 c 341 § 11; 2000 c 106 § 3; 1998 c 304 § 6.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.063 Administration and collection by department—County 911 excise tax account created. (1) Counties imposing the 911 excise tax under RCW 82.14B.030

must contract with the department for the administration and collection of the tax. The department may deduct a percentage amount, as provided by contract, of no more than two percent of the 911 excise taxes collected to cover administration and collection expenses incurred by the department. If a county imposes a 911 excise tax with an effective date of January 1, 2011, the county must contract with the department for the administration and collection of the tax by October 15, 2010.

(2) The remainder of any portion of the county 911 excise tax under RCW 82.14B.030 that is collected by the department must be deposited in the county 911 excise tax account hereby created in the custody of the state treasurer. Expenditures from the account may be used only for distribution to counties imposing the 911 excise tax. Only the director of the department or his or her designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures. [2022 c 203 § 27; 2010 1st sp.s. c 19 § 4.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Additional notes found at www.leg.wa.gov

82.14B.065 County 911 excise tax account distributions—911 excise tax imposed in excess of maximum allowable. (1) All moneys that accrue in the county 911 excise tax account created in RCW 82.14B.063 must be distributed monthly to the counties in the amount of the taxes collected on behalf of each county, minus the administration and collection fee retained by the department as provided in RCW 82.14B.063.

(2) If a county imposes by resolution or ordinance a 911 excise tax that is in excess of the maximum allowable county 911 excise tax provided in RCW 82.14B.030, the ordinance or resolution may not be considered void in its entirety, but only with respect to that portion of the 911 excise tax that is in excess of the maximum allowable tax. [2022 c 203 § 28; 2010 1st sp.s. c 19 § 5.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Additional notes found at www.leg.wa.gov

82.14B.150 Filing of tax returns—Credit or refund for bad debts. (1) A local exchange company, radio communications service company, or interconnected voice over internet protocol service company must file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A company filing returns on a cash receipts basis is not required to pay tax on debt subject to credit or refund under subsection (2) of this section.

(2) A local exchange company, radio communications service company, or interconnected voice over internet protocol service company is entitled to a credit or refund for state and county 911 excise taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003. [2022 c 203 § 29; 2010 1st sp.s. c 19 § 10; 2004 c 153 § 309; 1998 c 304 § 7.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.160 Exemption—Activities immune from taxation under constitutions. The taxes imposed or authorized by this chapter do not apply to any activity that the state or county is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [2010 1st sp.s. c 19 § 11; 1998 c 304 § 8.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions. Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Unless a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax, the burden of proving that a sale of the use of a switched access line, radio access line, or interconnected voice over internet protocol service line was not a sale to a subscriber, consumer, or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company remains liable for the tax as provided in RCW 82.14B.042, unless the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of the state or county 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state or county 911 excise taxes due but not paid as a result of the improper use of documentation stating that the buyer is not a subscriber or consumer or is otherwise not liable for the state or county 911 excise tax. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2022 c 203 § 30; 2013 2nd sp.s. c 8 § 106; 2010 1st sp.s. c 19 § 12; 2009 c 563 § 209; 2002 c 341 § 12; 1998 c 304 § 10.]

(2022 Ed.)

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.210 Personal liability upon termination, dissolution, or abandonment of business—Exemptions—Notice—Applicability—Collections. (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of state 911 excise tax funds collected and held in trust under RCW 82.14B.042, or who is charged with the responsibility for the filing of returns or the payment of state 911 excise tax funds collected and held in trust under RCW 82.14B.042, is personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person willfully fails to pay or to cause to be paid any state 911 excise taxes due from the corporation under this chapter. For the purposes of this section, any state 911 excise taxes that have been paid but not collected are deductible from the state 911 excise taxes collected but not paid. For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for taxes collected that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability if nonpayment of the state 911 excise tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160 through 82.32.200.

(5) This section applies only if the department has determined that there is no reasonable means of collecting the state 911 excise tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in chapter 82.32 RCW apply to collections under this section. [2022 c 203 § 31; 1998 c 304 § 11.]

Modernization of statewide 911 emergency communications system—2022 c 203: See note following RCW 38.52.010.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Chapter 82.16 RCW PUBLIC UTILITY TAX

Sections

82.16.010 Definitions.

82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys.
82.16.023	Tax preferences—Expiration dates.
82.16.030	Taxable under each schedule if within its purview.
82.16.040	Exemption.
82.16.0421	Exemptions—Sales to electrolytic processing businesses.
82.16.045	Exemptions and credits—Pollution control facilities.
82.16.046	Exemptions—Operation of state route No. 16.
82.16.047	Exemptions—Ride sharing.
82.16.0491	Credit—Contributions to an electric utility rural economic development revolving fund.
82.16.0495	Credit—Electricity sold to a direct service industrial customer.
82.16.0496	Credit—Clean alternative fuel commercial vehicles—Alternative fuel vehicle infrastructure.
82.16.0497	Credit—Light and power business, gas distribution business.
82.16.0498	Credit—Sales of electricity or gas to an aluminum smelter.
82.16.0499	Credit—Businesses that hire veterans.
82.16.050	Deductions in computing tax.
82.16.053	Deductions in computing tax—Light and power businesses.
82.16.055	Deductions relating to energy conservation or production from renewable resources.
82.16.060	May be taxed under other chapters.
82.16.080	Administration.
82.16.090	Light or power and gas distribution businesses—Information required on customer billings.
82.16.100	Solid waste business not subject to chapter.
82.16.110	Renewable energy system cost recovery—Definitions.
82.16.120	Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.
82.16.130	Renewable energy system cost recovery—Light/power business tax credit.
82.16.150	Light and power business—Liability.
82.16.155	Tax preference performance statement—Joint legislative audit and review committee review—Washington State University data collection.
82.16.160	Definitions—Renewable energy tax incentives.
82.16.165	Annual production incentive certification.
82.16.170	Community solar programs—Organization and administration—Certification for incentive payments.
82.16.175	Shared commercial solar projects—Organization and administration.
82.16.180	Solar modules—Sale and installation tax incentives.
82.16.182	Community solar projects—Definitions.
82.16.183	Community solar projects.
82.16.184	Credit—Community solar projects.
82.16.185	Credit—State energy performance standard—Early adoption incentive program.
82.16.305	Exemptions—Joint municipal utility services authorities.
82.16.310	Exemptions—Sales by a gas distribution business.
82.16.315	Exemptions—Sales of electricity or gas to silicon smelters.
82.16.320	Exemptions—Qualifying grants—National emergency or state of emergency.
82.16.325	Exemptions—Services for farms.

Commuter trip reduction incentives: Chapter 82.70 RCW.

Public utility districts, privilege tax: Chapter 54.28 RCW.

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

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

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

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

(4) "Light and power business" means the business of operating a plant or system for the generation, production or

distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

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

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

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

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

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

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

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

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

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

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

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

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

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

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2015 3rd sp.s. c 6 § 702. Prior: (2010 c 106 § 224 expired June 30, 2013); 2009 c 535 § 1110; (2009 c 469 § 701 expired June 30, 2013); 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203; prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 702 and 703: "This section is the tax preference performance statement for the tax preference contained in sections 702 and 703 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

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

(2022 Ed.)

the ten-year expiration provision in RCW 82.32.805(1)(a)." [2015 3rd sp.s. c 6 § 701.]

Effective date—2015 3rd sp.s. c 6 §§ 702 and 703: "Part VII of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015." [2015 3rd sp.s. c 6 § 2302.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Additional notes found at www.leg.wa.gov

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (1) There is levied and collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax is equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

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

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

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

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

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

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

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

(h) Log transportation business: One and twenty-eight one-hundredths percent. The reduced rate established in this subsection (1)(h) is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

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

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection

(1) of this section on sewerage collection businesses must be deposited in the education legacy trust account created in RCW 83.100.230 from July 1, 2013, through June 30, 2023, and thereafter in the public works assistance account created in RCW 43.155.050. [2017 3rd sp.s. c 10 § 14; 2015 3rd sp.s. c 6 § 703; 2013 2nd sp.s. c 9 § 7; 2011 1st sp.s. c 48 § 7033; 2011 1st sp.s. c 48 § 7032; (2009 c 469 § 702 expired June 30, 2013); 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Effective date—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 702 and 703: See notes following RCW 82.16.010.

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.023 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1708.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.16.030 Taxable under each schedule if within its purview. Every person engaging in businesses which are within the purview of two or more of schedules of RCW 82.16.020(1), shall be taxable under each schedule applicable to the businesses engaged in. [1989 c 302 § 205; 1982 1st ex.s. c 35 § 6; 1961 c 15 § 82.16.030. Prior: 1935 c 180 § 38; RRS § 8370-38.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.040 Exemption. The provisions of this chapter shall not apply to persons engaging in one or more businesses taxable under this chapter whose total gross income is less than two thousand dollars for a monthly period or portion thereof. Any person claiming exemption under this section may be required to file returns even though no tax may be due. If the total gross income for a taxable monthly period is two thousand dollars, or more, no exemption or deductions from the gross operating revenue is allowed by this provision. [1996 c 111 § 4; 1961 c 15 § 82.16.040. Prior: 1959 ex.s. c 3 § 17; 1959 c 197 § 27; 1935 c 180 § 39; RRS § 8370-39.]

Findings—Purpose—Effective date—1996 c 111: See notes following RCW 82.32.030.

82.16.0421 Exemptions—Sales to electrolytic processing businesses. (Expires July 1, 2029.) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business"

does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5) A person receiving the benefit of the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6)(a) This section does not apply to sales of electricity made after December 31, 2028.

(b) This section expires July 1, 2029. [2018 c 146 § 2; 2017 c 135 § 34; 2010 c 114 § 133; 2009 c 434 § 1; 2004 c 240 § 1.]

Tax preference performance statement—2018 c 146: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 146, Laws of 2018. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to maintain the industry competitiveness of electrolytic processing businesses in Washington created under the existing tax exemption in RCW 82.16.0421 and thereby enable such businesses to continue to provide family-wage jobs in our state. The legislature recognizes that since 2004 when the public utility tax exemption in RCW 82.16.0421 was initially enacted, electrolytic processing businesses receiving the exemption have demonstrated the ability to

successfully apply their tax savings towards maintaining competitiveness, while still providing family-wage jobs. It is the legislature's intent to extend the expiration date of the existing public utility tax exemption under RCW 82.16.0421 for chlor-alkali electrolytic processing businesses and sodium chlorate electrolytic processing businesses in order to:

(a) Maintain industry competitiveness for such electrolytic processing businesses, who rely on electricity as a primary manufacturing input. The legislature recognizes that these businesses face uncertain electric energy costs and that offsetting tax advantages are available to competing firms outside of Washington; and

(b) Support manufacturing and a skilled workforce by retaining existing family-wage jobs and creating new family-wage jobs in Washington by enabling electrolytic processing businesses to maintain production of chlor-alkali and sodium chlorate at a level that preserves the jobs that were on the payroll of electrolytic processing businesses as of June 7, 2018.

(4) To measure the effectiveness of the tax preference provided in section 2, chapter 146, Laws of 2018 in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must review the impact of the preference on electricity costs and whether electrolytic processing businesses in the state receive tax treatment similar to the treatment of competing firms in other states. The review must also include an analysis of the number of employees in family-wage jobs employed in electrolytic processing in the state.

(5) The legislature intends to extend the expiration date of the tax exemption in RCW 82.16.0421, if the joint legislative audit and review committee finds that:

(a) Electricity costs are reduced and that Washington electrolytic processing businesses receive similar tax treatment as provided in other states; or

(b) Family-wage jobs in electrolytic processing businesses have been preserved compared to the levels for such jobs as of June 7, 2018.

(6) The joint legislative audit and review committee must make recommendations on how the tax preference can be improved to accomplish the legislative objectives, if the joint legislative audit and review committee finds that:

(a) Electricity costs have not been reduced or that similar tax treatment as provided in other states has not been maintained; or

(b) The number of electrolytic processing business family-wage jobs in Washington has been maintained at less than the levels as of June 7, 2018.

(7) For the purposes of measuring the performance of the tax preference in section 2, chapter 146, Laws of 2018, "family-wage jobs" means jobs paying a wage equal to at least the average manufacturing wage in the county in which the jobs are located.

(8) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to data provided to the department of revenue and the employment security department." [2018 c 146 § 1.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

82.16.045 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.16.046 Exemptions—Operation of state route No. 16. The provisions of this chapter do not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW. [1998 c 179 § 5.]

Finding—1998 c 179: See note following RCW 35.21.718.

82.16.047 Exemptions—Ride sharing. This chapter does not apply to any funds received in the course of ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. [2021 c 135 § 8; 1999 c 358 § 12; 1979 c 111 § 18.]

Effective date—2021 c 135: See note following RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.16.0491 Credit—Contributions to an electric utility rural economic development revolving fund. (1) The following definitions apply to this section:

(a) "Qualifying project" means a project designed to achieve job creation or business retention, to add or upgrade nonelectrical infrastructure, to add or upgrade health and safety facilities, to accomplish energy and water use efficiency improvements, including renewable energy development, or to add or upgrade emergency services in any designated qualifying rural area.

(b) "Qualifying rural area" means:

(i) A rural county as defined in RCW 82.14.370; or

(ii) Any geographic area in the state that receives electricity from a light and power business with twelve thousand or fewer customers.

(c) "Electric utility rural economic development revolving fund" means a fund devoted exclusively to funding qualifying projects in qualifying rural areas.

(d) "Local board" is (i) a board of directors with at least, but not limited to, three members representing local businesses and community groups who have been appointed by the sponsoring electric utility to oversee and direct the activities of the electric utility rural economic development revolving fund; or (ii) a board of directors of an existing associate development organization serving the qualifying rural area who have been designated by the sponsoring electrical utility to oversee and direct the activities of the electric utility rural economic development revolving fund.

(2) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to fifty percent of contributions made in any fiscal year directly to an electric utility rural economic development revolving fund. The credit shall be taken in a form and manner as required by the department. The credit under this section shall not exceed twenty-five thousand dollars per fiscal year per light and power business. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years, except that this limitation does not apply to expenditures made between January 1, 2004, and March 31, 2004, which expenditures may be used to earn a credit through December 30, 2004.

(3) The right to earn tax credits under this section expires June 30, 2011.

(4) To qualify for the credit in subsection (2) of this section, the light and power business shall establish, or have a local board establish with the business's contribution, an electric utility rural economic development revolving fund which is governed by a local board whose members shall reside or work in the qualifying rural area served by the light and power business. Expenditures from the electric utility rural economic development revolving fund shall be made solely on qualifying projects, and the local board shall have authority to determine all criteria and conditions for the expenditure of funds from the electric utility rural economic development revolving fund, and for the terms and conditions of repayment.

(5) Any funds repaid to the electric utility rural economic development revolving fund by recipients shall be made available for additional qualifying projects.

(6) If at any time the electric utility rural economic development revolving fund is dissolved, any moneys claimed as a tax credit under this section shall either be granted to a qualifying project or refunded to the state within two years of termination.

(7) The total amount of credits that may be used in any fiscal year shall not exceed three hundred fifty thousand dollars in any fiscal year. The department shall allow the use of earned credits on a first-come, first-served basis. Unused earned credits may be carried over to subsequent years.

(8) The following provisions apply to expenditures under subsection (2) of this section made between January 1, 2004, and March 31, 2004:

(a) Credits earned from such expenditures are not considered in computing the statewide limitation set forth in subsection (7) of this section for the period July 1, 2004, through December 31, 2004; and

(b) For the fiscal year ending June 30, 2005, the credit allowed under this section for light and power businesses making expenditures is limited to thirty-seven thousand five hundred dollars. [2008 c 131 § 4; 2004 c 238 § 1; 1999 c 311 § 402.]

Finding—2004 c 238: "(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(2) The goal of the tax credit available to light and power businesses for contributing to an electric utility rural economic development revolving fund in RCW 82.16.0491 is to support qualifying projects that create or retain jobs, add or upgrade health and safety facilities, facilitate energy and water conservation, or develop renewable sources of energy in a qualified area. The goal of this tax credit is achieved when the investment of the revolving funds established under RCW 82.16.0491 have generated capital investment in an amount of four million seven hundred fifty thousand dollars or more within a five-year period." [2004 c 238 § 2.]

Findings—Intent—1999 c 311: "The legislature finds that it is necessary to employ multiple approaches to revitalize the economy of Washington state's rural areas. The legislature also finds that where possible, Washington state should develop programs which can complement other private, state, and federal programs. It is the intent of section 402 of this act to complement such rural economic development efforts by creating a public utility tax offset program to help establish locally based electric utility revolving fund programs to be used for economic development and job creation." [1999 c 311 § 401.]

Additional notes found at www.leg.wa.gov

82.16.0495 Credit—Electricity sold to a direct service industrial customer. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter on sales of electricity made from a facility to a direct service industrial customer if the contract for sale of electricity to a direct service industrial customer contains the following terms:

(a) Sales of electricity from the facility to the direct service industrial customer will be made for ten consecutive years or more;

(b) The price charged for the electricity will be reduced by an amount equal to the tax credit; and

(c) Disallowance of all or part of the credit under subsection (5) of this section is a breach of contract and the damages to be paid by the direct service industrial customer to the facility are the amount of tax credit disallowed.

(3) The credit is equal to the gross proceeds from the sale of the electricity to a direct service industrial customer multiplied by the rate in effect at the time of the sale for the public utility tax on light and power businesses under RCW 82.16.020. The credit may be used each reporting period for sixty months following the first month electricity is sold from a facility to a direct service industrial customer. Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(4) Application for credit shall be made before the first sale of electricity from a facility to a direct service industrial customer. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, identification of the direct service industrial customer who will receive electricity from the facility, the projected date of the first sale of electricity to a direct service industrial customer, the date construction is projected to begin or did begin, and the average annual employment in the state of the direct service industrial customer who will receive electricity from the facility for the six calendar years immediately preceding the year in which the application is made. A copy of the contract for sale of electricity must be attached to the application. The department shall rule on the application within thirty days of receipt.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of sale of electricity from a facility to a direct service industrial customer is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer shall certify to the department and to the facility by June 1st of the sixth calendar year following the calendar year in which the month of first sale occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) Payments on credit that is disallowed shall begin in the sixth calendar year following the calendar year in which the month following the first month of sale of electricity from a facility to a direct service industrial customer occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the schedule in this subsection.

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	75% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	75% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	75% of incremental cost	\$100,000	\$2,000,000

(ii) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter for up to 50 percent of the cost to purchase alternative fuel vehicle infrastructure, tangible personal property that will become a component of alternative fuel vehicle infrastructure, and installation and construction of alternative fuel vehicle infrastructure, but excluding the cost of property acquisition and site improvement related to the installation of alternative fuel vehicle infrastructure. The credit is subject to a maximum annual credit amount of \$2,000,000.

(b) On September 1st of each year, any unused credits from any category identified in (a) of this subsection must be made available to applicants applying for credits under any other category identified in (a) of this subsection, subject to the maximum annual and total credit amounts identified in this subsection. The credit established in this section and RCW 82.04.4496 is subject to a maximum annual credit amount of \$6,000,000, and a maximum total credit amount of \$32,500,000 beginning July 15, 2015.

(c) The credit provided in (a)(i) of this subsection is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in (a)(i) of this subsection multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per category

(2022 Ed.)

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the taxpayer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department. [2001 c 214 § 11.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

82.16.0496 Credit—Clean alternative fuel commercial vehicles—Alternative fuel vehicle infrastructure.

(1)(a)(i) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of \$25,000 or 50 percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under subsection (1)(a)(i) of this section may not exceed the lesser of \$250,000 or 25 vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.04 RCW.

(5) Credits are available on a first-in-time basis.

(a) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.04.4496, during any calendar year to exceed \$6,000,000. The department must provide notification on its website monthly on the amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(b) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed beginning July 15, 2015, under this section and RCW 82.04.4496 to exceed \$32,500,000. The department must provide notification on its website monthly on the total

amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle, infrastructure, infrastructure components, infrastructure construction, or infrastructure installation;

(iii) The type of alternative fuel to be used by the vehicle or supported by the infrastructure;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) The anticipated delivery date of the vehicle, the anticipated delivery date of the infrastructure or infrastructure components, the anticipated construction completion date of the infrastructure, or the anticipated installation completion date of the infrastructure;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties or the estimated annual fuel to be supplied by the infrastructure;

(vii) The gross weight of each vehicle for vehicle credits;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within 15 days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle or infrastructure-related item, including the total cost for the vehicle or infrastructure-related item;

(ii) The anticipated delivery date of the vehicle or infrastructure or infrastructure component, which must be within one year of acceptance of the credit;

(iii) The anticipated construction or installation completion date of the infrastructure, which must be within two years of acceptance of the credit; and

(iv) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within 30 days of receipt of the vehicle or infrastructure or infrastructure components or of completion of construction or installation of the infrastructure, including:

(i) A copy of the final invoice for the vehicle or infrastructure-related items;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) Attestations signed by both the seller and purchaser of the vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application. A separate application is required for infrastructure-related items, but all infrastructure-related items at a single location may be included in a single application provided the required information for each infrastructure-related item is included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its website monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit and total limit are reached;

(b) Within 15 days of receipt of the application, notify persons applying of the availability of tax credits in the year in which the vehicles or infrastructure applied for are anticipated to be delivered, constructed, or installed;

(c) Within 15 days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within 15 days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel;

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel; or

(iii) Sales of alternative fuel vehicle infrastructure or infrastructure components, or the cost of construction or installation of alternative fuel vehicle infrastructure.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or infrastructure-related item, the vehicle conversion is complete, or the construction or installation of the infrastructure is complete.

(13) The definitions in RCW 82.04.4496 apply to this section.

(14) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

(15) Credits may be earned under this section from January 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached, except for credits for leased vehicles, which may be earned from July 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached. [2022 c 182 § 308; 2019 c 287 § 13; 2017 c 116 § 2; 2016 c 29 § 2; 2015 3rd sp.s. c 44 § 412.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Effective date—2019 c 287 §§ 8 and 13: See note following RCW 82.04.4496.

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Effective date—2017 c 116: See note following RCW 82.04.4496.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Short title—Findings—Tax preference performance statement—2015 3rd sp.s. c 44 §§ 411 and 412: See note following RCW 82.04.4496.

82.16.0497 Credit—Light and power business, gas distribution business. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base credit" means the maximum amount of credit against the tax imposed by this chapter that each light and power business or gas distribution business may take each fiscal year as calculated by the department. The base credit is equal to the proportionate share that the total grants received by each light and power business or gas distribution business in the prior fiscal year bears to the total grants received by all light and power businesses and gas distribution businesses in the prior fiscal year multiplied by five million five hundred thousand dollars for fiscal year 2007, and two million five hundred thousand dollars for all other fiscal years before and after fiscal year 2007.

(b) "Billing discount" means a reduction in the amount charged for providing service to qualifying persons in Washington made by a light and power business or a gas distribution business. Billing discount does not include grants received by the light and power business or a gas distribution business.

(c) "Grant" means funds provided to a light and power business or gas distribution business by the department of commerce or by a qualifying organization.

(d) "Low-income home energy assistance program" means energy assistance programs for low-income households as defined on December 31, 2000, in the low-income home energy assistance act of 1981 as amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

(e) "Qualifying person" means a Washington resident who applies for assistance and qualifies for a grant regardless of whether that person receives a grant.

(f) "Qualifying contribution" means money given by a light and power business or a gas distribution business to a

qualifying organization, exclusive of money received in the prior fiscal year from its customers for the purpose of assisting other customers.

(g) "Qualifying organization" means an entity that has a contractual agreement with the department of commerce to administer in a specified service area low-income home energy assistance funds received from the federal government and such other funds that may be received by the entity.

(2) Subject to the limitations in this section, a light and power business or a gas distribution business may take a credit each fiscal year against the tax imposed under this chapter.

(a)(i) A credit may be taken for qualifying contributions if the dollar amount of qualifying contributions for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of qualifying contributions given in fiscal year 2000.

(ii) If no qualifying contributions were given in fiscal year 2000, a credit is allowed for the first fiscal year that qualifying contributions are given. Thereafter, credit is allowed if the qualifying contributions given exceed one hundred twenty-five percent of qualifying contributions given in the first fiscal year.

(iii) The amount of credit is fifty percent of the dollar amount of qualifying contributions given in the fiscal year in which the tax credit is taken.

(b)(i) A credit may be taken for billing discounts if the dollar amount of billing discounts for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of billing discounts given in fiscal year 2000.

(ii) If no billing discounts were given in fiscal year 2000, a credit is allowed in the first fiscal year that billing discounts are given. Thereafter, credit is allowed if the dollar amount of billing discounts given exceeds one hundred twenty-five percent of billing discounts given in the first fiscal year.

(iii) The amount of credit is fifty percent of the dollar amount of the billing discounts given in the fiscal year in which the tax credit is taken.

(c) The total amount of credit that may be taken for qualifying contributions and billing discounts in a fiscal year is limited to the base credit for the same fiscal year.

(3)(a)(i) Except as provided in (a)(ii) of this subsection, the total amount of credit, statewide, that may be taken in any fiscal year may not exceed two million five hundred thousand dollars.

(ii) The total amount of credit, statewide, that may be taken in fiscal year 2007 may not exceed five million five hundred thousand dollars.

(b) By May 1st of each year starting in 2002, the department of commerce must notify the department of revenue in writing of the grants received in the current fiscal year by each light and power business and gas distribution business.

(4)(a) Not later than June 1st of each year beginning in 2002, the department must publish the base credit for each light and power business and gas distribution business for the next fiscal year.

(b) Not later than July 1st of each year beginning in 2002, application for credit must be made to the department including but not limited to the following information: Billing discounts given by the applicant in fiscal year 2000; qual-

ifying contributions given by the applicant in the prior fiscal year; the amount of money received in the prior fiscal year from customers for the purpose of assisting other customers; the base credit for the next fiscal year for the applicant; the qualifying contributions anticipated to be given in the next fiscal year; and billing discounts anticipated to be given in the next fiscal year. No credit under this section will be allowed to a light and power business or gas distribution business that does not file the application by July 1st.

(c) Not later than August 1st of each year beginning in 2002, the department must notify each applicant of the amount of credit that may be taken in that fiscal year.

(d) The balance of base credits not used by other light and power businesses and gas distribution businesses must be ratably distributed to applicants under the formula in subsection (1)(a) of this section. The total amount of credit that may be taken by an applicant is the base credit plus any ratable portion of unused base credit.

(5) The credit taken under this section is limited to the amount of tax imposed under this chapter for the fiscal year. The credit must be claimed in the fiscal year in which the billing reduction is made. Any unused credit expires. Refunds may not be given in place of credits.

(6) No credit may be taken for billing discounts made before July 1, 2001. Within two weeks of May 8, 2001, the department of commerce must notify the department of revenue in writing of the grants received in fiscal year 2001 by each light and power business and gas distribution business. Within four weeks of May 8, 2001, the department of revenue must publish the base credit for each light and power business and gas distribution business for fiscal year 2002. Within eight weeks of May 8, 2001, application to the department must be made showing the information required in subsection (4)(b) of this section. Within twelve weeks of May 8, 2001, the department must notify each applicant of the amount of credit that may be taken in fiscal year 2002. [2020 c 139 § 26; 2006 c 213 § 1; 2001 c 214 § 13.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

82.16.0498 Credit—Sales of electricity or gas to an aluminum smelter. (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217. [2004 c 24 § 13.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.16.0499 Credit—Businesses that hire veterans. (Expires July 1, 2023.) (1) A person is allowed a credit against the tax due under this chapter as provided in this section. The credit equals twenty percent of wages and benefits paid to or on behalf of a qualified employee up to a maximum of one thousand five hundred dollars for each qualified employee hired on or after October 1, 2016.

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

(3) Credits are available on a first-in-time basis. The department must keep a running total of all credits allowed under this section and RCW 82.04.4498 during each fiscal year. The department may not allow any credits that would cause the total credits allowed under this section and RCW 82.04.4498 to exceed five hundred thousand dollars in any fiscal year. If all or part of a claim for credit is disallowed under this subsection, the disallowed portion is carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded. Priority must be given to credits carried over from a previous fiscal year. The department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

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

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

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

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

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

(a)(i) "Qualified employee" means an unemployed veteran who is employed in a permanent full-time position for at least two consecutive full calendar quarters. For seasonal

employers, "qualified employee" also includes the equivalent of a full-time employee in work hours for two consecutive full calendar quarters.

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

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

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

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

(10) This section expires July 1, 2023. [2015 3rd sp.s. c 6 § 1003.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 1002 and 1003: See note following RCW 82.04.4498.

82.16.050 Deductions in computing tax. In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof. This subsection may not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid under this chapter;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes other than the irrigation of cannabis as defined under RCW 69.50.101;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to

final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination;

(9) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. No deduction is allowed under this subsection when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213;

(11) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(12) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(13) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage;

(14) Amounts derived from fees or charges imposed on persons for transit services provided by a public transporta-

tion agency. For the purposes of this subsection, "public transportation agency" means a municipality, as defined in RCW 35.58.272, and urban public transportation systems, as defined in RCW 47.04.082. Public transportation agencies must spend an amount equal to the reduction in tax provided by this tax deduction solely to adjust routes to improve access for citizens using food banks and senior citizen services or to extend or add new routes to assist low-income citizens and seniors. [2022 c 16 § 162; 2014 c 140 § 25; 2007 c 330 § 1; 2006 c 336 § 1; 2004 c 153 § 308; 2000 c 245 § 1; 1994 c 124 § 12; 1989 c 302 § 103; 1987 c 207 § 1; 1982 2nd ex.s. c 9 § 3; 1977 ex.s. c 368 § 1; 1967 ex.s. c 149 § 25; 1965 ex.s. c 173 § 22; 1961 c 15 § 82.16.050. Prior: 1959 ex.s. c 3 § 18; 1949 c 228 § 11; 1937 c 227 § 12; 1935 c 180 § 40; Rem. Supp. 1949 § 8370-40.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.053 Deductions in computing tax—Light and power businesses. (1) In computing tax under this chapter, a light and power business may deduct from gross income the lesser of the amounts determined under subsections (2) through (4) of this section.

(2)(a) Fifty percent of wholesale power cost paid during the reporting period, if the light and power business has fewer than five and one-half customers per mile of line.

(b) Forty percent of wholesale power cost paid during the reporting period, if the light and power business has more than five and one-half but less than eleven customers per mile.

(c) Thirty percent of the wholesale power cost paid during the reporting period, if the light and power business has more than eleven but less than seventeen customers per mile of line.

(d) Zero if the light and power business has more than seventeen customers per mile of line.

(3) Wholesale power cost multiplied by the percentage by which the average retail electric power rates for the light and power business exceed the state average electric power rate. If more than fifty percent of the kilowatt-hours sold by a light and power business are sold to irrigators, then only sales to nonirrigators shall be used to calculate the average electric power rate for that light and power business. For purposes of this subsection, the department shall determine state average electric power rate each year based on the most recent available data and shall inform taxpayers of its determination.

(4) Four hundred thousand dollars per month. [1996 c 145 § 1; 1994 c 236 § 1.]

Additional notes found at www.leg.wa.gov

82.16.055 Deductions relating to energy conservation or production from renewable resources. (1) In computing tax under this chapter there must be deducted from the gross income:

(a) An amount equal to the cost of production at the plant for consumption within the state of Washington of:

(i) Electrical energy produced or generated from cogeneration as defined in RCW 82.35.020, as existing on June 30, 2006; and

(ii) Electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat; and

(b) Those amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer.

(2) This section applies only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end use on which construction or installation is begun after June 12, 1980, and before January 1, 1990.

(3) Deductions under subsection (1)(a) of this section must be allowed for a period not to exceed thirty years after the project is placed in operation.

(4) Measures or projects encouraged under this section must at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(5) The department of revenue, after consultation with the utilities and transportation commission in the case of investor-owned utilities and the governing bodies of locally regulated utilities, must determine the eligibility of individual projects and measures for deductions under this section. [2020 c 139 § 27; 1980 c 149 § 3.]

Legislative finding—1980 c 149: See RCW 80.28.024.

Utility rate structures encouraging energy conservation and production from renewable resources: RCW 80.28.025.

82.16.060 May be taxed under other chapters. Nothing herein shall be construed to exempt persons taxable under the provisions of this chapter from tax under any other chapters of this title with respect to activities other than those specifically within the provisions of this chapter. [1961 c 15 § 82.16.060. Prior: 1935 c 180 § 41; RRS § 8370-41.]

82.16.080 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.16.080. Prior: 1935 c 180 § 43; RRS § 8370-43.]

82.16.090 Light or power and gas distribution businesses—Information required on customer billings. (1) Any customer billing issued by a light or power business or gas distribution business that serves a total of more than twenty thousand customers and operates within the state shall include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by the light and power business or gas distribution business;

(b) The rate, origin and approximate amount of each tax levied upon the revenue of the light and power business or gas distribution business and added as a component of the amount charged to the customer. Taxes based upon revenue

of the light and power business or gas distribution business to be listed on the customer billing need not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW; and

(c) The total amount of kilowatt-hours of electricity consumed for the most recent twelve-month period or other information that provides the customer with information regarding their energy usage over a twelve-month period.

(2) A light or power business or gas distribution business that serves a total of more than twenty thousand customers and operates within the state may include information regarding rates over the most recent twelve-month period on any customer billing. [2019 c 235 § 5; 1988 c 228 § 1.]

Additional notes found at www.leg.wa.gov

82.16.100 Solid waste business not subject to chapter.

The business of collection, receipt, transfer, including transportation between any locations, storage, or disposal of solid waste is not subject to this chapter. Any such business activities are subject to taxation under the classification in RCW 82.04.290(2). "Solid waste" for purposes of this section is defined in RCW 82.18.010. [2001 c 320 § 8.]

Additional notes found at www.leg.wa.gov

82.16.110 Renewable energy system cost recovery—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means an owner and assignee of a community solar project as defined in subsection (2)(a)(i) of this section that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary, such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to the other owners.

(2)(a) "Community solar project" means:

(i) A solar energy system that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business;

(ii) A utility-owned solar energy system that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project; or

(iii) A solar energy system, placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive for the same customer-generated electricity as provided in RCW 82.16.120.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Company" means an entity that is:

(A)(I) A limited liability company;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in this subsection (2)(b); and

(ii) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(iii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(3) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington and installed on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for utility-owned community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt-hours of annual sales or a gas distribution business.

(4) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(5) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(6) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(7) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(8) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(9) "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

(10) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(11) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine. [2011 c 179 § 2. Prior: 2010 c 202 § 1; 2010 c 106 § 225; 2009 c 469 § 504; 2005 c 300 § 2.]

Findings—Intent—2005 c 300: "The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington state has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington state." [2005 c 300 § 1.]

Additional notes found at www.leg.wa.gov

82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—

Limitations. (1)(a) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, and ending June 30, 2017, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system.

(b) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(i), the administrator must apply for the investment cost recovery incentive on behalf of each of the other owners.

(c) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(iii), the company owning the community solar project must apply for the investment cost recovery incentive on behalf of each member of the company.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the information described in (c) of this subsection.

(b) The department may not accept certifications submitted to the department under (a) of this subsection after September 30, 2017.

(c) The certification must include:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the certification must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the certification must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

(E) A stirling converter manufactured in Washington state; or

(F) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems; and

(v) The date that the renewable energy system received its final electrical inspection from the applicable local jurisdiction.

(d) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure.

(3)(a) By August 1st of each year through August 1, 2017, the application for the incentive must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the application must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the application must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section; and

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure.

(c)(i) Persons, administrators of community solar projects, and companies receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and must add thereto interest on the amount. Interest is assessed in the man-

ner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state or a solar stirling converter manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5)(a) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year.

(b) Except as provided in (c) through (e) of this subsection (5), each applicant in a community solar project is eligible for up to five thousand dollars per year.

(c) Where the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible for an incentive but only in proportion to the ownership share of the project, up to five thousand dollars per year.

(d) Where the applicant is a company owning a community solar project that has applied for an investment cost recovery incentive on behalf of its members, each member of the company is eligible for an incentive that would otherwise belong to the company but only in proportion to each ownership share of the company, up to five thousand dollars per year. The company itself is not eligible for incentives under this section.

(e) In the case of a utility-owned community solar project, each ratepayer that contributes to the project is eligible for an incentive in proportion to the contribution, up to five thousand dollars per year.

(6) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(7) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state

or the light and power business upon receipt of the investment cost recovery incentive.

(8) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, 2017, except as provided in subsections (10) through (12) of this section.

(9) Beginning October 1, 2017, program management, technical review, and tracking responsibilities of the department under this section are transferred to the Washington State University extension energy program. At the earliest date practicable and no later than September 30, 2017, the department must transfer all records necessary for the administration of the remaining incentive payments due under this section to the Washington State University extension energy program.

(10) Participants in the renewable energy investment cost recovery program under this section will continue to receive payments for electricity produced through June 30, 2020, at the same rates their utility paid to participants for electricity produced between July 1, 2015, and June 30, 2016.

(11) In order to continue to receive the incentive payment allowed under subsection (4) of this section, a person or community solar project administrator who has, by September 30, 2017, submitted a complete certification to the department under subsection (2) of this section must apply to the Washington State University extension energy program by April 30, 2018, for a certification authorizing the utility serving the situs of the renewable energy system to annually remit the incentive payment allowed under subsection (4) of this section for each kilowatt-hour generated by the renewable energy system through June 30, 2020.

(12)(a) The Washington State University extension energy program must establish an application process and form by which to collect the system operation data described in RCW 82.16.165(7)(a)(iii) from each person or community solar project administrator applying for a certification under subsection (11) of this section. The Washington State University extension energy program must notify any applicant that providing this data is a condition of certification and that any certification issued pursuant to this section is void as of June 30, 2018, if the applicant has failed to provide the data by that date.

(b) Beginning July 1, 2018, the Washington State University extension energy program must, in a form and manner that is consistent with the roles and processes established under RCW 82.16.165 (19) and (20), calculate for the year and provide to the utility the amount of the incentive payment due to each participant under subsection (11) of this section. [2017 3rd sp.s. c 36 § 3; 2011 c 179 § 3. Prior: 2010 c 202 § 2; 2010 c 106 § 103; 2009 c 469 § 505; 2007 c 111 § 101; 2005 c 300 § 3.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

Additional notes found at www.leg.wa.gov

82.16.130 Renewable energy system cost recovery—Light/power business tax credit. (Expires June 30, 2033.)

(1) A light and power business is allowed a credit against taxes due under this chapter in an amount equal to:

(a) Incentive payments made in any fiscal year under RCW 82.16.120 and 82.16.165; and

(b) Any fees a utility is allowed to recover pursuant to RCW 82.16.165(5).

(2) The credits must be taken in a form and manner as required by the department. The credit taken under this section for the fiscal year may not exceed one and one-half percent of the business's taxable Washington power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or two hundred fifty thousand dollars, whichever is greater, for incentive payments made for the following:

(a) Renewable energy systems, other than community solar projects, that are certified for an incentive payment as of June 30, 2020; and

(b) Community solar and shared commercial projects that are under precertification status under RCW 82.16.165(7)(b) as of June 30, 2020, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2022.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments is immediately due and payable. The department may deduct amounts due from future credits claimed by the business.

(a) Except as provided in (b) of this subsection, the department must assess interest but not penalties on the taxes against which the credit was claimed. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under RCW 82.16.165(20), if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits for incentive payments made under RCW 82.16.120 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(7)(a) The right to earn tax credits for incentive payments made under RCW 82.16.165 for the following expires June 30, 2029:

(i) Renewable energy systems, other than community solar projects, that are certified for an incentive payment as of June 30, 2020; and

(ii) Community solar and shared commercial projects that are under precertification status under RCW 82.16.165(7)(b) as of June 30, 2020, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2022.

(b) Credits may not be claimed after June 30, 2030.

(8) This section expires June 30, 2033. [2022 c 212 § 2; 2017 3rd sp.s. c 36 § 4; 2010 c 202 § 3; 2009 c 469 § 506; 2005 c 300 § 4.]

Findings—Intent—Tax preference performance statement exemption—Effective date—2022 c 212: See notes following RCW 82.16.183.

Finding—Intent—2017 3rd sp.s. c 36: "The legislature finds and declares that stimulating local investment in distributed renewable energy generation is an important part of a state energy strategy, helping to increase energy independence from fossil fuels, promote economic development, hedge against the effects of climate change, and attain environmental benefits. The legislature intends to increase the effectiveness of the existing renewable energy investment cost recovery program by reducing the maximum incentive rate provided for each kilowatt-hour of electricity generated by a renewable energy system over the period of the program and by creating opportunities for broader participation by low-income individuals and others who may not own the premises where a renewable energy system may be installed. The legislature intends to provide an incentive sufficient to promote installation of systems through 2021, at which point the legislature expects that the state's renewable energy industry will be capable of sustained growth and vitality without the cost recovery incentive. The legislature intends for the program to balance the deployment of community solar and shared commercial solar projects in order to support participation in renewable energy generation, and that deployment of community solar projects is balanced among eligible utilities, nonprofits, and local housing authorities, as doing so will support maximum deployment of renewable energy generation throughout the state." [2017 3rd sp.s. c 36 § 1.]

Effective date—2017 3rd sp.s. c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 36 § 19.]

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

Additional notes found at www.leg.wa.gov

82.16.150 Light and power business—Liability.

Owners of a community solar project as defined in RCW 82.16.110(2)(a) (i) and (iii) must agree to hold harmless the light and power business serving the situs of the system, including any employee, for the good faith reliance on the information contained in an application or certification submitted by an administrator or company. In addition, the light and power business and any employee is immune from civil liability for the good faith reliance on any misstatement that may be made in such application or certification. Should a light and power business or employee prevail upon the defense provided in this section, it is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense. [2010 c 202 § 5.]

82.16.155 Tax preference performance statement—Joint legislative audit and review committee review—Washington State University data collection.

(1) This section is the tax preference performance statement for the tax preference and incentives created under RCW 82.16.130 and section 6, chapter 36, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference and incentives. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preference created under RCW 82.16.130 and incentive payments authorized in section 6, chapter 36, Laws of 2017 3rd sp. sess. as intended to:

(a) Induce participating utilities to make incentive payments to utility customers who invest in renewable energy systems; and

(b) By inducing utilities, nonprofit organizations, and utility customers to acquire and install renewable energy systems, retain jobs in the clean energy sector and create additional jobs.

(3) The legislature's public policy objectives are to:

(a) Increase energy independence from fossil fuels; and

(b) Promote economic development through increasing and improving investment in, development of, and use of clean energy technology in Washington; and

(c) Increase the number of jobs in and enhance the sustainability of the clean energy technology industry in Washington.

(4) It is the legislature's intent to provide the incentives in section 6, chapter 36, Laws of 2017 3rd sp. sess. and RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating solar energy systems by persons or entities receiving the incentive.

(5) As part of its 2021 tax preference reviews, the joint legislative audit and review committee must review the tax preferences and incentives in section 6, chapter 36, Laws of 2017 3rd sp. sess. and RCW 82.16.130. The legislature intends for the legislative auditor to determine that the incentive has achieved its desired outcomes if the following objectives are achieved:

(a) Installation of one hundred fifteen megawatts of solar photovoltaic capacity by participants in the incentive program between July 1, 2017, and June 30, 2021; and

(b) Growth of solar-related employment from 2015 levels, as evidenced by:

(i) An increased per capita rate of solar energy-related jobs in Washington, which may be determined by consulting a relevant trade association in the state; or

(ii) Achievement of an improved national ranking for solar energy-related employment and per capita solar energy-related employment, as reported in a nationally recognized report.

(6) In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to data collected by the Washington State University extension energy program and may obtain employment data from the employment security department.

(7) The Washington State University extension energy program must collect, through the application process, data from persons claiming the tax credit under RCW 82.16.130 and persons receiving the incentive payments created in RCW 82.16.165, as necessary, and may collect data from other interested persons as necessary to report on the performance of chapter 36, Laws of 2017 3rd sp. sess.

(8) All recipients of tax credits or incentive payments awarded under this chapter must provide data necessary to evaluate the tax preference performance objectives in this section as requested by the Washington State University extension energy program or the joint legislative audit and review committee. Failure to comply may result in the loss of a tax credit award or incentive payment in the following year. [2017 3rd sp.s. c 36 § 2.]

(2022 Ed.)

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.160 Definitions—Renewable energy tax incentives. The definitions in this section apply throughout this section and RCW 82.16.165, 82.16.170, and 82.16.175 unless the context clearly requires otherwise.

(1) "Administrator" means the utility, nonprofit, or other local housing authority that organizes and administers a community solar project as provided in RCW 82.16.165 and 82.16.170.

(2) "Certification" means the authorization issued by the Washington State University extension energy program establishing a person's eligibility to receive annual incentive payments from the person's utility for the program term.

(3) "Commercial-scale system" means a renewable energy system or systems other than a community solar project or a shared commercial solar project with a combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in RCW 82.16.165.

(4) "Community solar project" means a solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts and meets the applicable eligibility requirements established in RCW 82.16.165 and 82.16.170.

(5) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(6) "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner is not a utility and such owner is a customer of the utility and either owns the premises where the renewable energy system is installed or occupies the premises.

(7) "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(8) "Governing body" has the same meaning as provided in RCW 19.280.020.

(9) "Person" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity.

(10) "Program term" means: (a) For community solar projects, eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first; and (b) for other renewable energy systems, including shared commercial solar projects, eight years or until cumulative incentive payments for electricity produced by a system reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(11) "Renewable energy system" means a solar energy system, including a community solar project, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(12) "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts or less that meets the applicable system eligibility requirements established in RCW 82.16.165.

(13) "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility,

with a combined nameplate capacity of greater than one megawatt and not more than five megawatts and meets the applicable eligibility requirements established in RCW 82.16.165 and 82.16.175. [2017 3rd sp.s. c 36 § 5.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.165 Annual production incentive certification.

(1) Beginning July 1, 2017, the following persons may submit a one-time application to the Washington State University extension energy program to receive a certification authorizing the utility serving the situs of a renewable energy system in the state of Washington to remit an annual production incentive for each kilowatt-hour of alternating current electricity generated by the renewable energy system:

(a) The utility's customer who is the customer-owner of a residential-scale or commercial-scale renewable energy system;

(b) An administrator of a community solar project meeting the eligibility requirements outlined in RCW 82.16.170 and applies for certification on behalf of each of the project participants; or

(c) A utility or a business under contract with a utility that administers a shared commercial solar project that meets the eligibility requirements in RCW 82.16.175 and applies for certification on behalf of each of the project participants.

(2) No person, business, or household is eligible to receive incentive payments provided under subsection (1) of this section of more than five thousand dollars per year for residential systems or community solar projects, twenty-five thousand dollars per year for commercial-scale systems, or thirty-five thousand dollars per year for shared commercial solar projects.

(3)(a) No new certification may be issued under this section to an applicant who submits a request for or receives an annual incentive payment for a renewable energy system that was certified under RCW 82.16.120, or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in subsection (4) of this section.

(b) The Washington State University extension energy program may issue a new certification for an additional system installed at a situs with a previously certified system so long as the new system meets the requirements of this section and its production can be measured separately from the previously certified system.

(c) The Washington State University extension energy program may issue a recertification for a residential-scale or commercial-scale system if a customer makes investments resulting in an expansion of the system's nameplate capacity. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system and applies to the entire system the incentive rates and program rules in effect as of the date of the recertification.

(4) A utility's participation in the incentive program provided in this section is voluntary.

(a) A utility electing to participate in the incentive program must notify the Washington State University extension energy program of such election in writing.

(b) The utility may terminate its voluntary participation in the production incentive program by providing notice in

writing to the Washington State University extension energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(c) Such notice of termination of participation is effective after fifteen days, at which point the Washington State University extension energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(d) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University extension energy program must report on its website that customers of that utility are no longer eligible to receive new certifications under the program.

(e) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The Washington State University extension energy program must continue to process and issue certifications for renewable energy systems that were received by the Washington State University extension energy program before the effective date of the notice of termination.

(f) A utility that has terminated participation in the program may resume participation upon filing notice with the Washington State University extension energy program.

(5)(a) The Washington State University extension energy program may certify a renewable energy system that is connected to equipment capable of measuring the electricity production of the system and interconnecting with the utility's system in a manner that allows the utility, or the customer at the utility's option, to measure and report to the Washington State University extension energy program the total amount of electricity produced by the renewable energy system.

(b) The Washington State University extension energy program must establish a reporting and fee-for-service system to accept electricity production data from the utility or the customer that is not reported electronically and with the reporting entity selected at the utility's option as described in subsection (19) of this section. The fee-for-service agreement must allow for electronic reporting or reporting by mail, may be specific to individual utilities, and must recover only the program's costs of obtaining the electricity production data and incorporating it into an electronic format. A statement of the amount due for the fee-for-service must be provided to the utility by the Washington State University extension energy program with the report provided to the utility pursuant to subsection (20)(a) of this section. The utility may determine how to assess and remit the fee, and the utility may be allowed a credit for fees paid under this subsection (5) against taxes due, as provided in RCW 82.16.130(1).

(6) The Washington State University extension energy program may issue a certification authorizing annual incentive payments up to the following annual dollar limits:

(a) For community solar projects, five thousand dollars per project participant;

(b) For residential-scale systems, five thousand dollars;

(c) For commercial-scale systems, twenty-five thousand dollars; and

(d) For shared commercial solar projects, up to thirty-five thousand dollars a year per participant, as determined by the terms of subsection (15) of this section.

(7)(a) To obtain certification under this section, a person must submit to the Washington State University extension energy program an application, including:

(i) A signed statement that the applicant has not previously received a notice of eligibility from the department under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system at the same meter location;

(ii) A signed statement of the total price, including applicable sales tax, paid by the applicant for the renewable energy system;

(iii) System operation data including global positioning system coordinates, tilt, estimated shading, and azimuth;

(iv) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels, administering the program, tracking progress toward achieving the limits on program participation established in RCW 82.16.130, or facilitating the review of the performance of the tax preferences by the joint legislative audit and review committee, as described in RCW 82.16.155; and

(v)(A) Except as provided in (a)(v)(B) of this subsection (7), the date that the renewable energy system received its final electrical inspection from the applicable local jurisdiction, as well as a copy of the permit or, if the permit is available online, the permit number;

(B) The Washington State University extension energy program may waive the requirement in (a)(v)(A) of this subsection (7), accepting an application and granting provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction or the Washington State University extension energy program extends the certification, for a term or terms of thirty days, due to extenuating circumstances; and

(b)(i) Prior to obtaining certification under this subsection, a community solar project or shared commercial solar project must apply for precertification against the remaining funds available for incentive payments under subsection (13)(d) of this section in order to be guaranteed an incentive payment under this section;

(ii) A project applicant of a community solar project or shared commercial solar project must complete an application for certification with the Washington State University extension energy program within less than one year to retain the precertification status described in this subsection; and

(iii) The Washington State University extension energy program may design a reservation or precertification system for an applicant of a residential-scale or commercial-scale renewable energy system.

(8) No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the Washington State University extension energy program.

(9) Within thirty days of receipt of the application for certification, the Washington State University extension energy program must notify the applicant and, except when a utility is the applicant, the utility serving the situs of the renewable energy system, by mail or electronically, whether certification has been granted. The certification notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in subsection (12) of this section, subject to any applicable cap on total annual payment provided in subsection (6) of this section.

(10) Certification is valid for the program term and entitles the applicant or, in the case of a community solar project or shared commercial solar project, the participant, to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later. For purposes of this subsection, the Washington State University extension energy program must define when a renewable energy system commences operation and provide notice of such date to the recipient and the utility serving the situs of the system. Certification may not be retroactively changed except to correct later discovered errors that were made during the original application or certification process.

(11)(a) System certification follows the system if the following conditions are met using procedures established by the Washington State University extension energy program:

(i) The renewable energy system is transferred to a new owner who notifies the Washington State University extension energy program of the transfer; and

(ii) The new owner provides an executed interconnection agreement with the utility serving the premises.

(b) In the event that a community solar project participant terminates their participation in a community solar project, the system certification follows the system and participation may be transferred to a new participant. The administrator of a community solar project must provide notice to the Washington State University extension energy program of any changes or transfers in project participation.

(12) The Washington State University extension energy program must determine the total incentive rate for a new renewable energy system certification by adding to the base rate any applicable made-in-Washington bonus rate. A made-in-Washington bonus rate is provided for a renewable energy system or a community solar project with solar modules made in Washington or with a wind turbine or tower that is made in Washington. Both the base rates and bonus rate vary, depending on the fiscal year in which the system is certified and the type of renewable energy system being certified, as provided in the following table:

Fiscal year of system certification	Base rate - residential-scale	Base rate - commercial-scale	Base rate -community solar	Base rate - shared commercial solar	Made in Washington bonus
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05
2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04

Fiscal year of system certification	Base rate - residential-scale	Base rate - commercial-scale	Base rate -community solar	Base rate - shared commercial solar	Made in Washington bonus
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

(13) The Washington State University extension energy program must cease to issue new certifications:

(a) For community solar projects and shared commercial solar projects in any fiscal year for which the Washington State University extension energy program estimates that fifty percent of the remaining funds for credit available to a utility for renewable energy systems certified under this section as of July 1, 2017, have been allocated to community solar projects and shared commercial solar projects combined;

(b) For commercial-scale systems in any fiscal year for which the Washington State University extension energy program estimates that twenty-five percent of the remaining funds for credit available to a utility for renewable energy systems certified under this section as of July 1, 2017, have been allocated to commercial-scale systems;

(c) For any renewable energy system served by a utility, if certification is likely to result in incentive payments by that utility, including payments made under RCW 82.16.120, exceeding the utility's available funds for credit under RCW 82.16.130; and

(d) For any renewable energy system, if certification is likely to result in total incentive payments under this section exceeding one hundred ten million dollars.

(14) If the Washington State University extension energy program ceases issuing new certifications during a fiscal year or biennium as provided in subsection (13) of this section, in the following fiscal year or biennium, or when additional funds are available for credit such that the thresholds described in subsection (13) of this section are no longer exceeded, the Washington State University extension energy program must resume issuing new certifications using a method of awarding certifications that results in equitable and orderly allocation of benefits to applicants.

(15) A customer who is a participant in a shared commercial solar project may not receive incentive payments associated with the project greater than the difference between the levelized cost of energy output of the system over its production life and the retail rate for the rate class to which the customer belongs. The levelized cost of the output of the energy must be determined by the utility that administers the shared commercial solar project and must be disclosed, along with an explanation of the limitations on incentive payments contained in this subsection (15), in the contractual agreement with the shared commercial solar project participants.

(16) In order to begin to receive annual incentive payments, a person who has been issued a certification for the incentive as provided in subsection (9) of this section must obtain an executed interconnection agreement with the utility serving the situs of the renewable energy system.

(17) The Washington State University extension energy program must establish a list of equipment that is eligible for the bonus rates described in subsection (12) of this section. The Washington State University extension energy program

must, in consultation with the department of commerce, develop technical specifications and guidelines to ensure consistent and predictable determination of eligibility. A solar module is made in Washington for purposes of receiving the bonus rate only if the lamination of the module takes place in Washington. A wind turbine is made in Washington only if it is powered by a turbine or built with a tower manufactured in Washington.

(18) The manufacturer of a renewable energy system component subject to a bonus rate under subsection (12) of this section may apply to the Washington State University extension energy program to receive a determination of eligibility for such bonus rates. The Washington State University extension energy program must publish a list of components that have been certified as eligible for such bonus rates. The Washington State University extension energy program may assess an equipment certification fee to recover its costs. The Washington State University extension energy program must deposit all revenue generated by this fee into the state general fund.

(19) Annually, the utility must report electronically to the Washington State University extension energy program the amount of gross kilowatt-hours generated by each renewable energy system since the prior annual report. For the purposes of this section, to report electronically means to submit statistical or factual information in alphanumeric form through a website established by the Washington State University extension energy program or in a list, table, spreadsheet, or other nonnarrative format that can be digitally transmitted or processed. The utility may instead opt to report by mail or require program participants to report individually, but if the utility exercises one or more of these options it must negotiate with the Washington State University extension energy program the fee-for-service arrangement described in subsection (5)(b) of this section.

(20)(a) The Washington State University extension energy program must calculate for the year and provide to the utility the amount of the incentive payment due to each participant and the total amount of credit against tax due available to the utility under RCW 82.16.130 that has been allocated as annual incentive payments. Upon notice to the Washington State University extension energy program, a utility may opt to directly perform this calculation and provide its results to the Washington State University extension energy program.

(b) If the Washington State University extension energy program identifies an abnormal production claim, it must notify the utility, the department of revenue, and the applicant, and must recommend withholding payment until the applicant has demonstrated that the production claim is accurate and valid. The utility is not liable to the customer for withholding payments pursuant to such recommendation unless and until the Washington State University extension energy program notifies the utility to resume incentive payments.

(21)(a) The utility must issue the incentive payment within ninety days of receipt of the information required under subsection (20)(a) of this section from the Washington State University extension energy program. The utility must resume the incentive payments withheld under subsection (20)(b) of this section within thirty days of receiving notice from the Washington State University extension energy program that the claim has been demonstrated accurate and valid and payment should be resumed.

(b) A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as non-payment of the customer's bill, or a violation of an interconnection agreement.

(22) Beginning January 1, 2018, the Washington State University extension energy program must post on its website and update at least monthly a report, by utility, of:

(a) The number of certifications issued for renewable energy systems, including estimated system sizes, costs, and annual energy production and incentive yields for various system types; and

(b) An estimate of the amount of credit that has not yet been allocated for incentive payments under each utility's credit limit and remains available for new renewable energy system certifications.

(23) Persons receiving incentive payments under this section must keep and preserve, for a period of five years for the duration of the consumer contract, suitable records as may be necessary to determine the amount of incentive payments applied for and received. The Washington State University extension energy program may direct a utility to cease issuing incentive payments if the records are not made available for examination upon request. A utility receiving such a directive is not liable to the applicant for any incentive payments or other damages for ceasing payments pursuant to the directive.

(24) The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant, and can be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the attributes will be retained by the utility.

(25) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online by the Washington State University extension energy program.

(26) No certification may be issued under this section after June 30, 2021.

(27) The Washington State University extension energy program must collect a one-time fee for applications submitted under subsection (1) of this section of one hundred twenty-five dollars per applicant. The Washington State University extension energy program must deposit all revenue generated by this fee into the state general fund. The Washington State University extension energy program must administer and budget for the program established in RCW 82.16.120, this section, and RCW 82.16.170 in a manner that ensures its administrative costs through June 30, 2022, are

completely met by the revenues from this fee. If the Washington State University extension energy program determines that the fee authorized in this subsection is insufficient to cover the administrative costs through June 30, 2022, the Washington State University extension energy program must report to the legislature on costs incurred and fees collected and demonstrate why a different fee amount or funding mechanism should be authorized.

(28) The Washington State University extension energy program may, through a public process, develop any program requirements, policies, and processes necessary for the administration or implementation of this section, RCW 82.16.120, 82.16.155, and 82.16.170. The department is authorized, in consultation with the Washington State University extension energy program, to adopt any rules necessary for administration or implementation of the program established under this section and RCW 82.16.170.

(29) Applications, certifications, requests for incentive payments under this section, and the information contained therein are not deemed tax information under RCW 82.32.330 and are subject to disclosure.

(30)(a) By November 1, 2019, and in compliance with RCW 43.01.036, the Washington State University extension energy program must submit a report to the legislature that includes the following:

(i) The number and types of renewable energy systems that have been certified under this section as of July 1, 2019, both statewide and per participating utility;

(ii) The number of utilities that are approaching or have reached the credit limit established under RCW 82.16.130(2) or the thresholds established under subsection (13) of this section;

(iii) The share of renewable energy systems by type that contribute to each utility's threshold under subsection (13) of this section;

(iv) An assessment of the deployment of community solar projects in the state, including but not limited to the following:

(A) An evaluation of whether or not community solar projects are being deployed in low-income and moderate-income communities, as those terms are defined in RCW 43.63A.510, including a description of any barriers to project deployment in these communities;

(B) A description of the share of community solar projects by administrator type that contribute to each utility's threshold under subsection (13)(a) of this section; and

(C) A description of any barriers to participation by non-profits and local housing authorities in the incentive program established under this section and under RCW 82.16.170;

(v) The total dollar amount of incentive payments that have been made to participants in the incentive program established under this section to date; and

(vi) The total number of megawatts of solar photovoltaic capacity installed to date by participants in the incentive program established under this section.

(b) By December 31, 2019, the legislature must review the report submitted under (a) of this subsection and determine whether the credit limit established under RCW 82.16.130(2) should be increased to two percent of a light and power business' taxable power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or two hun-

dred fifty thousand dollars, whichever is greater, in order to achieve the legislative intent under section 1, chapter 36, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 36 § 6.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.170 Community solar programs—Organization and administration—Certification for incentive payments. (Expires June 30, 2038.) (1) The purpose of community solar programs is to facilitate broad, equitable community investment in and access to solar power. Beginning July 1, 2017, a community solar administrator may organize and administer a community solar project as provided in this section.

(2) In order to receive certification for the incentive payment provided under RCW 82.16.165(1) by June 30, 2021, a community solar project must have a direct current nameplate capacity that is no more than one thousand kilowatts and must have at least ten participants or at least one participant for every ten kilowatts of direct current nameplate capacity, whichever is greater. A community solar project that has a direct current nameplate capacity greater than five hundred kilowatts must be subject to a standard interconnection agreement with the utility serving the situs of the community solar project. Except for community solar projects authorized under subsection (10) of this section, each participant must be a customer of the utility providing service at the situs of the community solar project.

(3) In order to receive certification for the incentive payment provided under RCW 82.16.183 beginning July 1, 2022, a community solar project must meet the following requirements:

(a) The administrator of the community solar project must be a utility, nonprofit, or tribal housing authority that administers a community solar project on tribal lands or lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members, or other local housing authority. The administrator of the community solar project must apply for precertification under RCW 82.16.183 on or after July 1, 2022;

(b) The community solar project must have a direct current nameplate capacity that is greater than 12 kilowatts but no greater than 199 kilowatts, and must have at least two subscribers or one low-income service provider subscriber;

(c) The administrator of the community solar project must provide a verified list of qualifying subscribers;

(d) Verification that an individual household subscriber meets the definition of low-income must be provided to the administrator by an entity with authority to maintain the confidentiality of the income status of the low-income subscriber. If the providing entity incurs costs to verify a subscriber's income status, the administrator must provide reimbursement of those costs;

(e) Except for community solar projects authorized under subsection (10) of this section, each subscriber must be a customer of the utility providing service at the site of the community solar project;

(f) In the event that a low-income subscriber in a community solar project certified under RCW 82.16.183 moves within 120 months of system certification from the household premises of the subscriber's current subscription to another,

the subscriber may continue the subscription, provided that the new household premises is served by the utility providing service at the site of the community solar project. In the event that a subscriber is no longer served by that utility or the subscriber terminates participation in a community solar project certified under RCW 82.16.183, the certification follows the system and participation must be transferred by the administrator to a new qualifying subscriber as specified in RCW 82.16.183;

(g) The administrator must include in the application for precertification a project prospectus that demonstrates how the administrator intends to provide direct benefits to qualifying subscribers for the duration of their subscription to the community solar project; and

(h) The length of the subscription term for low-income subscribers must be the same length as for other subscribers, if applicable.

(4) The administrator of a community solar project must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.

(5) The administrator of a community solar project may establish a reasonable fee to cover costs incurred in organizing and administering the community solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the portion of the incentive payment that will be used for this purpose.

(6) The administrator of a community solar project must maintain and update annually through June 30, 2030, the following information for each project it operates or administers:

- (a) Ownership information;
- (b) Contact information for technical management questions;
- (c) Business address;
- (d) Project design details, including project location, output capacity, equipment list, and interconnection information; and
- (e) Subscription information, including rates, fees, terms, and conditions.

(7) The administrator of a community solar project must provide the information required in subsection (6) of this section to the Washington State University extension energy program at the time it submits the applications allowed under RCW 82.16.165(1) and 82.16.183.

(8) The administrator of a community solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project, including but not limited to the following:

- (a) Plain language disclosure of the terms under which the project participant's share of any incentive payment will be calculated by the Washington State University extension energy program;
- (b) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;
- (c) All recurring and nonrecurring charges;
- (d) A description of the billing and payment procedures;
- (e) A description of any compensation to be paid in the event of project underperformance;

(f) Current production projections and a description of the methodology used to develop the projections;

(g) Contact information for questions and complaints; and

(h) Any other terms and conditions of the services provided by the administrator.

(9) A utility may not adopt rates, terms, conditions, or standards that unduly or unreasonably discriminate between utility-administered community solar projects and those administered by another entity.

(10) A public utility district that is engaged in distributing electricity to more than one retail electric customer in the state and a joint operating agency organized under chapter 43.52 RCW on or before January 1, 2017, may enter into an agreement with each other to construct and own a community solar project that is located on property owned by a joint operating agency or on property that receives electric service from a participating public utility district. Each participant of a community solar project under this subsection must be a customer of at least one of the public utility districts that is a party to the agreement with a joint operating agency to construct and own a community solar project.

(11) The Washington utilities and transportation commission must publish, without disclosing proprietary information, a list of the following:

(a) Entities other than utilities, including affiliates or subsidiaries of utilities, that organize and administer community solar projects; and

(b) Community solar projects and related programs and services offered by investor-owned utilities.

(12) If a consumer-owned utility opts to provide a community solar program or contracts with a nonutility administrator to offer a community solar program, the governing body of the consumer-owned utility must publish, without disclosing proprietary information, a list of the nonutility administrators contracted by the utility as part of its community solar program.

(13) Except for parties engaged in actions and transactions regulated under laws administered by other authorities and exempted under RCW 19.86.170, a violation of this section constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of chapter 36, Laws of 2017 3rd sp. sess. are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(14) Nothing in this section may be construed as intending to preclude persons from investing in or possessing an ownership interest in a community solar project, or from applying for and receiving federal investment tax credits.

(15) This section expires June 30, 2038. [2022 c 212 § 6; 2017 3rd sp.s. c 36 § 7.]

Findings—Intent—Tax preference performance statement exemption—Effective date—2022 c 212: See notes following RCW 82.16.183.

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.175 Shared commercial solar projects—Organization and administration. (1) The purpose of a shared commercial solar project is to provide an entry point in solar

utilization by large load customers in a manner that achieves economies of scale and maximizes system performance without limitations posed by on-site systems where sun exposure is not optimal or structural and other site deficiencies preclude solar development.

(2) Beginning July 1, 2017, a utility may, at its discretion, organize and administer a shared commercial solar project as provided in this section.

(3) A shared commercial solar project must have a direct current nameplate capacity greater than one megawatt and no more than five megawatts and must have at least five participants. To receive incentive payments under RCW 82.16.165, each participant must be a customer of the utility providing service at the situs of the shared commercial solar project and must be located in the state of Washington.

(4) The administrator of a shared commercial solar project must administer the project in a transparent manner.

(5) The administrator of a shared commercial solar project may establish a reasonable fee to cover costs incurred in organizing and administering the shared commercial solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the fees charged by the administrator as authorized under this subsection.

(6) The administrator of a shared commercial solar project must submit to the Washington State University extension energy program at the time it submits an application allowed under RCW 82.16.165(1) project design details, including project location, output capacity, equipment list, and interconnection information.

(7) The administrator of a shared commercial solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project, including but not limited to the following:

(a) All recurring and nonrecurring charges;

(b) A description of the billing and payment procedures;

(c) Production projections and a description of the methodology used to develop the projections;

(d) An estimate of the project participant's share of any incentive payment over the life of the contract;

(e) A description of contract terms that relate to project underperformance;

(f) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;

(g) Contact information for questions and complaints; and

(h) Any other terms and conditions of the services provided by the administrator.

(8) If a utility opts to contract with a nonutility administrator to offer a shared commercial solar program, the utility must publish, without disclosing proprietary information, the name of the nonutility administrator contracted by the utility as part of its shared commercial solar program.

(9) In order to meet the intent of chapter 36, Laws of 2017 3rd sp. sess. of promoting a sustainable, local renewable energy industry, the legislature prefers award of the majority of the installation of shared commercial solar projects be given to contractors based in Washington state. In the event the majority of the installation of a shared commercial solar

project is awarded to out-of-state contractors, the administrator must submit to the Washington State University extension energy program the reasons for using out-of-state contractors, the percentage of installation work performed by out-of-state contractors, and a cost comparison of the installation services performed by out-of-state contractors against the same services performed by Washington-based contractors. [2017 3rd sp.s. c 36 § 8.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.180 Solar modules—Sale and installation tax incentives. (1) Any person who sells a solar module to a customer-owner, or who receives compensation from a customer-owner in exchange for installing a solar module for use in a residential-scale system or commercial-scale system in Washington must provide to the customer-owner current information regarding the tax incentives available to the customer-owner under Washington law, including the scheduled expiration date of any tax incentives and the maximum period of time during which the customer-owner may benefit from any tax incentives, based on the law as it existed on the date of sale or installation of the solar module.

(2) The definitions in RCW 82.16.160 apply to this section.

(3) For the purposes of this section, "solar module" has the same meaning as provided in RCW 82.16.110.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition. Violations of this section may be enforced by the attorney general under the consumer protection act, chapter 19.86 RCW. [2017 3rd sp.s. c 36 § 9.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.182 Community solar projects—Definitions. (Expires June 30, 2038.) (1) The definitions in this section apply throughout this section and RCW 82.16.183 unless the context clearly requires otherwise.

(a)(i) "Administrator" means the utility, nonprofit, tribal housing authority as provided in (a)(ii) of this subsection, or other local housing authority that organizes and administers a community solar project as provided in RCW 82.16.183 and 82.16.170.

(ii) A tribal housing authority may only administer a community solar project on tribal lands or lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members.

(b) "Certification" means the authorization issued by the Washington State University extension energy program establishing a community solar project administrator's eligibility to receive a low-income community solar incentive payment from the electric utility serving the site of the community solar project, on behalf of, and for the purpose of providing direct benefits to, its low-income subscribers, low-

income service provider subscribers, and tribal and public agency subscribers.

(c)(i) "Community solar project" means a solar energy system that:

(A) Has a direct current nameplate capacity that is greater than 12 kilowatts but no greater than 199 kilowatts;

(B) Has, at minimum, either two subscribers or one low-income service provider subscriber; and

(C) Meets the applicable eligibility requirements in RCW 82.16.183.

(ii) A community solar project may include a storage system with a solar energy system.

(d) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(e) "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(f) "Energy assistance" has the same meaning as provided in RCW 19.405.020.

(g) "Energy burden" has the same meaning as provided in RCW 19.405.020.

(h) "Governing body" has the same meaning as provided in RCW 19.280.020.

(i)(i) "Installed cost" includes only the renewable energy system components and fees that are integral and necessary for the generation and storage of electricity. Components and fees include:

(A) Solar modules and inverters;

(B) Battery systems;

(C) Balance of system, such as racking, wiring, switch gears, and meter bases;

(D) Nonhardware costs incurred up to the date of the final electrical inspection, such as fees associated with engineering, permitting, interconnection, and application;

(E) Labor; and

(F) Sales tax.

(ii) "Installed cost" does not include structures and fixtures that are not integral and necessary to the generation or storage of electricity, such as carports and roofing.

(j) "Interconnection customer" means the person, corporation, partnership, government agency, or other entity that proposes to interconnect, or has executed an interconnection agreement, with the electric utility.

(k) "Low-income" has the same meaning as provided in RCW 19.405.020.

(l) "Low-income service provider" includes, but is not limited to, a local community action agency or local community service agency designated by the department of commerce under chapter 43.63A RCW, local housing authority, tribal housing authority, low-income tribal housing program, affordable housing provider, food bank, or other nonprofit organization that provides services to low-income households as part of their core mission.

(m) "Multifamily residential building" means a building containing more than two sleeping units or dwelling units where occupants are primarily permanent in nature.

(n) "Person" means an individual, firm, partnership, corporation, company, association, agency, or any other legal entity.

(o) "Preferred sites" means rooftops, structures, existing impervious surfaces, landfills, brownfields, previously devel-

oped sites, irrigation canals and ponds, stormwater collection ponds, industrial areas, dual-use solar projects that ensure ongoing agricultural operations, and other sites that do not displace critical habitat or productive farmland as defined by state and county planning processes.

(p) "Public agency" means any political subdivision of the state including, but not limited to, municipal and county governments, special purpose districts, and local housing authorities, but does not include state agencies.

(q)(i) Except as otherwise provided in (q)(ii) of this subsection, "qualifying subscriber" means a low-income subscriber, low-income service provider subscriber, tribal agency subscriber, or public agency subscriber.

(ii) For tribal agency subscribers and public agency subscribers, only the portion of their subscription to a community solar project that is demonstrated to benefit low-income beneficiaries, including low-income service providers and services provided to low-income citizens or households, is to be considered a qualifying subscriber.

(r) "Retail electric customer" has the same meaning as in RCW 80.60.010.

(s) "Subscriber" means a retail electric customer of an electric utility who owns or is the beneficiary of one or more units of a community solar project directly interconnected with that same utility.

(t) "Subscription" means an agreement between a subscriber and the administrator of a community solar project.

(2) This section expires June 30, 2038. [2022 c 212 § 4.]

Findings—Intent—Tax preference performance statement exemption—Effective date—2022 c 212: See notes following RCW 82.16.183.

82.16.183 Community solar projects. (Expires June 30, 2038.) (1) Beginning July 1, 2022, through June 30, 2033, an administrator of a community solar project meeting the eligibility requirements described in this section and RCW 82.16.170(3) may submit an application to the Washington State University extension energy program to receive a precertification for a community solar project. Projects with precertification applications approved by the Washington State University extension energy program have two years to complete their projects and apply for certification. Projects that have not completed certification within two years may apply to the Washington State University extension energy program for an extension of their precertification status for an additional 180 days if they can demonstrate significant progress during the time they were in precertification status. By certifying qualified projects pursuant to the requirements of this section and RCW 82.16.170(3), the Washington State University extension energy program authorizes the utility serving the site of a community solar project in the state of Washington to remit a one-time low-income community solar incentive payment to the community solar project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

(2) A one-time low-income community solar incentive payment remitted to a community solar project administrator for a project certified under this section equals the sum of the following:

(a) An amount, not to exceed \$20,000 per community solar project, equal to the community solar project's adminis-

trative costs related to the administrative start-up of the project for qualifying subscribers; and

(b) An amount that does not exceed 100 percent of the proportional cost of the installed cost of the share of the community solar project that provides direct benefits to qualifying subscribers, taking into account any federal tax credits or other federal or nonfederal grants or incentives that the program is benefiting from.

(3) No new certification may be issued under this section for a community solar project that was certified under RCW 82.16.120 or 82.16.165, or for a community solar project served by a utility that has elected not to participate in the incentive program provided in this section.

(4) Community solar projects that are under precertification status under RCW 82.16.165 as of June 30, 2020, may not apply for precertification of that same project for the one-time low-income community solar incentive payment provided in this section.

(5)(a) In addition to the one-time low-income community solar incentive payment under subsection (2) of this section, a participating utility must also provide the following compensation for the generation of electricity from the certified project:

(i) For a community solar project that has an alternating current nameplate capacity no greater than 100 kilowatts, and that is connected behind the electric service meter, compensation must be determined in accordance with RCW 80.60.020 and provided to the retail electric customer receiving service at the situs of the meter.

(ii) For all other community solar projects for which the administrator is not a utility, compensation paid to the interconnection customer must be determined in a written agreement between the interconnection customer and the utility.

(iii) For all other community solar projects for which the administrator is a utility, compensation must be provided directly to subscribers in accordance with subsection (8)(a)(i) of this section.

(iv)(A) When the administrator of a community solar project receives compensation for the generation of electricity from a participating utility, interconnection customer, or from the retail electric customer that is the host for the community solar project, the administrator must provide all of that compensation as a direct benefit to the project subscribers, except as described in (iv)(B) of this subsection.

(B) An administrator may deduct ongoing administrative and maintenance costs from compensation they provide to subscribers from power generation, provided those costs are identified in the subscription agreement or justified to the Washington State University extension energy program. The Washington State University extension energy program shall review any such administrative and maintenance costs justifications for reasonableness and approve, reject, or negotiate changes to the proposal. An administrator may request a change in the deduction for administrative and maintenance costs to the Washington State University extension energy program only if the subscription agreement includes language notifying the subscriber that administrative and maintenance fees are subject to change.

(b) For 10 years after certification, and by March 1st of each year following certification, the administrator must provide the Washington State University extension energy pro-

gram with signed statements of the following for the preceding year:

- (i) The energy production for the period for which compensation is to be provided;
 - (ii) Each subscriber's units of the project;
 - (iii) The amount disbursed to each subscriber for the period; and
 - (iv) The date and amount disbursed to each subscriber.
- (6) A utility's participation in the incentive program provided in this section is voluntary.

(a) The utility may terminate its voluntary participation in the program by providing notice in writing to the Washington State University extension energy program to cease accepting new applications for precertification for community solar projects that would be served by that utility. Such notice of termination of participation is effective after 15 days, at which point the Washington State University extension energy program may not accept new applications for precertification for community solar projects that would be served by that utility.

(b) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University extension energy program must report on its website that community solar project customers of that utility are no longer eligible to receive new certifications under the program.

(c) A utility that has terminated participation in the program may resume participation upon filing a notice with the Washington State University extension energy program.

(7)(a) The Washington State University extension energy program may issue certifications authorizing incentive payments under this section in a total statewide amount not to exceed \$100,000,000, and subject to the following biennial dollar limits:

- (i) For fiscal year 2023, \$300,000; and
- (ii) For each biennium beginning on or after July 1, 2023, \$25,000,000.

(b) The Washington State University extension energy program must attempt to equitably distribute incentive funds throughout the state. Considerations for equitable fund distribution, based on precertification applications received from administrators served by utilities voluntarily participating in the program, may include measures to reserve or allocate available funds based on the proportion of public utility taxes collected, the proportion of the state's low-income customers served by each utility based on low-income home energy assistance program data at the department of commerce, measures to achieve an equitable geographic distribution of community solar installations and a diversity of administrative models for community solar projects, and the amount of energy burden reduction for qualifying subscribers relative to the project's cost. If an equitable distribution of funds is not feasible due to a lack of precertification applications, the Washington State University extension energy program may allocate funds based on (a) of this subsection on a first-come, first-served basis.

(c) The Washington State University extension energy program must ensure that at least \$2,000,000 of the statewide total for the entire program is used to support nonprofit organizations' innovative approaches to allocating benefits to subscribers, defining and valuing benefits to be provided to sub-

scribers or other aspects of the subscriber, administrator, system host, and utility relationship.

(d) The Washington State University extension energy program must also ensure that at least \$2,000,000 of the statewide total for the entire program is available to tribal governments and their designated subdivisions and agencies.

(e) The Washington State University extension energy program shall regularly publish and update guidelines for how it manages the allocation of available funding, based on the evaluation of applications and the factors specified in (b) of this subsection.

(f) Beginning in fiscal year 2026, the Washington State University extension energy program may waive the requirements in (c) or (d) of this subsection if it fails to receive applications that meet the criteria of (c) or (d) of this subsection sufficient to result in the full allocation of incentives.

(8)(a) Prior to obtaining certification under this section, the administrator of a community solar project must apply for precertification against the funds available for incentive payments under subsection (7) of this section in order to be guaranteed an incentive payment under this section. The application for precertification must include, at a minimum:

(i) A demonstration of how the project will deliver continuing direct benefits to low-income subscribers. A direct benefit can include credit for the power generation for the community solar project or other mechanisms that lower the energy burden of a low-income subscriber; and

(ii) Any other information the Washington State University extension energy program deems necessary in determining eligibility for precertification.

(b) The administrator of a community solar project must complete an application for certification in accordance with the requirements of subsection (9) of this section within less than two years of being approved for precertification status. The administrator must submit a project update to the Washington State University extension energy program after one year in precertification status.

(9) To obtain certification for the one-time community solar incentive payment provided under this section, a project administrator must submit to the Washington State University extension energy program an application, including, at a minimum:

(a) A signed statement that the applicant has not previously received a notice of eligibility from the department under RCW 82.16.120 or the Washington State University extension energy program under RCW 82.16.165 entitling the applicant to receive annual incentive payments for electricity generated by the community solar project at the same meter location;

(b) A signed statement of the costs paid by the administrator related to administering the project for qualifying subscribers;

(c) A signed statement of the total project costs, including the proportional cost of the share of the community solar project that provides direct benefits to qualifying subscribers;

(d) A signed statement describing the amount of the upfront incentive and the timing, method, and distribution of estimated benefits to qualifying subscribers. The statement must describe any estimated energy burden reduction associated with the direct benefits;

(e) Available system operation data, such as global positioning system coordinates, tilt, estimated shading, and azimuth;

(f) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels or administering the program;

(g)(i) Except as provided in (g)(ii) of this subsection (9), the date that the community solar project received its final electrical inspection from the applicable local jurisdiction, as well as a copy of the permit or, if the permit is available online, the permit number or other documentation deemed acceptable by the Washington State University extension energy program;

(ii) The Washington State University extension energy program may waive the requirement in (g)(i) of this subsection (9), accepting an application and granting provisional certification prior to proof of final electrical inspection. Provisional certification expires 180 days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction or the Washington State University extension energy program extends certification, for a term or terms of 30 days, due to extenuating circumstances;

(h) Confirmation of the number of qualifying subscribers;

(i) A copy of the executed agreement describing how benefits will be determined and distributed from the retail electric customer or interconnection customer to the administrator if the administrator and the retail electric customer or interconnection customer are not the same. The Washington State University extension energy program must review the executed agreement to determine that benefits are being fairly determined and that there is an adequate plan for distributing the benefits; and

(j) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels or administering the program.

(10) No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the Washington State University extension energy program.

(11)(a) The Washington State University extension energy program must review each project for which an application for certification is submitted in accordance with subsection (8) of this section for reasonable cost and financial structure, with a targeted installed cost for the solar energy system of \$2 per watt direct current for systems over 200 kilowatts and \$2.25 per watt direct current for systems equal to or under 200 kilowatts. For solar energy systems that include storage systems, the targeted installed cost of the storage system is \$600 per kilowatt-hour of storage capacity.

(b) The Washington State University extension energy program may approve an application for a project that costs more or less than the targeted installed costs under (a) of this subsection based on a review of the project, documents submitted by the project applicant, and available data. Project cost evaluations may include costs associated with energy storage systems and electrical system improvements to permit grid-independent operation. Applicants may petition the

(2022 Ed.)

Washington State University extension energy program to approve a higher cost per watt or per kilowatt-hour for unusual circumstances.

(c) The Washington State University extension energy program may review the cost per watt target under (a) of this subsection prior to each fiscal biennium and is authorized to determine a new cost per watt target.

(12)(a) Within 30 days of receipt of an application for certification, the Washington State University extension energy program must notify the applicant and, except when a utility is the applicant, the utility serving the site of the community solar project, by mail or electronically, whether certification has been granted. The certification notice must state the total dollar amount of the low-income community solar incentive payment for which the applicant is eligible under this section.

(b) Within 60 days of receipt of a notification under (a) of this subsection, the utility serving the site of the community solar project must remit the applicable one-time low-income community solar incentive payment to the project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

(13)(a) Certification follows the community solar project if the following conditions are met using procedures established by the Washington State University extension energy program:

(i) The community solar project is transferred to a new owner who notifies the Washington State University extension energy program of the transfer;

(ii) The new owner provides an executed interconnection agreement with the utility serving the site of the community solar project; and

(iii) The new owner agrees to provide equivalent ongoing benefits to qualifying subscribers as the current owner.

(b) In the event that a qualifying subscriber terminates their participation in a community solar project during the first 120 months after project certification, the system certification follows the project and participation must be transferred to a new qualifying subscriber.

(14) Beginning January 1, 2023, the Washington State University extension energy program must post on its website and update at least monthly a report, by utility, of:

(a) The number of certifications issued for community solar projects; and

(b) An estimate of the amount of credit that has not yet been allocated for low-income community solar incentive payments and that remains available for new community solar project certifications in the state.

(15) Persons receiving incentive payments under this section must keep and preserve, for a period of five years for the duration of the consumer contract, suitable records as may be necessary to determine the amount of incentive payments applied for and received.

(16) The nonpower attributes of the community solar project must be retired on behalf of the subscribers unless, in the case of a utility-owned community solar project, a contract between the subscriber that benefits the subscriber clearly states that the attributes will be retained and retired by the utility.

(17) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online by the Washington State University extension energy program.

(18) The Washington State University extension energy program may, through a public process, develop program requirements, policies, and processes necessary for the administration or implementation of this section.

(19) Applications, certifications, requests for incentive payments under this section, and the information contained therein are not deemed tax information under RCW 82.32.330 and are subject to disclosure.

(20) No certification may be issued under this section by the Washington State University extension energy program for a community solar project after June 30, 2035.

(21) Community solar projects certified under this section must be sited on preferred sites to protect natural and working lands as determined by the Washington State University extension energy program.

(22) This section expires June 30, 2038. [2022 c 212 § 5.]

Findings—Intent—2022 c 212: "The legislature finds and declares that stimulating local investment in community solar projects continues to be an important part of a state energy strategy by helping to increase energy independence from fossil fuels, promote economic development, hedge against the effects of climate change, and attain environmental benefits. The legislature finds that although previous community solar programs were successful in stimulating these benefits, the programs failed to provide an adequate framework for low-income participation and long-term market certainty. The legislature finds that the vast majority of Washingtonians still do not have access to the benefits of solar energy. The legislature intends to stimulate the deployment of community solar projects for the benefit of all Washingtonians by funding the renewable energy production incentive program for community solar projects and by creating opportunities for broader participation, especially by low-income households and low-income service providers. As of December 2021, the state is 10.3 megawatts short of the 115 megawatts of solar photovoltaic capacity established as a goal under RCW 82.16.155. The legislature therefore intends to provide an incentive sufficient to promote installation of community solar projects through June 30, 2033, at which point the legislature expects to review the effectiveness of enhancing access to community solar projects." [2022 c 212 § 1.]

Tax preference performance statement exemption—2022 c 212: "RCW 82.32.808 does not apply to this act." [2022 c 212 § 7.]

Effective date—2022 c 212: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2022]." [2022 c 212 § 8.]

82.16.184 Credit—Community solar projects. (Expires June 30, 2038.) (1) Beginning July 1, 2022, a light and power business is allowed a credit against taxes due under this chapter in an amount equal to incentive payments made in any fiscal year under RCW 82.16.183.

(2) The credits must be taken in a form and manner as required by the department. The credit taken under this section for the fiscal year may not exceed 1.5 percent of the business's taxable Washington power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or \$250,000, whichever is greater, for incentive payments made for community solar projects that submit an application for precertification under RCW 82.16.183 on or after July 1, 2022, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2033.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of credits.

(4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.183, the amount of tax against which credit was claimed for the excess payments is immediately due and payable. The department may deduct amounts from future credits claimed by the business.

(a) Except as provided in (b) of this subsection, the department must assess interest but not penalties on the taxes against which the credit was claimed. Interest may be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under RCW 82.16.183, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits for incentive payments made under RCW 82.16.183 expires June 30, 2036. Credits may not be claimed under this section after June 30, 2037.

(7) This section expires June 30, 2038. [2022 c 212 § 3.]

Findings—Intent—Tax preference performance statement exemption—Effective date—2022 c 212: See notes following RCW 82.16.183.

82.16.185 Credit—State energy performance standard—Early adoption incentive program. (Expires June 30, 2032.) (1) Subject to the requirements of this section, a light and power business or a gas distribution business is allowed a credit against taxes due under this chapter in an amount equal to:

(a) Incentive payments made in any calendar year under RCW 19.27A.220; and

(b) Documented administrative cost not to exceed eight percent of the incentive payments.

(2) The credit must be taken in a form and manner as required by the department.

(3) Credit must be claimed against taxes due under this chapter for the incentive payments made and administrative expenses incurred. Credit earned in one calendar year may not be carried backward but may be claimed against taxes due under this chapter during the same calendar year and for the following two calendar years. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of a credit.

(4)(a) Except as provided in (c) of this subsection, any business that has claimed credit in excess of the amount of credit the business earned under subsection (1) of this section must repay the amount of tax against which the excess credit was claimed.

(b) The department must assess interest on the taxes due under this subsection. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed

are repaid. The department must provide written notice of the amount due under this subsection and that the amount due must be paid within thirty days of the date of the notice. The department may not impose penalties as provided in chapter 82.32 RCW on taxes due under this subsection unless the amount due is not paid in full by the due date in the notice.

(c) A business is not liable for excess credits claimed in reliance on amounts reported to the business by the department of commerce as due and payable as provided under RCW 19.27A.220, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section and the identity of a business that takes the credit is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) This section expires June 30, 2032. [2019 c 285 § 8.]

Tax preference performance statement—2019 c 285 § 8: "This section is the tax preference performance statement for the tax preference contained in section 8, chapter 285, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce implementation of building energy efficiency measures, as indicated in RCW 19.27A.220.

(2) It is the legislature's specific public policy objective to increase energy efficiency and the use of renewable fuels that reduce the amount of greenhouse gas emissions in Washington. It is the legislature's intent to provide a credit against the taxes owing by utilities under chapter 82.16 RCW for the incentives provided for the implementation by eligible building owners of energy efficiency and renewable energy measures.

(3) If a review finds that measurable energy savings have increased in covered commercial buildings for which building owners are receiving an incentive payment from a qualifying utility, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to the number of building owners receiving an incentive payment from qualifying utilities taking the public utility tax preference under RCW 82.16.185, the amount of the incentive payment, and the energy use intensity reduction of the buildings as a result of the incentive program, as reported by the department of commerce." [2019 c 285 § 7.]

82.16.305 Exemptions—Joint municipal utility services authorities. This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.106 RCW and any of its members. [2011 c 258 § 14.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

82.16.310 Exemptions—Sales by a gas distribution business. (1) The provisions of this chapter do not apply to sales by a gas distribution business of:

(a) Compressed natural gas or liquefied natural gas, where the compressed natural gas or liquefied natural gas is to be sold or used as transportation fuel;

(b) Natural gas from which the buyer manufactures compressed natural gas or liquefied natural gas, where the compressed natural gas or liquefied natural gas is to be sold or used as transportation fuel; or

(c) Renewable natural gas.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2022 Ed.)

(3) For the purposes of this section, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(4) For the purpose of this section, "renewable natural gas" has the same meaning as provided in RCW 54.04.190. [2019 c 202 § 1; 2014 c 216 § 301.]

Automatic expiration date and tax preference performance statement exemption—2019 c 202: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 202 § 4.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

82.16.315 Exemptions—Sales of electricity or gas to silicon smelters. (Contingent expiration date.) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual tax performance report required by RCW 82.32.534:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual tax performance report; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual tax performance report.

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

(a) "Silicon smelter" means a manufacturing facility that processes silica into solar grade silicon.

(b) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductor. [2017 3rd sp.s. c 37 § 703; 2017 3rd sp.s. c 37 § 702.]

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: "(1) The legislature finds that an opportunity exists through a smelting process to produce silicon metal, which can be used in the production of photovoltaic cells for solar energy systems. The legislature further finds that energy is one of the largest costs for the smelting process and therefore ensuring the lowest possible energy cost is one of the key drivers of business location decisions. The legislature further finds that the silicon smelting process creates an opportunity to reduce carbon dioxide emissions used in the manufacturing of materials for solar energy systems. The legislature further finds that if the silicon smelting process occurs in Washington, the carbon footprint of the end product solar energy systems is likely to be less than if the silicon smelting occurred elsewhere. It is the legislature's specific public policy objective to promote the manufacturing of

silicon for use in production of photovoltaic cells for solar energy systems. The legislature intends to provide a public utility tax credit, a business and occupation tax credit, and an exemption from the brokered natural gas use tax for silicon smelters thereby promoting the manufacture of silicon for solar energy systems, thereby reducing the cost of energy in the smelting process, and thereby stimulating economic growth and job creation in Washington's rural counties, as defined in RCW 82.14.370(5).

(2)(a) This section is the tax preference performance statement for the tax preferences contained in this part. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess. as ones intended to create jobs, as indicated in RCW 82.32.808(2)(c) and to provide tax relief for certain businesses or individuals as indicated in RCW 82.32.808(2)(e).

(c) To measure the effectiveness of this part in achieving the specific public policy objective described in (b) of this subsection, the joint legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of businesses who are claiming the tax preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess., and the total relief provided to them, as reported to the department of revenue on an annual basis;

(ii) The volume of solar grade silicon made in Washington compared to jobs prior to October 19, 2017;

(iii) Specifically assess the number of employment positions for each silicon smelter claiming or receiving the benefit of the preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess., using data provided by the department of revenue;

(iv) Estimate the cost per job based on the amount of tax preferences taken by each silicon smelter;

(v) Estimate the number of solar energy systems, and the power output of those systems, that were likely produced using Washington state solar grade silicon based on the volume of silicon smelted in Washington at each silicon smelter utilizing the incentive; and

(vi) Determine, utilizing the finalized 2015 county wage data from the census of employment and wages as reported by the employment security department:

(A) The number of jobs at each eligible silicon smelter paying above the county average annual wage in the county in which the facility is located; and

(B) The proportion of jobs paying above the county average annual wage represented by the jobs provided by each eligible silicon smelter utilizing the incentive.

(d) In addition to the data sources described under this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (c) of this subsection." [2017 3rd sp.s. c 37 § 701.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

82.16.320 Exemptions—Qualifying grants—National emergency or state of emergency. (1) This chapter does not apply to any person with respect to the value proceeding or accruing from a qualifying grant received on or after February 29, 2020.

(2) For purposes of this section, "qualifying grant" means an amount received, or relief from debt or other legal obligation received, that:

(a) Is received under a government-funded program either directly from a government entity, or through a non-governmental third-party entity authorized by a government entity to distribute the program funds, or, in the case of relief from debt or other legal obligation, is received from a private entity under circumstances where, in exchange for providing the relief, the private entity receives some form of direct financial benefit from a government entity;

(b) Is provided to address the impacts of conditions giving rise to an official proclamation of a national emergency by the president of the United States or an official proclamation of a state of emergency by the governor of this state; and

(c) Is not an amount received:

(i) Under a contract, including a sole source contract, for the acquisition of specific goods or services, or both, by purchase, lease, or barter, that was solicited and established in accordance with procurement laws or regulations; or

(ii) When the amount received or accrued during a tax reporting period is determined based on the amount of business actually conducted during that tax reporting period, such as the quantity, volume, or weight of products sold or transported, or the number of passengers transported. For purposes of this subsection (2)(c)(ii), "products" has the same meaning as in RCW 82.32.023 and includes electrical energy, water, natural gas, manufactured gas, and transporting persons or property.

(3) For purposes of a grant awarded to address the impacts of conditions giving rise to a national emergency or state of emergency, the exemption under this section applies only if the legislation authorizing the grant or the associated legislative history, public records created by the grantor, or the terms of the underlying grant agreement between the grantor and grantee, clearly indicate that the grant was established to address the impacts of conditions giving rise to a national emergency or state of emergency.

(4) For purposes of this section, "government" means any national, tribal, state, or local government. [2021 c 4 § 2.]

Retroactive application—Automatic expiration date and tax preference performance statement exemption—Effective date—2021 c 4: See notes following RCW 82.04.767.

82.16.325 Exemptions—Services for farms. (1) This chapter shall not apply to any person hauling agricultural products or farm machinery or equipment for a farmer or for a person performing custom farming services, when the person providing the hauling and the farmer or person performing custom farming services are related.

(2) The exemption provided by this section shall not apply to the hauling of any substances or articles manufactured from agricultural products. For the purposes of this subsection, "manufactured" has the same meaning as "to manufacture" in RCW 82.04.120.

(3) The definitions in RCW 82.04.213 and 82.04.758 apply to this section. [2022 c 119 § 2.]

Tax preference performance statement—Tax preference automatic expiration date exemption—Tax preference metrics exemption—Effective date—2022 c 119: See notes following RCW 82.04.758.

Chapter 82.18 RCW

SOLID WASTE COLLECTION TAX

Sections

82.18.010	Definitions.
82.18.020	Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040.
82.18.025	Tax preferences—Expiration dates.
82.18.030	Collection of tax.
82.18.040	Collection of tax—Payment to state.
82.18.050	Federal government exempt from tax.
82.18.060	No multiple taxation of single transaction.

82.18.070 Applicability of general administrative provisions.
82.18.080 Enforcement.

Solid waste management—Reduction and recycling: Chapter 70A.205 RCW.

82.18.010 Definitions. For purposes of this chapter:

(1) "Solid waste collection business" means every person who receives solid waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(2) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(3) "Solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(4) "Taxpayer" means that person upon whom the solid waste collection tax is imposed. [1989 c 431 § 78; 1986 c 282 § 6.]

82.18.020 Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040. There is imposed on each person using the solid waste services of a solid waste collection business a solid waste collection tax equal to three and six-tenths percent of the consideration charged for the services. [1989 c 431 § 79; 1986 c 282 § 7.]

82.18.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1709.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.18.030 Collection of tax. The person collecting the charges made for using the solid waste collection business shall collect the tax imposed in this chapter. If any person charged with collecting the tax fails to bill the taxpayer for the tax, or in the alternative has not notified the taxpayer in writing of the imposition of the tax, or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax. [1989 c 431 § 84; 1986 c 282 § 8.]

82.18.040 Collection of tax—Payment to state. (1) Taxes collected under this chapter must be held in trust until paid to the state. Except as otherwise provided in this subsection (1), taxes received by the state must be deposited in the public works assistance account created in RCW 43.155.050. For the period beginning July 1, 2011, and ending June 30, 2015, taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures. For fiscal years 2016, 2017, and 2018, one-half of the taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures and the remainder deposited in the education legacy trust account created in RCW 83.100.230. For fiscal years 2019 through 2023, taxes received by the state under this chapter must be

(2022 Ed.)

deposited in the education legacy trust account created in RCW 83.100.230. Any person collecting the tax who appropriates or converts the tax collected is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

(2) The tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

(3) The tax is due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted must be applied first to payment of the solid waste collection tax and this tax has priority over all other claims to the amount remitted. [2017 3rd sp.s. c 10 § 15; 2013 2nd sp.s. c 9 § 8; 2012 2nd sp.s. c 5 § 2; 2011 1st sp.s. c 48 § 7034; 2000 c 103 § 11; 1989 c 431 § 85; 1986 c 282 § 9.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2012 2nd sp.s. c 5 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 2nd sp.s. c 5 § 13.]

Additional notes found at www.leg.wa.gov

82.18.050 Federal government exempt from tax. The solid waste collection taxes imposed in this chapter shall not apply to any agency, division, or branch of the federal government or to services rendered under a contract therewith. [1989 c 431 § 86; 1986 c 282 § 10.]

82.18.060 No multiple taxation of single transaction. To prevent pyramiding and multiple taxation of a single transaction, the solid waste collection taxes imposed in this chapter shall not apply to any solid waste collection business using the services of another solid waste collection business for the transfer, storage, processing, or disposal of the waste collected during the transaction.

To be eligible for this exemption, a person first must be certified by the department of revenue as a solid waste collection business. [1989 c 431 § 87; 1986 c 282 § 11.]

82.18.070 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the taxes imposed under this chapter. [1989 c 431 § 88; 1986 c 282 § 12.]

82.18.080 Enforcement. The department of revenue shall have the power to enforce the taxes imposed in this chapter through appropriate rules. [1989 c 431 § 89; 1986 c 282 § 13.]

Chapter 82.19 RCW
LITTER TAX

Sections

82.19.010	Litter tax imposed—Report to the legislature—Time of collection.
82.19.020	Application to certain products.
82.19.030	Rule-making authority tax—Items subject to—Reporting and accounting.
82.19.040	Application of chapters 82.04 and 82.32 RCW—Disposition of revenue.
82.19.050	Exemptions.
82.19.055	Tax preferences—Expiration dates.
82.19.900	Effective date—1992 c 175.

82.19.010 Litter tax imposed—Report to the legislature—Time of collection. (1) In addition to any other taxes, there is hereby levied and there shall be collected by the department of revenue from every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer, a litter tax equal to the value of products listed in RCW 82.19.020, including by-products, manufactured within this state, multiplied by fifteen one-thousandths of one percent in the case of manufacturers, and equal to the gross proceeds of sales of the products listed in RCW 82.19.020 that are sold within this state multiplied by fifteen one-thousandths of one percent in the case of wholesalers and retailers.

(2) The frequency and time of collection of the tax will coincide with the reporting periods by payers of their business and occupation tax. [2008 c 86 § 201; 1998 c 257 § 7; 1992 c 175 § 3; 1971 ex.s. c 307 § 12. Formerly RCW 70.93.120.]

Additional notes found at www.leg.wa.gov

82.19.020 Application to certain products. To accomplish effective litter control within the state and to allocate a portion of the cost of administering this chapter to those industries whose products, including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, the tax imposed in this chapter shall only apply to the value of products or the gross proceeds of sales of products falling into the following categories:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1992 c 175 § 4; 1971 ex.s. c 307 § 13. Formerly RCW 70.93.130.]

82.19.030 Rule-making authority tax—Items subject to—Reporting and accounting. (1) The department of revenue, by rule, may, if such is required, define those items subject to tax under RCW 82.19.020. In making any such defini-

tions, the department of revenue shall be guided by the following standards:

(a) It is the purpose of this chapter to accomplish effective control of litter within this state;

(b) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state.

(2) Instead of requiring each business to separately account for taxable and nontaxable products under this chapter, the department may provide, by rule, that the tax imposed in this chapter be reported and paid based on a percentage of total sales for a particular type of business if the department determines that the percentage reasonably approximates the taxable activity of the particular type of business. [1992 c 175 § 5; 1971 ex.s. c 307 § 14. Formerly RCW 70.93.140.]

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (1) To the extent applicable, all of the definitions of chapter 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter.

(2) Beginning June 30, 2019, taxes collected under this chapter shall be deposited in the waste reduction, recycling, and litter control account under RCW 70A.200.140, except that until June 30, 2020, one million two hundred fifty thousand dollars must be deposited in equal monthly amounts in the state parks renewal and stewardship account, with the remainder deposited in the waste reduction, recycling, and litter control account. [2020 c 357 § 920; 2020 c 20 § 1482; 2019 c 415 § 989; (2018 c 299 § 915 expired June 30, 2019); 2017 3rd sp.s. c 1 § 990; (2017 3rd sp.s. c 1 § 989 expired June 30, 2019); 2015 c 15 § 6; (2015 c 15 § 5 expired June 30, 2019); (2013 2nd sp.s. c 15 § 5 expired June 30, 2019); 2001 c 118 § 6; 1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

Reviser's note: This section was amended by 2020 c 20 § 1482 and by 2020 c 357 § 920, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2020 c 357: See note following RCW 43.79.545.

Effective date—2019 c 415 § 989: "Section 989 of this act takes effect June 30, 2019." [2019 c 415 § 1801.]

Expiration date—2018 c 299 § 915: "Section 916 [915] of this act expires June 30, 2019." [2018 c 299 § 916.]

Effective date—2018 c 299: See note following RCW 43.41.433.

Expiration date—2017 3rd sp.s. c 1 § 989: "Section 989 (RCW 82.19.040) of this act expires June 30, 2019." [2017 3rd sp.s. c 1 § 999.]

Effective date—2017 3rd sp.s. c 1 § 990: "Section 990 (RCW 82.19.040) of this act takes effect June 30, 2019." [2017 3rd sp.s. c 1 § 998.]

Expiration date—2017 3rd sp.s. c 1; 2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 and 6 of this act expire June 30, 2019. Section 7 of this act expires June 30, 2017." [2017 3rd sp.s. c 1 § 992; 2013 2nd sp.s. c 15 § 8.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Expiration date—2015 c 15 §§ 2 and 5: See note following RCW 70A.200.140.

Effective date—2015 c 15 §§ 3 and 6: See note following RCW 70A.200.140.

Effective date—2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 through 7 of this act are necessary for the immediate preservation of the public peace,

health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 2nd sp.s. c 15 § 9.]

82.19.050 Exemptions. The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(4) The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(5)(a) The sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer.

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

(i) "Prepared food" has the same meaning as provided in RCW 82.08.0293.

(ii) "Nonsingle use container" means a receptacle for holding a single individual's food or beverage that is designed to be used more than once. Nonsingle use containers do not include pizza delivery bags and similar insulated containers that do not directly contact the food. Nonsingle use containers do not include plastic or paper plates or other containers that are disposable.

(iii) "Caterer" means a person contracted to prepare food where the final cooking or serving occurs at a location selected by the customer. [2005 c 289 § 1; 2003 c 120 § 1; 2001 1st sp.s. c 9 § 7; (2001 1st sp.s. c 9 § 8 expired July 22, 2001); 2001 c 118 § 7; 1992 c 175 § 7; 1971 ex.s. c 307 § 17. Formerly RCW 70.93.170.]

Additional notes found at www.leg.wa.gov

82.19.055 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1710.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.19.900 Effective date—1992 c 175. This act shall take effect July 1, 1992. [1992 c 175 § 11.]

Chapter 82.21 RCW

HAZARDOUS SUBSTANCE TAX—MODEL TOXICS CONTROL ACT

Sections

82.21.010	Intent of pollution tax—Intent of model toxics control reform act.
82.21.020	Definitions.
82.21.030	Pollution tax.
82.21.040	Exemptions.
82.21.045	Tax preferences—Expiration dates.

(2022 Ed.)

82.21.050	Credits.
82.21.900	Short title—1989 c 2.
82.21.905	Captions—1989 c 2.
82.21.910	Construction—1989 c 2.
82.21.915	Existing agreements—1989 c 2.
82.21.920	Effective date—1989 c 2.

82.21.010 Intent of pollution tax—Intent of model toxics control reform act.

(1) It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law.

(2) It is the specific purpose of the model toxics control reform act (chapter 422, Laws of 2019) to update the model toxics control program and its primary funding mechanism. These reforms are intended to achieve the financial stability, transparency, and long-term protection of revenues. Specifically, this reform act makes the following changes:

(a) Increases funding for programs and projects related to clean air, clean water, toxic cleanup, and prevention, with specific focus on stormwater pollution;

(b) Provides distinct and transparent financial separation of capital and operating budget funding under the model toxics control program;

(c) Improves the transparency and visibility of operating and capital project expenditures under the model toxics control program; and

(d) Eliminates the year-to-year volatility of hazardous substance tax revenues by moving to a volumetric rate for petroleum products. [2019 c 422 § 101; 1989 c 2 § 8 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2019 c 422: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 422 § 419.]

Intent—2019 c 422: "It is the intent of the legislature that during the 2019-2021 biennium no transfers to the state general fund, education legacy trust account, or opportunities pathway account must be made from the state toxics control account, local toxics control account, environmental legacy stewardship account, model toxics control operating account, model toxics control capital account, or model toxics control stormwater account." [2019 c 422 § 1.]

82.21.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hazardous substance" means:

(a) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc;

(b) Petroleum products;

(c) Any pesticide product required to be registered under section 136a of the federal insecticide, fungicide and rodenticide act, 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition shall take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items containing both: (i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and (ii) one or more substances that are not hazardous substances.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [2002 c 105 § 1; 1989 c 2 § 9 (Initiative Measure No. 97, approved November 8, 1988).]

Additional notes found at www.leg.wa.gov

82.21.030 Pollution tax. (1)(a) A tax is imposed on the privilege of possession of hazardous substances in this state. Except as provided in (b) of this subsection, the rate of the tax is seven-tenths of one percent multiplied by the wholesale value of the substance. Moneys collected under this subsection (1)(a) must be deposited in the model toxics control capital account.

(b) Beginning July 1, 2019, the rate of the tax on petroleum products is one dollar and nine cents per barrel. The tax collected under this subsection (1)(b) on petroleum products

must be deposited as follows, after first depositing the tax as provided in (c) of this subsection, except that during the 2021-2023 biennium the deposit as provided in (c) of this subsection may be prorated equally across each month of the biennium:

(i) Sixty percent to the model toxics control operating account created under RCW 70A.305.180;

(ii) Twenty-five percent to the model toxics control capital account created under RCW 70A.305.190; and

(iii) Fifteen percent to the model toxics control stormwater account created under RCW 70A.305.200.

(c) Until the beginning of the ensuing biennium after the enactment of an additive transportation funding act, \$50,000,000 per biennium to the motor vehicle fund to be used exclusively for transportation stormwater activities and projects. For purposes of this subsection, "additive transportation funding act" means an act enacted after June 30, 2023, in which the combined total of new revenues deposited into the motor vehicle fund and the multimodal transportation account exceed \$2,000,000,000 per biennium attributable solely to an increase in revenue from the enactment of the act.

(d) The department must compile a list of petroleum products that are not easily measured on a per barrel basis. Petroleum products identified on the list are subject to the rate under (a) of this subsection in lieu of the volumetric rate under (b) of this subsection. The list will be made in a form and manner prescribed by the department and must be made available on the department's internet website. In compiling the list, the department may accept technical assistance from persons that sell, market, or distribute petroleum products and consider any other resource the department finds useful in compiling the list.

(2) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(3) Beginning July 1, 2020, and every July 1st thereafter, the rate specified in subsection (1)(b) of this section must be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States department of commerce, bureau of economic analysis for the most recent 12-month period ending December 31st of the prior year. [2022 c 182 § 313; 2021 c 333 § 705; 2020 c 20 § 1483; 2019 c 422 § 201; 1989 c 2 § 10 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2022 c 182 §§ 313, 408-414, and 421: "Sections 313, 408 through 414, and 421 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2022]." [2022 c 182 § 508.]

Intent—2022 c 182: See note following RCW 70A.65.240.

Effective date—2021 c 333: See note following RCW 43.19.642.

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

82.21.040 Exemptions. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession

of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

***(5)(a)** Any possession of a hazardous substance as defined in RCW 82.21.020(1)(c) that is solely for use by a farmer or certified applicator as an agricultural crop protection product and warehoused in this state or transported to or from this state, provided that the person possessing the substance does not otherwise use, manufacture, package for sale, or sell the substance in this state.

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

(i) "Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(6) Persons or activities which the state is prohibited from taxing under the United States Constitution. [2015 3rd sp.s. c 6 § 1902; 1989 c 2 § 11 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** Subsection (5) of this section expires January 1, 2026, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Tax preference performance statement—2015 3rd sp.s. c 6 § 1902: "(1) The legislature categorizes the tax preference in section 1902 of this act as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b).

(2) The legislature's specific public policy objective is to clarify an existing exemption from the hazardous substance tax for agricultural crop protection products to incentivize storing products in Washington state as they are engaged in interstate commerce. The legislature finds that the agricultural industry is a vital component of Washington's economy, providing thousands of jobs throughout the state. The legislature further finds that Washington state is the ideal location for distribution centers for agricultural crop protection products because Washington is an efficient transportation hub for Pacific Northwest farmers, and encourages crop protection products to be managed in the most protective facilities, and transported using the most sound environmental means. However, products being warehoused in

(2022 Ed.)

the state are diminishing because agricultural crop protection products are being redirected to out-of-state distribution centers as a direct result of Washington's tax burden. Relocation of this economic activity is detrimental to Washington's economy through the direct loss of jobs and hazardous substance tax revenue, thereby negatively impacting the supply chain for Washington farmers, thereby causing increased transportation usage and risk of spillage, thereby failing to encourage the most environmentally protective measures. Therefore, it is the intent of the legislature to encourage the regional competitiveness of agricultural distribution by clarifying an exemption from the hazardous substance tax for agricultural crop protection products that are manufactured out-of-state, warehoused or transported into the state, but ultimately shipped and sold out of Washington state.

(3) If a review finds an average increase in revenue of the hazardous substance tax, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue." [2015 3rd sp.s. c 6 § 1901.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.21.045 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1711.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.21.050 Credits. (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) Which is imposed on the act or privilege of possessing hazardous substances, and which is not generally imposed on other activities or privileges; and

(ii) Which is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof. [1989 c 2 § 12 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.900 Short title—1989 c 2. See RCW 70A.305.900.

82.21.905 Captions—1989 c 2. See RCW 70A.305.901.

82.21.910 Construction—1989 c 2. See RCW 70A.305.902.

82.21.915 Existing agreements—1989 c 2. See RCW 70A.305.903.

82.21.920 Effective date—1989 c 2. See RCW 70A.305.904.

Chapter 82.23A RCW
PETROLEUM PRODUCTS—UNDERGROUND
STORAGE TANK PROGRAM FUNDING

Sections

- 82.23A.005 Intent.
- 82.23A.010 Definitions.
- 82.23A.020 Tax imposed—Revenues to be deposited in the pollution liability insurance program trust account.
- 82.23A.030 Exemptions from tax.
- 82.23A.040 Credit authorized.
- 82.23A.050 Tax preferences—Expiration dates.
- 82.23A.900 Effective date—1989 c 383.
- 82.23A.902 Expiration of chapter.

82.23A.005 Intent. (Expires July 1, 2030.) It is the intent of this chapter to impose a tax only once for each petroleum product possessed in this state and to tax the first possession of all petroleum products. This chapter is not intended to exempt any person from tax liability under any other law. [1989 c 383 § 14.]

82.23A.010 Definitions. (Expires July 1, 2030.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.

(2) "Possession" means the control of a petroleum product located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(3) "Previously taxed petroleum product" means a petroleum product in respect to which a tax has been paid under this chapter and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(4) "Rack" means a mechanism for delivering petroleum products from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer. For the purposes of this definition:

(a) "Terminal" has the same meaning as provided in RCW 82.38.020; and

(b) "Nonbulk transfer" means a transfer that does not meet the definition of "bulk transfer" as defined in RCW 82.38.020.

(5) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar products of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [2020 c 139 § 28; 2012 1st sp.s. c 3 § 4; 2004 c 203 § 4; 1989 c 383 § 15.]

82.23A.020 Tax imposed—Revenues to be deposited in the pollution liability insurance program trust account. (Expires July 1, 2030.) (1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be thirty one-hundredths of one percent multiplied by the wholesale value of the petroleum product. After July 1, 2021, the rate of tax is fifteen one-hundredths of one percent multiplied by the wholesale value of the petroleum product. For purposes of determining the tax imposed under this section for petroleum products introduced at the rack, the wholesale value is determined when the petroleum product is removed at the rack unless the removal is to an exporter licensed under chapter 82.38 RCW for direct delivery to a destination outside of the state. For all other cases, the wholesale value is determined upon the first nonbulk possession in the state.

(2) Except as identified in RCW 70A.345.130, moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70A.325.020.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70A.325.020(2). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars. [2020 c 20 § 1484; 2016 c 161 § 18; 2012 1st sp.s. c 3 § 5; 1991 c 4 § 8; 1990 c 64 § 12; 1989 c 383 § 16.]

82.23A.030 Exemptions from tax. (Expires July 1, 2030.) The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed petroleum product. If tax due under this chapter has not been paid with respect to a petroleum product, the department may collect the tax from any person who has had possession of the petroleum product. If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed

by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a petroleum product by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(4) Any persons possessing a petroleum product where such possession first occurred before July 1, 1989.

(5) Any possession of (a) natural gas, (b) petroleum coke, or (c) liquid fuel or fuel gas used in petroleum processing.

(6) Any possession of petroleum products that are exported for use or sale outside this state as fuel.

(7) Any possession of petroleum products packaged for sale to ultimate consumers. [1989 c 383 § 17.]

82.23A.040 Credit authorized. (Expires July 1, 2030.)

(1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any petroleum product tax paid to another state with respect to the same petroleum product. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that petroleum product. For the purpose of this subsection:

(a) "Petroleum product tax" means a tax:

(i) That is imposed on the act or privilege of possessing petroleum products, and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the value of the petroleum product, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1989 c 383 § 18.]

82.23A.050 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1712.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.23A.900 Effective date—1989 c 383. (Expires July 1, 2030.) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except RCW 82.23A.005 through 82.23A.040 shall take effect July 1, 1989. [1989 c 383 § 22.]

82.23A.902 Expiration of chapter. This chapter expires July 1, 2030, coinciding with the expiration of chap-

(2022 Ed.)

ter 70A.325 RCW. [2020 c 20 § 1485; 2016 c 161 § 19; 2012 1st sp.s. c 3 § 6; 2006 c 276 § 5; 2000 c 16 § 3; 1996 c 88 § 3.]

**Chapter 82.23B RCW
OIL SPILL RESPONSE TAX**

Sections

82.23B.010	Definitions.
82.23B.020	Oil spill response tax—Oil spill administration tax.
82.23B.025	Tax preferences—Expiration dates.
82.23B.030	Exemption.
82.23B.040	Credit—Crude oil or petroleum exported or sold for export.
82.23B.045	Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item.
82.23B.050	Rules.
82.23B.060	Imposition of taxes.
82.23B.900	Effective dates—1991 c 200.
82.23B.901	Savings—1992 c 73.
82.23B.902	Effective dates—1992 c 73.

82.23B.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Bulk oil terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products from a tank car or pipeline.

(3) "Crude oil" means any naturally occurring hydrocarbons coming from the earth that are liquid at twenty-five degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

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

(5) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(6) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(7) "Person" has the meaning provided in RCW 82.04.030.

(8) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(9) "Pipeline" means an interstate or intrastate pipeline subject to regulation by the United States department of transportation under 49 C.F.R. Part 195 in effect on April 1, 2018, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipes, pumping units, and fabricated assemblies associated with pumping units.

(10) "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

(11) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state and who is liable for the taxes imposed by this chapter.

(12) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [2018 c 262 § 102. Prior: 2015 c 274 § 13; 1992 c 73 § 6; 1991 c 200 § 801.]

Effective date—2018 c 262 §§ 102, 103, and 206: "Sections 102, 103, and 206 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2018." [2018 c 262 § 402.]

Findings—Intent—2018 c 262: "(1) The legislature finds that:

(a) The 2004 legislature declared a zero spills goal for the state of Washington. When a spill occurs, there is severe and irreversible damage to the environment, human health, tribal and other cultural and historical resources, and the economy. Fish, orcas, wildlife habitats, shellfish beds, archaeologically sensitive areas, clean air, and public facilities are put at risk when spills occur in the state of Washington.

(b) The department of ecology's oil spill program faces a critical funding gap due to the lack of adequate revenue to fully fund the prevention and preparedness services required by state law, including the 2015 oil transportation safety act. Moreover, the program has endured a decline in capacity and resources to fully utilize its existing authority for critical needs, like vessel inspections and developing spill response plans. Without an adequate investment in revenue, there will be a continued decline in required prevention and preparedness services, causing an increased risk of oil spills in the state of Washington and our shared waters with the Canadian transboundary region.

(c) While oil transported into the state by rail and tank vessels is taxed to fund the oil spill program's oil spill prevention and preparedness activities, a third method of transport, pipelines, currently is not taxed, despite it generating a sizeable oil spill risk.

(d) Some oils are inherently heavy and are likely to stay submerged in the water column or sink to the bottom of a water body. In addition, many oils, depending on their qualities, weathering, environmental factors, and method of discharge, may also submerge or sink in water. Oils that submerge or sink in water pose a substantial risk to the environment, human health, tribal and other cultural and historical resources, and the economy and are a significant challenge to cleanup. Oils are currently being transported by vessels, trains, and pipelines in large volumes in our state, with increased volumes of heavy oils being transported by vessel through our shared waters from Canada. As knowledge about how oils submerge or sink in water grows and technological advances to respond are developed, preventing and preparing for these spills must be updated.

(2) Therefore, the legislature intends to provide adequate revenue to fully fund prevention and preparedness services required by state law, as well as direct the department of ecology to specifically address the risks of oils submerging and sinking and more extensively coordinate with our Canadian partners in order to protect our state's economy and its shared resources." [2018 c 262 § 101.]

Report—2018 c 262: "The department of ecology shall provide a report to the legislature by July 1, 2020, on the following: (1) A description of activities conducted by the department's oil spill program that are expected to continue after fiscal year 2019, and activities that are not expected to continue after fiscal year 2019; (2) recommendations regarding potential sources of funding for the department's oil spill program; (3) recommendations regarding the allocation of funding from the taxes established in RCW 82.23B.020 among various state agencies, including whether funding should be discontinued or reduced for any agency; and (4) a forecast of the department's oil spill program funding needs after fiscal year 2019." [2018 c 262 § 104.]

Effective date—2015 c 274: See note following RCW 90.56.005.

82.23B.020 Oil spill response tax—Oil spill administration tax. (1) An oil spill response tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; or (b) crude oil or petroleum products at a bulk oil terminal within this state from a tank car or pipeline. The tax imposed in this section is levied upon the owner of the crude oil or petroleum

products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car, pipeline, waterborne vessel, or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; or (b) crude oil or petroleum products at a bulk oil terminal within this state from a tank car or pipeline. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car, pipeline, waterborne vessel, or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter must be collected by the marine or bulk oil terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she, nevertheless, is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine or bulk oil terminal operator relieves the owner from further liability for the taxes.

(4) Taxes collected under this chapter must be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected must be stated separately from other charges made by the marine or bulk oil terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes are due from the marine or bulk oil terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine or bulk oil terminal operator or to the department, constitutes a debt from the taxpayer to the marine or bulk oil terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, is guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the

administration of the taxes imposed under this chapter. The department must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator relieves the marine or bulk oil terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9)(a) All receipts from the tax imposed in subsection (1) of this section must be deposited into the state oil spill response account.

(b) Beginning in fiscal year 2019 and each fiscal year thereafter, the first two hundred thousand dollars of receipts from the tax imposed in subsection (2) of this section must be deposited into the military department active state service account created in RCW 38.40.220, and the remainder of the receipts from the tax imposed in subsection (2) of this section must be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management must promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars. [2018 c 262 § 103; 2015 c 274 § 14; 2006 c 256 § 2; 2003 1st sp.s. c 13 § 9; 2000 c 69 § 25; 1999 sp.s. c 7 § 1; 1997 c 449 § 2; 1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

Effective date—2018 c 262 §§ 102, 103, and 206: See note following RCW 82.23B.010.

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

Effective date—2015 c 274: See note following RCW 90.56.005.

Additional notes found at www.leg.wa.gov

82.23B.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1713.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.23B.030 Exemption. The taxes imposed under this chapter only apply to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine or bulk oil terminal in this state or after

refining or other processing. [2015 c 274 § 15; 1992 c 73 § 9; 1991 c 200 § 803.]

Effective date—2015 c 274: See note following RCW 90.56.005.

82.23B.040 Credit—Crude oil or petroleum exported or sold for export. Credit must be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine or bulk oil terminal and subsequently exported from or sold for export from the state. [2015 c 274 § 16; 1992 c 73 § 10; 1991 c 200 § 804.]

Effective date—2015 c 274: See note following RCW 90.56.005.

82.23B.045 Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item. (1) Any person having paid the tax imposed by this chapter who uses petroleum products as a consumer for a purpose other than as a fuel may claim refund or credit against the tax imposed under this chapter. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190.

(2) Any person having paid the tax imposed by this chapter who uses petroleum products as a component or ingredient in the manufacture of an item which is not a fuel may claim a refund or credit against the tax imposed by this chapter.

(3) The amount of refund or credit claimed under this section may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used. The refund or credit allowed by this section shall be claimed on such forms and subject to such requirements as the department may prescribe by rule. [1992 c 73 § 8.]

82.23B.050 Rules. The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the administration, collection, and enforcement of the taxes levied under this chapter. [1991 c 200 § 808.]

82.23B.060 Imposition of taxes. The taxes imposed in this chapter shall take effect October 1, 1991. [1991 c 200 § 809.]

82.23B.900 Effective dates—1991 c 200. See RCW 90.56.901.

82.23B.901 Savings—1992 c 73. The amendment of RCW 82.23B.010, 82.23B.020, 82.23B.030, and 82.23B.040 by chapter 73, Laws of 1992, shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections or under any rule or order adopted under the sections, nor as affecting any proceeding instituted under the sections. [1992 c 73 § 44.]

82.23B.902 Effective dates—1992 c 73. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1992], except sections 6, 7, 9, and 10 of this act shall take effect October 1, 1992. [1992 c 73 § 46.]

Chapter 82.24 RCW
TAX ON CIGARETTES

Sections

82.24.010	Definitions.
82.24.020	Tax imposed—Absorption of tax—Possession defined—Exempt tribal members.
82.24.026	Additional tax imposed—Where deposited.
82.24.029	Tax preferences—Expiration dates.
82.24.030	Stamps.
82.24.035	Circumstances when no stamp may be affixed—Violation of consumer protection act.
82.24.040	Duty of wholesaler.
82.24.050	Retailer—Possession of unstamped cigarettes—Access to commercial cigarette-making machines.
82.24.060	Stamps—How affixed.
82.24.080	Legislative intent—Taxable event—Tax liability.
82.24.090	Records—Preservation—Reports.
82.24.100	Forgery or counterfeiting of stamps—Penalty.
82.24.110	Other offenses—Penalties.
82.24.120	Violations—Penalties and interest.
82.24.130	Seizure and forfeiture.
82.24.135	Forfeiture procedure.
82.24.145	Forfeited property—Retention, sale, or destruction—Use of sale proceeds.
82.24.180	Seized property may be returned—Penalty, interest.
82.24.190	Search and seizure.
82.24.210	Redemption of stamps.
82.24.230	Administration.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.
82.24.280	Liability from tax increase—Interest and penalties on unpaid tax—Administration.
82.24.290	Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.
82.24.295	Exceptions—Sales by Indian retailer under cigarette tax contract.
82.24.300	Exceptions—Puyallup Tribe of Indians.
82.24.302	Exceptions—Sales by tribal retailers—Yakama Nation.
82.24.500	Business of cigarette purchase, sale, consignment, distribution, or providing access to cigarette-making machines—License required—Penalty.
82.24.510	Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.
82.24.520	Wholesaler's license—Fee—Display of license—Bond.
82.24.530	Retailer's license—Vending machines—Cigarette-making machines.
82.24.540	Licensee to operate within scope of license—Penalty.
82.24.550	Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.
82.24.551	Enforcement—Appointment of officers of liquor and cannabis board.
82.24.552	Enforcement—Administration—Inspection of books and records.
82.24.560	Fees and penalties credited to general fund.
82.24.570	Counterfeit cigarette offenses—Penalties.
82.24.900	Construction—1961 c 15.

Minors: Chapter 70.155 RCW.

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

(1) "Board" means the liquor and cannabis board.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. "Cigarette" includes a roll-your-own cigarette.

(3) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(4) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(5) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.

(6) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(7) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

(8) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(9) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.

(10) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(11) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(12) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(13) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [2020 c 139 § 29; 2012 2nd sp.s. c 4 § 1; 1997 c 420 § 3; 1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Additional notes found at www.leg.wa.gov

82.24.020 Tax imposed—Absorption of tax—Possession defined—Exempt tribal members. (1) There is levied and collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to 12.125 cents per cigarette.

(2) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(3) For purposes of this chapter, "possession" means both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee,

which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

(4) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection (5) of this section, any person, who purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

(5) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect. [2010 1st sp.s. c 22 § 2; 2009 c 479 § 66. Prior: 2008 c 226 § 3; 2008 c 86 § 301; 2003 c 114 § 1; 1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020; prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Intent—2010 1st sp.s. c 22: "It is the intent of the legislature to use revenue raised from taxes levied on the sales of cigarettes and other tobacco products to fund basic health care services." [2010 1st sp.s. c 22 § 1.]

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.24.026 Additional tax imposed—Where deposited. In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

Beginning July 1, 2010, the revenue collected under this section must be deposited into the general fund. [2011 c 334 § 1; 2010 1st sp.s. c 22 § 3; 2009 c 479 § 67; 2008 c 86 § 302; 2005 c 514 § 1102.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Additional notes found at www.leg.wa.gov

82.24.029 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1714.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.24.030 Stamps. (1) In order to enforce collection of the tax hereby levied, the department of revenue must design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be

(2022 Ed.)

affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, only a wholesaler may cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same. However, where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Except as otherwise provided in this chapter, only wholesalers may purchase or obtain cigarette stamps. Wholesalers may not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, must have a separate serial number, which is legible at the point of sale. The department of revenue must keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, must either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section may be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(6) In order to enforce collection of the tax in the case of roll-your-own cigarettes, a retailer must affix a stamp or stamps to each box or similar container provided by the retailer to the consumer. The box or similar container must be used by a consumer to transport roll-your-own cigarettes from the retailer's place of business. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. Stamps must be for an amount equaling the tax due under this chapter. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting taxes under this chapter. Stamps for roll-your-own cigarettes must be issued and affixed in a manner determined by the department but as consistent as practicable with the stamping requirements for wholesalers. [2012 2nd sp.s. c 4 § 2; 2003 c 114 § 2; 1995 c 278 § 2; 1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2012." [2012 2nd sp.s. c 4 § 13.]

Additional notes found at www.leg.wa.gov

82.24.035 Circumstances when no stamp may be affixed—Violation of consumer protection act. (1) No stamp may be affixed to, or made upon, any container or package of cigarettes if:

(a) The container or package differs in any respect with the requirements of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The container or package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(c) The container or package, including a container of individually stamped containers or packages, is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The container or package has been altered by adding or deleting the wording, labels, or warnings described in (a) or (c) of this subsection.

(2) In addition to the penalty and forfeiture provisions otherwise provided for in this chapter, a violation of this section is a deceptive act or practice under the consumer protection act, chapter 19.86 RCW.

(3) Subsection (1)(a) of this section does not apply to boxes or similar containers used by a consumer to transport roll-your-own cigarettes. [2012 2nd sp.s. c 4 § 3; 1999 c 193 § 5.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Intent—Finding—1999 c 193: "(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the policy of the state that manufacturers and importers of cigarettes not make any material misrepresentation of fact regarding the health consequences of using cigarettes, including compliance with applicable federal laws, regulations, and policies.

(4) It is the intent of the legislature to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) and 26 U.S.C. Sec. 5754.

(5) The legislature finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States." [1999 c 193 § 1.]

Additional notes found at www.leg.wa.gov

82.24.040 Duty of wholesaler. (1) Except as authorized by this chapter, no person other than a licensed wholesaler shall possess in this state unstamped cigarettes.

(2) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter,

such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

(4) Unstamped cigarettes possessed by a wholesaler under subsection (2) of this section that are transferred by the wholesaler to another facility of the wholesaler within the borders of Washington shall be transferred in compliance with RCW 82.24.250.

(5) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

(6) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 3; 1995 c 278 § 3; 1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Additional notes found at www.leg.wa.gov

82.24.050 Retailer—Possession of unstamped cigarettes—Access to commercial cigarette-making machines. (1) No retailer in this state may possess unstamped cigarettes within this state unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter.

(3) Only a retailer licensed under this chapter may provide consumers with access to a commercial cigarette-making machine to make roll-your-own cigarettes. A retailer is prohibited from allowing the use of a commercial cigarette-making machine by a person unless, contemporaneously to the person's use of the machine, the retailer provides the consumer with a box or similar container to transport roll-your-own cigarettes and such box is affixed with the appropriate stamp or stamps as required under RCW 82.24.030(6). A consumer must transport roll-your-own cigarettes from a retailer's place of business only in such box or similar container.

(4) A commercial cigarette-making machine must have a secure meter that counts the number of cigarettes made, manufactured, or fabricated by the machine and that cannot be

accessed, except for the sole purpose of taking meter readings, altered or reset by the machine operator. [2012 2nd sp.s. c 4 § 4; 2003 c 114 § 4; 1995 c 278 § 4; 1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Additional notes found at www.leg.wa.gov

82.24.060 Stamps—How affixed. (1) Except as otherwise provided in this chapter, stamps must be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed are evidence of the tax imposed.

(2) In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps must be affixed securely on each individual package.

(3) With respect to roll-your-own cigarettes, stamps must be affixed securely on each individual box or similar container provided by the retailer to the consumer. [2012 2nd sp.s. c 4 § 5; 1961 c 15 § 82.24.060. Prior: 1959 c 270 § 6; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

82.24.080 Legislative intent—Taxable event—Tax liability. (1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles taxed under this chapter is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

(2) It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by subsection (1) of this section but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. A precollection obligation may not be imposed upon a person exempt from the tax who sells, distributes, or transfers possession of cigarettes to another person who, by law, is exempt from the tax imposed by this chapter or upon whom the obligation for collection of the tax may not be imposed. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

(3) In the event of an increase in the rate of the tax imposed under this chapter, it is the intent of the legislature that the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed articles after the effective date of the rate increase shall be liable for the additional

(2022 Ed.)

tax, or its precollection obligation as required by this chapter, represented by the rate increase. The failure to pay the additional tax with respect to the first taxable event after the effective date of a rate increase shall not prevent tax liability for the additional tax from arising from a subsequent taxable event.

(4) It is the intent of the legislature that, in the absence of a cigarette tax contract or agreement under chapter 43.06 RCW, applicable taxes imposed by this chapter be collected on cigarettes sold by an Indian tribal organization to any person who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place consistent with collection of these taxes generally within the state. The legislature finds that applicable collection and enforcement measures under this chapter are reasonably necessary to prevent fraudulent transactions and place a minimal burden on the Indian tribal organization, pursuant to the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). [2008 c 226 § 2; 1995 c 278 § 5; 1993 c 492 § 308; 1972 ex.s. c 157 § 4; 1961 c 15 § 82.24.080. Prior: 1959 c 270 § 8; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Finding—Intent—2008 c 226: "The legislature finds that under Article III of the treaty with the Yakamas of 1855, members of the Yakama Nation have the right to travel upon all public highways. It is the legislature's intent to honor the treaty rights of the Yakama Nation, while protecting the state's interest in collecting and enforcing its cigarette taxes." [2008 c 226 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.24.090 Records—Preservation—Reports. (1) Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records. These records must show all transactions relating to the purchase and sale of any of the articles taxed under this chapter and show all physical inventories performed on those articles, all invoices, and a record of all stamps purchased. All such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

(2) All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month. The report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof. [1995 c 278 § 6; 1975 1st ex.s. c 278 § 62; 1961 c 15 § 82.24.090. Prior: 1941 c 178 § 14; 1939 c 225 § 24; 1935 c 180 § 84; Rem. Supp. 1941 § 8370-84.]

Additional notes found at www.leg.wa.gov

82.24.100 Forgery or counterfeiting of stamps—Penalty. To forge or counterfeit any stamp of the kind herein provided is a felony. [1961 c 15 § 82.24.100. Prior: 1935 c 180 § 85; RRS § 8370-85.]

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) For any person other than the department of revenue, its duly authorized agent, or a licensed wholesaler who has lawfully purchased or obtained them to possess any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(f) To violate any of the provisions of this chapter;

(g) To violate any lawful rule made and published by the department of revenue or the board;

(h) To use any stamps more than once or any individual stamped box or similar container used to transport roll-your-own cigarettes more than once;

(i) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(j) Except as otherwise provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(k) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(l) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(m) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(n) For any person to possess or transport in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless:

(i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so

transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;

(o) For any person to possess or receive in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with the requirements of this chapter;

(p) To possess, sell, distribute, purchase, receive, ship, or transport within this state any container or package of cigarettes that does not comply with this chapter; and

(q) For a retailer to provide consumers with access to a commercial cigarette-making machine without providing a box or similar container that has a properly affixed stamp or stamps.

(2) It is unlawful for any person knowingly or intentionally to possess or to:

(a) Transport in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (i) Proper notice as required by RCW 82.24.250 has been given; (ii) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state; or

(b) Receive in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with this chapter.

(3) Violation of subsection (2) of this section is punished as a class C felony under Title 9A RCW.

(4) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter are guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter.

(5) For purposes of this section, "person authorized by this chapter to possess unstamped cigarettes in this state" has the same meaning as in RCW 82.24.250. [2012 2nd sp.s. c 4 § 6; 2008 c 226 § 4; 2003 c 114 § 5; 1999 c 193 § 2; 1997 c 420 § 4; 1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Additional notes found at www.leg.wa.gov

82.24.120 Violations—Penalties and interest. (1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority of this section, is found to have failed to affix the stamps

required, or to have them affixed as provided in this section, or to pay any tax due under this section, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration of this chapter, there must be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or ten dollars per twenty roll-your-own cigarettes, or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount is due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter is prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.280. [2012 2nd sp.s. c 4 § 7; 2007 c 111 § 102; 2006 c 14 § 6; 1996 c 149 § 7; 1995 c 278 § 8; 1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370-87.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.24.130 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of RCW 82.24.570.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or deliv-

(2022 Ed.)

ery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine or commercial cigarette-making machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of RCW 70.158.030(3). For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in RCW 70.158.020(3).

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, are not considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570. [2012 2nd sp.s. c 4 § 8. Prior: 2003 c 114 § 7; 2003 c 113 § 4; 2003 c 25 § 9; 1999 c 193 § 3; 1997 c 420 § 5; 1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130; prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Additional notes found at www.leg.wa.gov

82.24.135 Forfeiture procedure. In all cases of seizure of any property made subject to forfeiture under this chapter the department or the board shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department or the board immediately if the seizure is made by someone other than an agent of the department or the board authorized to collect taxes.

(2) Upon notification or seizure by the department or the board or upon receipt of property subject to forfeiture under this chapter from any other person, the department or the board shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or the board or acting as its agent. Listing and appraisal of the property shall be properly attested by the department or the board and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department or the board to be less than one hundred dollars in value.

(3) The department or the board shall cause notice to be served within five days following the seizure or notification to the department or the board of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. The department may also furnish notice electronically as provided in RCW 82.32.135. If service is by mail or notice is provided electronically as provided in RCW 82.32.135, the notice shall also be served by certified mail with return receipt requested. Electronic notification or service by mail shall be deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the five-day period following the seizure or notification of the seizure to the department or the board.

(4) If no person notifies the department or the board in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department or the board, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee or the board or the board's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing and any appeal therefrom shall be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department or the board shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized. [2007 c 111 § 103; 1998 c 53 § 1; 1987 c 496 § 3.]

Additional notes found at www.leg.wa.gov

82.24.145 Forfeited property—Retention, sale, or destruction—Use of sale proceeds. When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or 70.158.030(3) shall be destroyed. For the purposes of this subsection (3) "cigarettes" has the same meaning as provided in RCW 70.158.020(3). [2003 c 25 § 10; 1999 c 193 § 4; 1987 c 496 § 4.]

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Additional notes found at www.leg.wa.gov

82.24.180 Seized property may be returned—Penalty, interest. (1) The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

(2) When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or ten dollars per twenty roll-your-own cigarettes, or two hundred fifty dollars, and interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [2012 2nd sp.s. c 4 § 9; 1996 c 149 § 8; 1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.24.190 Search and seizure. When the department of revenue or the board has good reason to believe that any of the articles taxed herein are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter or

regulations issued under authority hereof, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department of revenue commanding him or her diligently to search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person in possession or control thereof. If upon the return of such warrant, it shall appear that any of the articles taxed herein, unlawfully possessed, were seized, the same shall be sold as provided in this chapter. [1997 c 420 § 6; 1987 c 202 § 244; 1975 1st ex.s. c 278 § 67; 1961 c 15 § 82.24.190. Prior: 1949 c 228 § 16; 1935 c 180 § 91; Rem. Supp. 1949 § 8370-91.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

82.24.210 Redemption of stamps. The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he or she has received from the purchaser outside the state a written acknowledgment that he or she has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to RCW 70.158.030(2), may apply to the department for a refund of the cost of the stamps. [2013 c 23 § 320; 2003 c 25 § 11; 1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

Additional notes found at www.leg.wa.gov

82.24.230 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW 82.24.280. [2006 c 14 § 7; 1995 c 278 § 9; 1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

(2022 Ed.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Additional notes found at www.leg.wa.gov

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If unstamped cigarettes are consigned to or purchased by any person in this state, such purchaser or consignee must be a person who is authorized by this chapter to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his or her possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter to possess unstamped cigarettes in this state" means:

(a) A wholesaler, licensed under Washington state law;
 (b) The United States or an agency thereof;
 (c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department; and

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and

who within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

Nothing in this subsection (7) shall be construed as modifying RCW 82.24.050 or 82.24.110.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(9) Nothing in this section shall be construed as limiting the right to travel upon all public highways under Article III of the treaty with the Yakamas of 1855. [2013 c 23 § 321; 2008 c 226 § 5; 2003 c 114 § 8; 1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Additional notes found at www.leg.wa.gov

82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability. (1) Other than:

(a) A wholesaler required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [2003 c 114 § 9; 1995 c 278 § 11; 1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

Additional notes found at www.leg.wa.gov

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax—Administration. (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

[Title 82 RCW—page 288]

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [2007 c 111 § 104; 1996 c 149 § 10; 1995 c 278 § 13.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities. The taxes imposed by this chapter do not apply to the sale of cigarettes to:

(1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;

(2) The United States veterans' administration; or

(3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section. [1995 c 278 § 14.]

Additional notes found at www.leg.wa.gov

82.24.295 Exceptions—Sales by Indian retailer under cigarette tax contract. (1) The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455.

(2) Effective July 1, 2002, wholesalers and retailers subject to the provisions of this chapter are allowed compensation for their services in affixing the stamps required under this chapter a sum computed at the rate of six dollars per one thousand stamps purchased or affixed by them.

(3) In addition to the compensation allowed under subsection (2) of this section, retailers purchasing stamps for roll-your-own cigarettes are allowed additional compensation to offset the cost of the tax under chapter 82.26 RCW. The amount equals five cents per cigarette. [2012 2nd sp.s. c 4 § 10; 2001 c 235 § 6.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Intent—Finding—2001 c 235: See RCW 43.06.450.

82.24.300 Exceptions—Puyallup Tribe of Indians. The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 5.]

Findings—Intent—Explanatory statement—Effective date—2005 c 11: See notes following RCW 43.06.465.

(2022 Ed.)

82.24.302 Exceptions—Sales by tribal retailers—Yakama Nation. The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by a tribal retailer during the effective period of a cigarette tax agreement under RCW 43.06.466. [2008 c 228 § 2.]

Additional notes found at www.leg.wa.gov

82.24.500 Business of cigarette purchase, sale, consignment, distribution, or providing access to cigarette-making machines—License required—Penalty. No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter, or providing consumers with access to a commercial cigarette-making machine without a license under this chapter. A violation of this section is a class C felony. [2012 2nd sp.s. c 4 § 11; 2003 c 114 § 10; 1986 c 321 § 4.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Policy—Intent—1986 c 321: "It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act." [1986 c 321 § 1.]

Additional notes found at www.leg.wa.gov

82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.

(1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board must adopt rules regarding the regulation of the licenses. The board may refrain from the issuance of any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or fed-

eral jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's business license expiration under chapter 19.02 RCW, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24, 82.26, or 70.345 RCW, the background check done under the authority of chapter 66.24, 82.26, or 70.345 RCW satisfies the requirements of this section.

(4) Each such license expires on the business license expiration date, and each such license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2019 c 445 § 203; 2013 c 144 § 50; 2009 c 154 § 1; 2001 c 235 § 8; 1986 c 321 § 5.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Intent—Finding—2001 c 235: See RCW 43.06.450.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.520 Wholesaler's license—Fee—Display of license—Bond. A fee of six hundred fifty dollars must accompany each wholesaler's license application or license renewal application. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars is required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, must be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a business license issued under chapter 19.02 RCW. The board must require each licensed wholesaler to file with the department of revenue a bond in an amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond must be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license. [2013 c 144 § 51; 1986 c 321 § 6.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.530 Retailer's license—Vending machines—Cigarette-making machines. (1) A fee of one hundred seventy-five dollars must accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates. A fee of thirty additional dollars for each vending machine must accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. An additional fee of ninety-three dollars must

accompany each application or renewal for a license issued to a retail dealer operating a cigarette-making machine.

(2) A retailer applying for, or renewing, both a retailer's license under RCW 82.24.510 and a vapor products retailer's license under RCW 70.345.020 may pay a combined application fee of two hundred fifty dollars for both licenses. [2016 sp.s. c 38 § 9; 2012 2nd sp.s. c 4 § 12; 1993 c 507 § 15; 1986 c 321 § 7.]

Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28: See note following RCW 70.345.020.

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Finding—1993 c 507: See RCW 70.155.005.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Minors, access to tobacco, role of liquor and cannabis board: Chapter 70.155 RCW.

82.24.540 Licensee to operate within scope of license—Penalty. Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity unless the additional appropriate license or licenses are first secured. A violation of this section is a misdemeanor. [1986 c 321 § 8.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal. (1) The board must enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The board may revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license may not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, must, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, must suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 or 70.345 RCW to a person whose license or licenses have been suspended or revoked under this section must also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of one year from the date of revocation of the license or licenses. The license or licenses may be approved

by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked may not sell cigarettes, vapor products, or tobacco products or permit cigarettes, vapor products, or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW.

(9) For purposes of this section:

(a) "Tobacco products" has the same meaning as provided in RCW 82.26.010; and

(b) "Vapor products" has the same meaning as provided in RCW 82.25.005. [2019 c 445 § 204; 2015 c 86 § 307; 2009 c 154 § 2; 2005 c 180 § 19; 1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automated expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Finding—1993 c 507: See RCW 70.155.005.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Additional notes found at www.leg.wa.gov

82.24.551 Enforcement—Appointment of officers of liquor and cannabis board. The department must appoint, as duly authorized agents, enforcement officers of the liquor and cannabis board to enforce provisions of this chapter. These officers are not considered employees of the department. [2020 c 139 § 30; 1997 c 420 § 10.]

82.24.552 Enforcement—Administration—Inspection of books and records. (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting cigarettes for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of cigarettes for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband cigarettes.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the

board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 2.]

82.24.560 Fees and penalties credited to general fund. Except as specified in RCW 70.155.120, all fees and penalties received or collected by the department of revenue pursuant to this chapter shall be paid to the state treasurer, to be credited to the general fund. [1993 c 507 § 18; 1986 c 321 § 10.]

Finding—1993 c 507: See RCW 70.155.005.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.570 Counterfeit cigarette offenses—Penalties.

(1) It is unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

(a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and

(b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person.

(2) Any person who violates the provisions of this section is guilty of a class C felony which is punishable by up to five years in prison and a fine of up to ten thousand dollars.

(3) Any person who is convicted of a second or subsequent violation of the provisions of this section is guilty of a class B felony which is punishable by up to ten years in prison and a fine of up to twenty thousand dollars. [2003 c 114 § 6.]

82.24.900 Construction—1961 c 15. The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States. [1961 c 15 § 82.24.900. Prior: 1935 c 180 § 94; RRS § 8370-94.]

Chapter 82.25 RCW

TAX ON VAPOR PRODUCTS

Sections

82.25.005	Definitions.
82.25.010	Tax imposed—Time of collection—Deposits.
82.25.015	Foundational public health services account.
82.25.020	Intent—Purpose.
82.25.025	Federal law preemption.
82.25.030	Recordkeeping requirements.
82.25.035	Itemized invoice requirement when sold to person other than ultimate consumer.
82.25.040	Itemized invoice requirement—Retailers.
82.25.050	Chapter 82.32 RCW application.
82.25.055	Enforcement officers.
82.25.060	Invoice requirements—Rules—Liability.
82.25.065	Transporting vapor products for sale—Notice.
82.25.070	Recordkeeping by the board.
82.25.075	Distributors and retailers—Invoices—Transportation—Additional licenses.
82.25.080	Distributor and retailer license requirements.
82.25.085	Manufacturer's representatives.
82.25.090	License and notice requirement violations—Seizure and forfeiture.

82.25.095	Seizure and forfeiture procedures.
82.25.100	Violations of chapter—Affidavit—Search warrants.
82.25.105	Tax credit—Sold outside state—Returned, destroyed products—Sold to United States or an Indian tribal organization.
82.25.110	Preexisting inventories.
82.25.900	Conflict with federal requirements—2019 c 445.
82.25.901	Effective date—2019 c 445.

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

(1) "Accessible container" means a container that is intended to be opened. The term does not mean a closed cartridge or closed container that is not intended to be opened such as a disposable e-cigarette.

(2) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(3) "Board" means the Washington state liquor and cannabis board.

(4) "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing vapor products in this state.

(5) "Distributor" means any person:

(a) Engaged in the business of selling vapor products in this state who brings, or causes to be brought, into this state from outside the state any vapor products for sale;

(b) Who makes, manufactures, fabricates, or stores vapor products in this state for sale in this state;

(c) Engaged in the business of selling vapor products outside this state who ships or transports vapor products to retailers or consumers in this state; or

(d) Engaged in the business of selling vapor products in this state who handles for sale any vapor products that are within this state but upon which tax has not been imposed.

(6) "Indian country" has the same meaning as provided in RCW 82.24.010.

(7) "Manufacturer" has the same meaning as provided in RCW 70.345.010.

(8) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's vapor products and includes employees and independent contractors.

(9) "Person" means: Any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, limited liability company, association, or society; the state and its departments and institutions; any political subdivision of the state of Washington; and any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise. Except as provided otherwise in this chapter, "person" does not include any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(10) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, or train.

(11) "Retail outlet" has the same meaning as provided in RCW 70.345.010.

(12) "Retailer" has the same meaning as provided in RCW 70.345.010.

(13) "Sale" has the same meaning as provided in RCW 70.345.010.

(14) "Taxpayer" means a person liable for the tax imposed by this chapter.

(15) "Vapor product" means any noncombustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also includes any cartridge or other container of liquid nicotine, solution, or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the device and is sold for such purpose.

(a) The term does not include:

(i) Any product approved by the United States food and drug administration for sale as a tobacco cessation product, medical device, or for other therapeutic purposes when such product is marketed and sold solely for such an approved purpose;

(ii) Any product that will become an ingredient or component in a vapor product manufactured by a distributor; or

(iii) Any product that meets the definition of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, cigarette, or tobacco products.

(b) For purposes of this subsection (15):

(i) "Cigarette" has the same meaning as provided in RCW 82.24.010; and

(ii) "Cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as provided in RCW 69.50.101. [2022 c 16 § 163; 2019 c 445 § 101.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.010 Tax imposed—Time of collection—Deposits. (1)(a) There is levied and collected a tax upon the sale, use, consumption, handling, possession, or distribution of all vapor products in this state as follows:

(i) All vapor products other than those taxed under (a)(ii) of this subsection are taxed at a rate equal to twenty-seven cents per milliliter of solution, regardless of whether it contains nicotine, and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.

(ii) Any accessible container of solution, regardless of whether it contains nicotine, that is greater than five milliliters, is taxed at a rate equal to nine cents per milliliter of solution and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.

(b) The tax in this section must be imposed based on the volume of the solution as listed by the manufacturer.

(2)(a) The tax under this section must be collected at the time the distributor: (i) Brings, or causes to be brought, into this state from without the state vapor products for sale; (ii)

makes, manufactures, fabricates, or stores vapor products in this state for sale in this state; (iii) ships or transports vapor products to retailers or consumers in this state; or (iv) handles for sale any vapor products that are within this state but upon which tax has not been imposed.

(b) The tax imposed under this section must also be collected by the department from the consumer of vapor products where the tax imposed under this section was not paid by the distributor on such vapor products.

(3)(a) The moneys collected under this section must be deposited as follows:

(i) Fifty percent into the Andy Hill cancer research endowment fund match transfer account created in RCW 43.348.080; and

(ii) Fifty percent into the foundational public health services account created in RCW 82.25.015.

(b) The funding provided under this subsection is intended to supplement and not supplant general fund investments in cancer research and foundational public health services. [2019 c 445 § 102.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.015 Foundational public health services account. The foundational public health services account is created in the state treasury. Half of all of the moneys collected from the tax imposed on vapor products under RCW 66.44.010 must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account are to be used for the following purposes:

(1) To fund foundational health services. In the 2019-2021 biennium, at least twelve million dollars of the funds deposited into the account must be appropriated for this purpose. Beginning in the 2021-2023 biennium, fifty percent of the funds deposited into the account, but not less than twelve million dollars each biennium, are to be used for this purpose;

(2) To fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education. Beginning in the 2021-2023 biennium, seventeen percent of the funds deposited into the account are to be used for this purpose;

(3) To support increased access and training of public health professionals at public health programs at accredited public institutions of higher education in Washington. Beginning in the 2021-2023 biennium, five percent of the funds deposited into the account are to be used for this purpose;

(4) To fund enforcement by the state liquor and cannabis board of the provisions of this chapter to prevent sales of vapor products to minors and related provisions for control of marketing and product safety, provided that no more than eight percent of the funds deposited into the account may be appropriated for these enforcement purposes. [2019 c 445 § 103.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.020 Intent—Purpose. It is the intent and purpose of this chapter to levy a tax on all vapor products sold, used, consumed, handled, possessed, or distributed within this state. It is the further intent and purpose of this chapter to impose the tax only once on all vapor products in this state.

Nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under this title. [2019 c 445 § 104.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.025 Federal law preemption. The tax imposed by RCW 82.25.010 does not apply with respect to any vapor products which under the Constitution and laws of the United States may not be made the subject of taxation by this state. [2019 c 445 § 105.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.030 Recordkeeping requirements. (1) Every distributor must keep at each place of business complete and accurate records for that place of business, including itemized invoices, of vapor products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of vapor products made.

(2) These records must show the names and addresses of purchasers, the inventory of all vapor products, and other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the vapor products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises are subject to revocation by the department, and any licenses issued under chapter 70.345, 82.26, or 82.24 RCW are subject to suspension or revocation by the board. [2019 c 445 § 106.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.035 Itemized invoice requirement when sold to person other than ultimate consumer. Every person required to be licensed under chapter 70.345 RCW who sells vapor products to persons other than the ultimate consumer must render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. The person must preserve legible copies of all such invoices for five years from the date of sale. [2019 c 445 § 107.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.040 Itemized invoice requirement—Retailers. (1) Every retailer must procure itemized invoices of all vapor products purchased. The invoices must show the seller's

(2022 Ed.)

name and address, the date of purchase, and all prices and discounts.

(2) The retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the vapor products contained in the retail outlet, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation by the department, and any licenses issued under chapter 70.345, 82.26, or 82.24 RCW are subject to suspension or revocation by the board. [2019 c 445 § 108.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.050 Chapter 82.32 RCW application. All of the provisions contained in chapter 82.32 RCW not inconsistent with the provisions of this chapter have full force and application with respect to taxes imposed under the provisions of this chapter. [2019 c 445 § 110.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.055 Enforcement officers. The department must authorize, as duly authorized agents, enforcement officers of the board to enforce provisions of this chapter. These officers are not employees of the department. [2019 c 445 § 111.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.060 Invoice requirements—Rules—Liability. (1) The department may by rule establish the invoice detail required under RCW 82.25.030 for a distributor and for those invoices required to be provided to retailers under RCW 82.25.040.

(2) If a retailer fails to keep invoices as required under RCW 82.25.040, the retailer is liable for the tax owed on any uninvoiced vapor products but not penalties and interest, except as provided in subsection (3) of this section.

(3) If the department finds that the nonpayment of tax by the retailer was willful or if in the case of a second or plural nonpayment of tax by the retailer, penalties and interest must be assessed in accordance with chapter 82.32 RCW. [2019 c 445 § 112.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.065 Transporting vapor products for sale—Notice. (1) No person may transport or cause to be transported in this state vapor products for sale other than: (a) A licensed distributor under chapter 70.345 RCW, or a manufacturer's representative authorized to sell or distribute vapor

products in this state under chapter 70.345 RCW; (b) a licensed retailer under chapter 70.345 RCW; (c) a seller with a valid delivery sale license under chapter 70.345 RCW; or (d) a person who has given notice to the board in advance of the commencement of transportation.

(2) When transporting vapor products for sale, the person must have in his or her actual possession, or cause to have in the actual possession of those persons transporting such vapor products on his or her behalf, invoices or delivery tickets for the vapor products, which must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the vapor products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section, the department, board, or peace officer is authorized to stop the vehicle and to inspect it for contraband vapor products.

(4) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102. [2019 c 445 § 113.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.070 Recordkeeping by the board. The board must compile and maintain a current record of the names of all distributors, retailers, and delivery sales licenses under chapter 70.345 RCW and the status of their license or licenses. The information must be updated on a monthly basis and published on the board's official internet website. This information is not subject to the confidentiality provisions of RCW 82.32.330 and must be disclosed to manufacturers, distributors, retailers, and the general public upon request. [2019 c 445 § 114.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.075 Distributors and retailers—Invoices—Transportation—Additional licenses. (1) No person engaged in or conducting business as a distributor or retailer in this state may:

(a) Make, use, or present or exhibit to the department or the board any invoice for any of the vapor products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(b) Fail to produce on demand of the department or the board all invoices of all the vapor products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(2)(a) No person, other than a licensed distributor, retailer or delivery sales licensee, or manufacturer's representative, may transport vapor products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.25.065;

(ii) The person transporting the vapor products actually possesses invoices or delivery tickets showing the true name

and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported; and

(iii) The vapor products are consigned to or purchased by a person in this state who is licensed under chapter 70.345 RCW.

(b) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under chapter 70.345 RCW as a distributor, and any person licensed under chapter 70.345 RCW as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.

(5) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102. [2019 c 445 § 115.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.080 Distributor and retailer license requirements. (1) A retailer that obtains vapor products from an unlicensed distributor or any other person that is not licensed under chapter 70.345 RCW must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.25.010 with respect to the vapor products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in chapter 445, Laws of 2019 and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under chapter 70.345 RCW may sell vapor products to retailers located in Washington only if the retailer has a current retailer's license under chapter 70.345 RCW. [2019 c 445 § 116.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.085 Manufacturer's representatives. A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's vapor products in this state must provide the board a list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. A manufacturer's representative is not authorized to distribute or sell vapor products in this state unless the manufacturer that hired the representative has a valid distributor's license under chapter 70.345 RCW and that manufacturer provides the board a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's vapor products. [2019 c 445 § 117.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.090 License and notice requirement violations—Seizure and forfeiture. (1) Any vapor products in the possession of a person selling vapor products in this state acting as a distributor or retailer and who is not licensed as required under chapter 70.345 RCW, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, manufacturer's representative, or retailer and who transports vapor products for sale without having provided notice to the board required under RCW 82.25.065, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section may not be construed to require the seizure of vapor products if the department's agent, board's agent, or law enforcement officer reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(6) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

(7) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102. [2019 c 445 § 118.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.095 Seizure and forfeiture procedures. (1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the department or board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money must be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter. [2019 c 445 § 119.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.100 Violations of chapter—Affidavit—Search warrants. When the department or the board has good reason to believe that any of the vapor products taxed under this chapter are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter, it may make affidavit of facts describing the place or thing to be searched, before any judge of any court in this state, and the judge must issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department or the board commanding him or her diligently to search any building, room in a building, place, or vehicle as may be designated in the affidavit and search warrant, and to seize the vapor products and hold them until disposed of by law. [2019 c 445 § 120.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.105 Tax credit—Sold outside state—Returned, destroyed products—Sold to United States or an Indian tribal organization. (1)(a) Where vapor products upon which the tax imposed by this chapter has been reported and paid are shipped or transported outside this state by the distributor to a person engaged in the business of selling vapor products, to be sold by that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, or are sold by the distributor to the United States or any of its agencies or instrumentalities, or are sold by the distributor to any Indian tribal organization, credit of such tax may be made to the distributor in accordance with rules prescribed by the department.

(b) For purposes of this subsection (1), the following definitions apply:

(i) "Indian distributor" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of "distributor" under RCW 82.25.005, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.25.005.

(ii) "Indian retailer" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of "retailer" under RCW 82.25.005, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.25.005.

(iii) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(2) Credit allowed under this section must be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid. [2019 c 445 § 121.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.110 Preexisting inventories. (1) Preexisting inventories of vapor products are subject to the tax imposed in RCW 82.25.010. All retailers and other distributors must report the tax due under RCW 82.25.010 on preexisting inventories of vapor products on a form, as prescribed by the department, on or before October 31, 2019, and the tax due on such preexisting inventories must be paid on or before January 31, 2020.

(2) Reports under subsection (1) of this section not filed with the department by October 31, 2019, are subject to a late filing penalty equal to the greater of two hundred fifty dollars or ten percent of the tax due under RCW 82.25.010 on the taxpayer's preexisting inventories.

(3) The department must notify the taxpayer of the amount of tax due under RCW 82.25.010 on preexisting inventories, which is subject to applicable penalties under RCW 82.32.090 (2) through (7) if unpaid after January 31, 2020. Amounts due in accordance with this section are not considered to be substantially underpaid for the purposes of RCW 82.32.090(2).

(4) Interest, at the rate provided in RCW 82.32.050(2), must be computed daily beginning February 1, 2020, on any remaining tax due under RCW 82.25.010 on preexisting inventories until paid.

(5) A retailer required to comply with subsection (1) of this section is not required to obtain a distributor license as otherwise required under chapter 70.345 RCW as long as the retailer:

(a) Does not sell vapor products other than to ultimate consumers; and

(b) Does not meet the definition of "distributor" in RCW 82.25.005 other than with respect to the sale of that retailer's preexisting inventory of vapor products.

(6) Taxes may not be collected under RCW 82.25.010 from consumers with respect to any vapor products acquired before October 1, 2019.

(7) For purposes of this section, "preexisting inventory" means an inventory of vapor products located in this state as of the moment that RCW 82.25.010 takes effect and held by a distributor for sale, handling, or distribution in this state. [2019 c 445 § 122.]

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.25.900 Conflict with federal requirements—2019 c 445. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2019 c 445 § 407.]

82.25.901 Effective date—2019 c 445. This act takes effect October 1, 2019. [2019 c 445 § 409.]

Chapter 82.26 RCW TAX ON TOBACCO PRODUCTS

Sections

82.26.010	Definitions.
82.26.020	Tax imposed—Deposited into the general fund.
82.26.027	Tax preferences—Expiration dates.
82.26.030	Legislative intent—Purpose.
82.26.040	When tax not applicable under laws of United States.
82.26.060	Books and records to be preserved—Entry and inspection by department or board.
82.26.070	Preservation of invoices of sales to other than ultimate consumer.
82.26.080	Retailer invoices—Requirements—Inspection.
82.26.090	Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection.
82.26.100	Reports and returns.
82.26.105	Inspection of books, documents, or records of carriers.
82.26.110	When credit may be obtained for tax paid.
82.26.120	Administration.
82.26.121	Enforcement—Appointment of officers of liquor and cannabis board.
82.26.130	Invoices—Nonpayment—Penalties and interest.
82.26.140	Transport of tobacco products—Requirements—Vehicle inspection.
82.26.150	Distributor's license, retailer's license—Application—Approval—Display.
82.26.160	Distributor's license—Application fees.
82.26.170	Retailer's license—Application fee.
82.26.180	Board website listing distributors and retailers.
82.26.190	Distributors and retailers—Valid license required—Violations—Penalties.
82.26.200	Sales from distributors to retailers—Requirements.
82.26.210	Manufacturer's representatives—Requirements.

82.26.220	Enforcement, administration of chapter—License suspension, revocation.
82.26.230	Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property.
82.26.240	Seizure and forfeiture of property—Department and board requirements.
82.26.250	Enforcement—Search warrants.
82.26.260	Tobacco product code—Tax payment and exemption verification.

Minors: Chapter 70.155 RCW.

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

(1) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(2) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(3) "Board" means the liquor and cannabis board.

(4) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(5) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(6) "Cigarette" has the same meaning as in RCW 82.24.010.

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

(8) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(9) "Indian country" means the same as defined in chapter 82.24 RCW.

(10) "Little cigar" means a cigar that has a cellulose acetate integrated filter.

(11) "Manufacturer" means a person who manufactures and sells tobacco products.

(12) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(13) "Moist snuff" means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

(14) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock

company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(15) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(16) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(17) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(18)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(19)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (18)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (14)

of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

(20) "Taxpayer" means a person liable for the tax imposed by this chapter.

(21) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but does not include cigarettes as defined in RCW 82.24.010.

(22) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(23) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products. [2020 c 139 § 31. Prior: 2010 1st sp.s. c 22 § 4; 2005 c 180 § 2; 2002 c 325 § 1; 1995 c 278 § 16; 1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26.010; prior: 1959 ex.s. c 5 § 11.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Additional notes found at www.leg.wa.gov

82.26.020 Tax imposed—Deposited into the general fund. (1) There is levied and collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) For cigars except little cigars, ninety-five percent of the taxable sales price of cigars, not to exceed sixty-five cents per cigar;

(b) For all tobacco products except those covered under separate provisions of this subsection, ninety-five percent of the taxable sales price. The tax imposed on a product under this subsection must be reduced by fifty percent if that same product is issued a modified risk tobacco product order by the secretary of the United States department of health and human services pursuant to Title 21 U.S.C. Sec. 387k(g)(1), or by twenty-five percent if that same product is issued a modified risk tobacco product order by the secretary of the United States department of health and human services pursuant to Title 21 U.S.C. Sec. 387k(g)(2). The tax reduction applies during the period the modified risk tobacco product order is in effect;

(c) For moist snuff, as established in this subsection (1)(c) and computed on the net weight listed by the manufacturer:

(i) On each single unit consumer-sized can or package whose net weight is one and two-tenths ounces or less, a rate per single unit that is equal to the greater of 2.526 dollars or

eighty-three and one-half percent of the cigarette tax under chapter 82.24 RCW multiplied by twenty; or

(ii) On each single unit consumer-sized can or package whose net weight is more than one and two-tenths ounces, a proportionate tax at the rate established in (c)(i) of this subsection (1) on each ounce or fractional part of an ounce; and

(d) For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW.

(2) Taxes under this section must be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section must be deposited into the state general fund. [2019 c 445 § 404; 2010 1st sp.s. c 22 § 5; 2009 c 479 § 70; 2005 c 180 § 3; 2002 c 325 § 2; 1993 c 492 § 309; 1983 2nd ex.s. c 3 § 16; 1982 1st ex.s. c 35 § 9; 1975 1st ex.s. c 278 § 71; 1971 ex.s. c 299 § 77; 1965 ex.s. c 173 § 25; 1961 c 15 § 82.26.020. Prior: 1959 ex.s. c 5 § 12.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Finding—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.26.027 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1715.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.26.030 Legislative intent—Purpose. It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state is the distributor liable for the tax and that (1) for moist snuff the tax will be based on the net weight listed by the manufacturer and (2) in most other instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller. [2010 1st sp.s. c 22 § 7; 2005 c 180 § 1; 2002 c 325 § 4; 1961 c 15 § 82.26.030. Prior: 1959 ex.s. c 5 § 13.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Additional notes found at www.leg.wa.gov

82.26.040 When tax not applicable under laws of United States. The tax imposed by RCW 82.26.020 shall not apply with respect to any tobacco products which under the Constitution and laws of the United States may not be made the subject of taxation by this state. [1961 c 15 § 82.26.040. Prior: 1959 ex.s. c 5 § 14.]

82.26.060 Books and records to be preserved—Entry and inspection by department or board. (1) Every distributor must keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records must show the names and addresses of purchasers, the inventory of all tobacco products, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 or 70.345 RCW are subject to suspension or revocation, by the department or board. [2019 c 445 § 205; 2009 c 154 § 3; 2005 c 180 § 4; 1975 1st ex.s. c 278 § 73; 1961 c 15 § 82.26.060. Prior: 1959 ex.s. c 5 § 16.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Additional notes found at www.leg.wa.gov

82.26.070 Preservation of invoices of sales to other than ultimate consumer. Every person required to be licensed under this chapter who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. The person shall preserve legible copies of all such invoices for five years from the date of sale. [2005 c 180 § 7; 1961 c 15 § 82.26.070. Prior: 1959 ex.s. c 5 § 17.]

Additional notes found at www.leg.wa.gov

82.26.080 Retailer invoices—Requirements—Inspection. (1) Every retailer must procure itemized invoices of all tobacco products purchased. The invoices must show the seller's name and address, the date of purchase, and all prices and discounts.

(2022 Ed.)

(2) The retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the tobacco products contained in the retail outlet, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 or 70.345 RCW are subject to suspension or revocation by the department. [2019 c 445 § 206; 2005 c 180 § 5; 1975 1st ex.s. c 278 § 74; 1961 c 15 § 82.26.080. Prior: 1959 ex.s. c 5 § 18.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Additional notes found at www.leg.wa.gov

82.26.090 Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the department of revenue for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the department may require. These records shall be preserved for five years from the date of delivery of the tobacco products. [1975 1st ex.s. c 278 § 75; 1961 c 15 § 82.26.090. Prior: 1959 ex.s. c 5 § 19.]

Additional notes found at www.leg.wa.gov

82.26.100 Reports and returns. Every taxpayer shall report and make returns as provided in RCW 82.32.045. [2005 c 180 § 8; 1983 c 3 § 218; 1961 c 15 § 82.26.100. Prior: 1959 ex.s. c 5 § 20.]

Additional notes found at www.leg.wa.gov

82.26.105 Inspection of books, documents, or records of carriers. (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting tobacco products for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of tobacco products for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband tobacco products.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by

this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 3; 2005 c 180 § 6.]

Additional notes found at www.leg.wa.gov

82.26.110 When credit may be obtained for tax paid.

(1)(a) Where tobacco products upon which the tax imposed by this chapter has been reported and paid are shipped or transported outside this state by the distributor to a person engaged in the business of selling tobacco products, to be sold by that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, or are sold by the distributor to the United States or any of its agencies or instrumentalities, or are sold by the distributor to any Indian tribal organization, credit of such tax may be made to the distributor in accordance with rules prescribed by the department.

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

(i) "Indian distributor" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(ii) "Indian retailer" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(iii) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(2) Credit allowed under this section shall be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid. [2007 c 221 § 4; 2005 c 180 § 9; 1975 1st ex.s. c 278 § 76; 1961 c 15 § 82.26.110. Prior: 1959 ex.s. c 5 § 21.]

Additional notes found at www.leg.wa.gov

82.26.120 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1963 ex.s. c 28 § 5.]

Additional notes found at www.leg.wa.gov

82.26.121 Enforcement—Appointment of officers of liquor and cannabis board. The department must appoint, as duly authorized agents, enforcement officers of the liquor and cannabis board to enforce provisions of this chapter. These officers are not considered employees of the department. [2020 c 139 § 32; 1997 c 420 § 11.]

82.26.130 Invoices—Nonpayment—Penalties and interest. (1) The department must by rule establish the invoice detail required under RCW 82.26.060 for a distributor under RCW 82.26.010(8)(d) and for those invoices required to be provided to retailers under RCW 82.26.070.

(2) If a retailer fails to keep invoices as required under chapter 82.32 RCW, the retailer is liable for the tax owed on any uninvoiced tobacco products but not penalties and interest, except as provided in subsection (3) of this section.

(3) If the department finds that the nonpayment of tax by the retailer was willful or if in the case of a second or plural nonpayment of tax by the retailer, penalties and interest must be assessed in accordance with chapter 82.32 RCW. [2020 c 139 § 33; 2002 c 325 § 5.]

Additional notes found at www.leg.wa.gov

82.26.140 Transport of tobacco products—Requirements—Vehicle inspection.

(1) No person other than (a) a licensed distributor in the distributor's own vehicle, a manufacturer's representative authorized to sell or distribute tobacco products in this state under RCW 82.26.210, or a licensed retailer in the retailer's own vehicle, or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state tobacco products for sale.

(2) When transporting tobacco products for sale, the person shall have in his or her actual possession, or cause to have in the actual possession of those persons transporting such tobacco products on his or her behalf, invoices or delivery tickets for the tobacco products, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting tobacco products in violation of this section, the department, the board, or peace officer, is authorized to stop the vehicle and to inspect it for contraband tobacco products. [2005 c 180 § 10.]

Additional notes found at www.leg.wa.gov

82.26.150 Distributor's license, retailer's license—Application—Approval—Display.

(1) The licenses issuable by the board under this chapter are as follows:

- (a) A distributor's license; and
- (b) A retailer's license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such

cases. The board may, in its discretion, issue or refuse to issue the distributor's license or retailer's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24, 82.24, or 70.345 RCW, the background check done under the authority of chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter expires on the business license expiration date. The license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board adopted pursuant to this chapter.

(5) Each license and any other evidence of the license required under this chapter must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2019 c 445 § 207; 2013 c 144 § 52; 2009 c 154 § 4; 2005 c 180 § 11.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Additional notes found at www.leg.wa.gov

82.26.160 Distributor's license—Application fees.

(1) A fee of six hundred fifty dollars shall accompany each distributor's license application or license renewal application. If a distributor sells or intends to sell tobacco products at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business.

(2) The fees imposed under subsection (1) of this section do not apply to any person applying for a distributor's license or for renewal of a distributor's license if the person has a valid wholesaler's license under RCW 82.24.510 for the place of business associated with the distributor's license application or license renewal application. [2005 c 180 § 12.]

Additional notes found at www.leg.wa.gov

82.26.170 Retailer's license—Application fee. (1) A fee of one hundred seventy-five dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates.

(2) The fee imposed under subsection (1) of this section does not apply to any person applying for a retailer's license or for renewal of a retailer's license if the person has a valid retailer's license under RCW 82.24.510 for the place of business associated with the retailer's license application or renewal application.

(3) A retailer applying for, or renewing, both a retailer's license under RCW 82.26.170 and a vapor products retailer's license under RCW 70.345.020 may pay a combined application fee of two hundred fifty dollars for both licenses. [2016 sp.s. c 38 § 28; 2005 c 180 § 13.]

(2022 Ed.)

Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28: See note following RCW 70.345.020.

Additional notes found at www.leg.wa.gov

82.26.180 Board website listing distributors and retailers. The board shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the board's official internet website. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request. [2009 c 154 § 5; 2005 c 180 § 15.]

Additional notes found at www.leg.wa.gov

82.26.190 Distributors and retailers—Valid license required—Violations—Penalties. (1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(8)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer,

may not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2020 c 139 § 34; 2009 c 154 § 6; 2005 c 180 § 16.]

Additional notes found at www.leg.wa.gov

82.26.200 Sales from distributors to retailers—Requirements. (1) A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in RCW 82.26.010(14) and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under this chapter must sell tobacco products to retailers located in Washington only if the retailer has a current retailer's license under this chapter. [2020 c 139 § 35; 2005 c 180 § 17.]

Additional notes found at www.leg.wa.gov

82.26.210 Manufacturer's representatives—Requirements. A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the board a list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the board a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products. [2009 c 154 § 7; 2005 c 180 § 14.]

Additional notes found at www.leg.wa.gov

82.26.220 Enforcement, administration of chapter—License suspension, revocation. (1) The board must enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The board may revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license may not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or of any

rule adopted under it, must, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 or 70.345 RCW to a person whose license or licenses have been suspended or revoked under this section must also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of one year of the license or licenses. The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked may not sell tobacco products, vapor products, or cigarettes or permit tobacco products, vapor products, or cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW. [2019 c 445 § 208; 2015 c 86 § 308; 2009 c 154 § 8; 2005 c 180 § 18.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Additional notes found at www.leg.wa.gov

82.26.230 Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property. (1) Any tobacco products in the possession of a person selling tobacco products in this state acting as a distributor or retailer and who is not licensed as required under RCW 82.26.190, or a person who is selling tobacco products in violation of RCW 82.26.220(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any tobacco products seized under this subsection shall be deemed forfeited.

(2) Any tobacco products in the possession of a person who is not a licensed distributor or retailer and who transports tobacco products for sale without having provided notice to the board required under RCW 82.26.140, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address

of the consignee or purchaser, and the quantity and brands of tobacco products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of tobacco products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the tobacco products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section shall not be construed to require the seizure of tobacco products if the department's agent, board's agent, or law enforcement officer reasonably believes that the tobacco products are possessed for personal consumption by the person in possession of the tobacco products.

(6) Any tobacco products seized by a law enforcement officer shall be turned over to the board as soon as practicable. [2005 c 180 § 20.]

Additional notes found at www.leg.wa.gov

82.26.240 Seizure and forfeiture of property—Department and board requirements. (1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money shall be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter. [2005 c 180 § 21.]

Additional notes found at www.leg.wa.gov

82.26.250 Enforcement—Search warrants. When the department or the board has good reason to believe that any of the tobacco products taxed under this chapter are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter, it may make affidavit of facts describing the place or thing to be searched, before any judge of any court in this state, and the judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department or the board commanding him or her diligently to search any building, room in a building, place, or vehicle as may be designated in the affidavit and search warrant, and to seize the tobacco products and hold them until disposed of by law. [2005 c 180 § 22.]

Additional notes found at www.leg.wa.gov

82.26.260 Tobacco product code—Tax payment and exemption verification. (1)(a) Within one year following the date on which the requirement for a tobacco product code is effective, payment of, or exemption from, the tax imposed in RCW 82.26.020 must be verifiable on each single-unit consumer-sized can or package of moist snuff, as provided in (b) of this subsection.

(b) Within thirty days following the date on which notice of proposed rule making to require a tobacco product code is published in the federal register, the department must commence to develop a method for using a tobacco product code to verify payment of, or exemption from, the tax imposed in RCW 82.26.020; to develop and implement a pilot project to test the method; and to develop a plan for adoption of rules to implement the method. The department must report to the legislature on its progress annually by December 1st through the year following the year in which the method is implemented.

(2) If notice of proposed rule making to require a tobacco product code is not published in the federal register by July 1, 2011, the department must determine and recommend to the legislature by November 1, 2014, a method to verify payment of, or exemption from, the tax imposed in RCW 82.26.020,

by means of stamping, use of manufacturers' digitally readable product identifiers, or any other method, and must complete and present to the legislature a study of compliance with the tax imposed in RCW 82.26.020, the effect of noncompliance on state revenue, and the effect of adopting a method to verify payment of, or exemption from, the tax.

(3) For purposes of this section, "tobacco product code" means a code that is required on the label of a tobacco product for purposes of tracking or tracing the product through the distribution system under final regulations adopted by the secretary of the United States department of health and human services. [2010 1st sp.s. c 22 § 6.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Chapter 82.27 RCW

TAX ON ENHANCED FOOD FISH

Sections

82.27.010	Definitions.
82.27.020	Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.
82.27.025	Tax preferences—Expiration dates.
82.27.030	Exemptions.
82.27.040	Credit for taxes paid to another taxing authority.
82.27.050	Application of excise taxes' administrative provisions and definitions.
82.27.060	Payment of tax—Remittance—Returns.
82.27.070	Deposit of taxes.
82.27.900	Effective date—Implementation—1980 c 98.

82.27.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Enhanced food fish" includes all species of food fish, except all species of tuna, mackerel, and jack; shellfish; and anadromous game fish, including by-products and parts thereof, originating within the territorial and adjacent waters of Washington and salmon originating from within the territorial and adjacent waters of Oregon, Washington, and British Columbia, and all troll-caught Chinook salmon originating from within the territorial and adjacent waters of southeast Alaska. As used in this subsection, "adjacent" waters of Oregon, Washington, and Alaska are those comprising the United States fish conservation zone; "adjacent" waters of British Columbia are those comprising the Canadian two hundred mile exclusive economic zone; and "southeast Alaska" means that portion of Alaska south and east of Cape Suckling to the Canadian border. For purposes of this chapter, point of origination is established by a document which identifies the product and state or province in which it originates, including, but not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies.

(2) "Commercial" means related to or connected with buying, selling, bartering, or processing.

(3) "Possession" means the control of enhanced food fish by the owner and includes both actual and constructive possession. Constructive possession occurs when the person has legal ownership but not actual possession of the enhanced food fish.

(4) "Anadromous game fish" means steelhead trout and anadromous cutthroat trout and Dolly Varden char and

includes by-products and also parts of anadromous game fish, whether fresh, frozen, canned, or otherwise.

(5) "Landed" means the act of physically placing enhanced food fish (a) on a tender in the territorial waters of Washington; or (b) on any land within or without the state of Washington including wharves, piers, or any such extensions therefrom. [1995 c 372 § 4; 1985 c 413 § 1. Prior: 1983 1st ex.s. c 46 § 180; 1983 c 284 § 5; 1980 c 98 § 1.]

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed. (1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Puget Sound Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

(b) Ocean waters, Columbia river, Willapa Bay, and Grays Harbor Chinook, coho, and chum salmon and anadromous game fish: Six and twenty-five one-hundredths percent;

(c) Pink and sockeye salmon: Three and fifteen one-hundredths percent;

(d) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent;

(e) Oysters: Eight one-hundredths of one percent;

(f) Sea urchins: Two and one-tenth percent; and

(g) Sea cucumbers: Two and one-tenth percent.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section. [2017 3rd sp.s. c 8 § 53; 2010 c 193 § 16; 2005 c 110 § 3; 2001 c 320 § 9; 1999 c 126 § 3; 1993 sp.s. c 17 § 12; 1985 c 413 § 2; 1983 2nd ex.s. c 3 § 17; 1983 c 284 § 6; 1982 1st ex.s. c 35 § 10; 1980 c 98 § 2.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Findings—Intent—1983 c 284: "The legislature finds that there are commercial fish buyers benefiting financially from the propagation of game fish in the state. The legislature recognizes that license fees obtained from sports fishermen support the majority of the production of these game fish. The legislature finds that commercial operations which benefit from the commercial harvest of these fish should pay a tax to assist in the funding of these facilities. However, the intent of the legislature is not to support the commercial harvest of steelhead and other game fish." [1983 c 284 § 8.]

Additional notes found at www.leg.wa.gov

82.27.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1716.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.27.030 Exemptions. The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced food fish originating outside the state which enters the state as (a) frozen enhanced food fish or (b) enhanced food fish packaged for retail sales; (2) the growing, processing, or dealing with food fish or shellfish which are raised from eggs, fry, or larvae and which are under the physical control of the grower at all times until being sold or harvested; and (3) food fish, shellfish, anadromous game fish, and by-products or parts of food fish shipped from outside the state which enter the state, except as provided in RCW 82.27.010, provided the taxpayer must have documentation showing shipping origination of fish exempt under this subsection to qualify for exemption. Such documentation includes, but is not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies. [1995 2nd sp.s. c 7 § 1; 1985 c 413 § 3; 1980 c 98 § 3.]

Additional notes found at www.leg.wa.gov

82.27.040 Credit for taxes paid to another taxing authority. A credit shall be allowed against the tax imposed by RCW 82.27.020 upon enhanced food fish with respect to any tax previously paid on that same enhanced food fish to any other legally established taxing authority. To qualify for a credit, the owner of the enhanced food fish must have documentation showing a tax was paid in another jurisdiction. [1985 c 413 § 4; 1980 c 98 § 4.]

82.27.050 Application of excise taxes' administrative provisions and definitions. All of the provisions of chapters 82.02 and 82.32 RCW shall be applicable and have full force and effect with respect to taxes imposed under this chapter. The meaning attributed to words and phrases in chapter 82.04 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under this chapter. [1980 c 98 § 5.]

82.27.060 Payment of tax—Remittance—Returns. The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made within twenty-five days after the end of the month in which the taxable activity occurs. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to cover other periods, but in no event may periodic returns be filed for a period greater than one year. In such cases tax pay-

ments are due on or before the last day of the month next succeeding the end of the period covered by the return. [2006 c 256 § 3; 2003 1st sp.s. c 13 § 10; 1990 c 214 § 1; 1980 c 98 § 6.]

Additional notes found at www.leg.wa.gov

82.27.070 Deposit of taxes. All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the following:

(1) The excise tax on anadromous game fish is deposited in the fish, wildlife, and conservation account created in RCW 77.12.170(3).

(2) The excise tax on ocean waters, Columbia river, Willapa Bay, and Grays Harbor chinook, coho, and chum salmon is deposited as follows:

(a) The equivalent of five and twenty-five one-hundredths percent shall be deposited in the state general fund.

(b) The equivalent of one percent shall be deposited in the fish, wildlife, and conservation account created in RCW 77.12.170(3). [2020 c 148 § 28; 2017 3rd sp.s. c 8 § 54; 2010 c 193 § 17; 2005 c 110 § 4; 2003 c 39 § 46; 1999 c 126 § 4; 1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

Intent—Effective date—2020 c 148: See notes following RCW 77.12.170.

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

82.27.900 Effective date—Implementation—1980 c 98. This act shall take effect on July 1, 1980. The director of revenue is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective date. [1980 c 98 § 11.]

Chapter 82.29A RCW LEASEHOLD EXCISE TAX

Sections

- 82.29A.010 Legislative findings and recognition.
- 82.29A.020 Definitions.
- 82.29A.025 Tax preferences—Expiration dates.
- 82.29A.030 Tax imposed—Credit—Additional tax imposed.
- 82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection.
- 82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting.
- 82.29A.055 Payment in lieu of leasehold excise tax—Property owned by Indian tribe.
- 82.29A.060 Administration—Appraisal appeal—Audits.
- 82.29A.070 Disposition of revenue.
- 82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account.
- 82.29A.090 Distributions to counties and cities.
- 82.29A.100 Distributions by county treasurers.
- 82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance.
- 82.29A.120 Allowable credits.
- 82.29A.125 Exemptions—Electric vehicle infrastructure.
- 82.29A.130 Exemptions—Certain property.
- 82.29A.132 Exemptions—Operation of state route No. 16.
- 82.29A.134 Exemptions—Sales/leasebacks by regional transit authorities.
- 82.29A.135 Exemptions—Property used for the operation of an anaerobic digester.
- 82.29A.136 Exemptions—Certain residential and recreational lots.
- 82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes.
- 82.29A.138 Exemptions—Certain amateur radio repeaters.
- 82.29A.140 Rules and regulations.

82.29A.160 Improvements not defined as contract rent taxable under Title 84 RCW.

Reviser's note: Throughout chapter 82.29A RCW the term "this 1976 amendatory act" has been changed to "this chapter, RCW 84.36.451 and 84.40.175." This 1976 amendatory act [1975-'76 2nd ex.s. c 61] also repealed chapter 82.29 RCW, RCW 84.36.450, 84.36.455, and 84.36.460.

82.29A.010 Legislative findings and recognition.

(1)(a) The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

(b) The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

(c) The legislature finds that lessees of publicly owned property or community centers are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property or community centers. For the purposes of this subsection, "community center" has the same meaning as provided in RCW 84.36.010.

(d) The legislature also finds that eliminating the property tax on property owned exclusively by federally recognized Indian tribes within the state requires that the leasehold excise tax also be applied to leasehold interests on tribally owned property.

(2) The legislature further finds that experience gained by lessors, lessees, and the department of revenue since enactment of the leasehold excise tax under this chapter has shed light on areas in the leasehold excise statutes that need explanation and clarification. The purpose of chapter 220, Laws of 1999 is to make those changes. [2014 c 207 § 2; 2010 c 281 § 2; 1999 c 220 § 1; 1975-'76 2nd ex.s. c 61 § 1.]

Application—2014 c 207: See note following RCW 84.36.010.

Additional notes found at www.leg.wa.gov

82.29A.020 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1)(a) "Leasehold interest" means an interest in publicly owned, or specified privately owned, real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. However, no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government may constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" includes the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within

a district listed on any federal or state register of historical sites.

(b) The term "leasehold interest" does not include:

(i) Road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from an owner or the lessee of an owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration; or

(ii) The preferential use of publicly owned cargo cranes and docks and associated areas used in the loading and discharging of cargo located at a port district marine facility. "Preferential use" means that publicly owned real or personal property is used by a private party under a written agreement with the public owner, but the public owner or any third party maintains a right to use the property when not being used by the private party.

(2)(a) "Taxable rent" means contract rent as defined in (c) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. With respect to a leasehold interest in privately owned property, "taxable rent" means contract rent. However, after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in (g) of this subsection. All other leasehold interests are subject to the determination of taxable rent under the terms of (g) of this subsection.

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

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

(d) "Contract rent" does not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant

to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements are taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

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

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

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

(3) "Product lease" as used in this chapter means a lease of property for use in the production of agricultural or marine products, not including the production of cannabis as defined in RCW 69.50.101, to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

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

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

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

(7) "Publicly owned, or specified privately owned, real or personal property" includes real or personal property:

(a) Owned in fee or held in trust by a public entity and exempt from property tax under the laws or Constitution of this state or the Constitution of the United States;

(b) Owned by a federally recognized Indian tribe in the state and exempt from property tax under RCW 84.36.010;

(c) Owned by a nonprofit fair association exempt from property tax under RCW 84.36.480(2), but only with respect to that portion of the fair's property subject to the tax imposed in this chapter pursuant to RCW 84.36.480(2)(b); or

(d) Owned by a community center exempt from property tax under RCW 84.36.010. [2022 c 16 § 164; 2015 3rd sp.s. c 6 § 2004; 2015 3rd sp.s. c 6 § 2003. Prior: 2014 c 207 § 3; 2014 c 140 § 26; 2012 2nd sp.s. c 6 § 501; 1999 c 220 § 2; 1991 c 272 § 23; 1986 c 285 § 1; 1979 ex.s. c 196 § 11; 1975-'76 2nd ex.s. c 61 § 2.]

Reviser's note: Two versions of this section existed prior to the repeal of their respective expiration and effective date sections by 2020 c 272 §§ 4 and 5. The language in both versions was identical. For purposes of publication, this section incorporates both 2015 3rd sp.s. c 6 § 2004 and 2015 3rd sp.s. c 6 § 2003.

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Application—2015 3rd sp.s. c 6 §§ 2003, 2005, and 2006: "Sections 2003, 2005, and 2006 of this act apply with respect to taxable rent, as defined in RCW 82.29A.020, payable on or after January 1, 2019." [2015 3rd sp.s. c 6 § 2007.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Application—2014 c 207: See note following RCW 84.36.010.

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Additional notes found at www.leg.wa.gov

82.29A.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1717.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.29A.030 Tax imposed—Credit—Additional tax imposed. (1) There is levied and collected a leasehold excise tax on the act or privilege of occupying or using publicly owned, or specified privately owned, real or personal property through a leasehold interest on and after January 1, 1976,

at a rate of twelve percent of taxable rent. However, after the computation of the tax a credit is allowed for any tax collected pursuant to RCW 82.29A.040.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [2015 3rd sp.s. c 6 § 2005; 2010 c 281 § 3; 1983 2nd ex.s. c 3 § 18; 1982 1st ex.s. c 35 § 11; 1975-'76 2nd ex.s. c 61 § 3.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Application—2015 3rd sp.s. c 6 §§ 2003, 2005, and 2006: See note following RCW 82.29A.020.

Additional notes found at www.leg.wa.gov

82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection. (1) The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned, or specified privately owned, real or personal property through a leasehold interest within the territorial limits of such county or city. The tax levied by a county under authority of this section shall not exceed six percent and the tax levied by a city shall not exceed four percent of taxable rent. However, any county ordinance levying such tax shall contain a provision allowing a credit against the county tax for the full amount of any city tax imposed upon the same taxable event.

(2) The department of revenue shall perform the collection of such taxes on behalf of such county or city. [2015 3rd sp.s. c 6 § 2006; 1975-'76 2nd ex.s. c 61 § 4.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Application—2015 3rd sp.s. c 6 §§ 2003, 2005, and 2006: See note following RCW 82.29A.020.

82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting. (1) The leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 must be paid by the lessee to the lessor and the lessor must collect such tax and remit the same to the department. The tax must be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. The tax payment must be accompanied by such information as the department may require. In the case of prepaid contract rent the payment may be prorated in accordance with instructions of the department and the prorated portion of the tax is due, one-half not later than May 31st and the other half not later than November 30th each year.

(2) The lessor receiving taxes payable under the provisions of this chapter must remit the same together with a return provided by the department, to the department of revenue on or before the last day of the month following the month in which the tax is collected. The department may relieve any taxpayer or class of taxpayers from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event may returns be filed for a period greater than one year. The lessor is fully liable for collection and remittance of the tax. The amount of tax until paid by the lessee to the lessor constitutes a debt from the les-

see to the lessor. The tax required by this chapter must be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter. Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax. However, taxes due where contract rent has not been paid must be reported by the lessor to the department and the lessee alone is liable for payment of the tax to the department.

(3) Each person having a leasehold interest subject to the tax provided for in this chapter arising out of a lease of federally owned or federal trust lands, or property owned by a federally recognized Indian tribe in the state and exempt from tax under RCW 84.36.010, must report and remit the tax due directly to the department of revenue in the same manner and at the same time as the lessor would be required to report and remit the tax if such lessor were a state public entity. [2014 c 207 § 4; 1992 c 206 § 6; 1975-'76 2nd ex.s. c 61 § 5.]

Application—2014 c 207: See note following RCW 84.36.010.

Additional notes found at www.leg.wa.gov

82.29A.055 Payment in lieu of leasehold excise tax—Property owned by Indian tribe. (1) Property owned exclusively by a federally recognized Indian tribe that is exempt from property tax under RCW 84.36.010 is subject to payment in lieu of leasehold excise taxes, if:

(a) The tax exempt property is used exclusively for economic development, as defined in RCW 84.36.010;

(b) There is no taxable leasehold interest in the tax exempt property;

(c) The property is located outside of the tribe's reservation; and

(d) The property is not otherwise exempt from taxation by federal law.

(2) The amount of the payment in lieu of leasehold excise taxes must be determined jointly and in good faith negotiation between the tribe that owns the property and the county and any city in which the property is located. However, the amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property. If the tribe and the county and any city cannot agree to terms on the amount of payment in lieu of taxes, the department may determine the rate, provided that the amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.

(3) Payment must be made by the tribe to the county. The county treasurer must distribute all such money collected solely to the local taxing districts, including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied. [2020 c 272 § 2; 2014 c 207 § 8.]

Automatic expiration date and tax preference performance statement exemption—2020 c 272: See note following RCW 84.36.010.

Application—2014 c 207: See note following RCW 84.36.010.

82.29A.060 Administration—Appraisal appeal—Audits. (1) All administrative provisions in chapters 82.02

and 82.32 RCW are applicable to taxes imposed pursuant to this chapter.

(2)(a) A lessee, or a sublessee in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the county board of equalization for a change in appraised value when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(g) based on an appraisal done by the county assessor at the request of the department. The petition must be on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed may not be considered by the board. The petition must be filed with the board within the time period set forth in RCW 84.40.038. A decision of the board of equalization may be appealed by the taxpayer to the board of tax appeals as provided in RCW 84.08.130.

(b) A sublessee, in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the department for a change in taxable rent when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(g).

(c) Any change in tax resulting from an appeal under this subsection must be allocated to the lessee or sublessee responsible for paying the tax.

(3) This section does not authorize the issuance of any levy upon any property owned by the public lessor.

(4) In selecting leasehold excise tax returns for audit the department of revenue must give priority to any return an audit of which is specifically requested in writing by the county assessor or treasurer or other chief financial officer of any city or county affected by such return. Notwithstanding the provisions of RCW 82.32.330, findings of fact and determinations of the amount of taxable rent made pursuant to the provisions of this chapter must be open to public inspection at all reasonable times. [2020 c 139 § 36; 1994 c 95 § 1; 1975-'76 2nd ex.s. c 61 § 6.]

Additional notes found at www.leg.wa.gov

82.29A.070 Disposition of revenue. All moneys received by the department of revenue from taxes levied under provisions of RCW 82.29A.030 shall be transmitted to the state treasurer and deposited in the general fund. [1975-'76 2nd ex.s. c 61 § 7.]

82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account. The counties and cities shall contract, prior to the effective date of an ordinance imposing a leasehold excise tax, with the department of revenue for administration and collection. The department of revenue shall deduct a percentage amount, as provided by such contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by RCW 82.29A.040, which is collected by the department of revenue, must be remitted to the state treasurer who shall deposit the funds in the local leasehold excise tax account hereby created in the state treasury. Moneys in the local leasehold excise tax account may be spent only for distribution to counties and cit-

ies imposing a leasehold excise tax. [2008 c 86 § 401; 2002 c 371 § 925; 1985 c 57 § 84; 1981 2nd ex.s. c 4 § 8; 1975-'76 2nd ex.s. c 61 § 8.]

Additional notes found at www.leg.wa.gov

82.29A.090 Distributions to counties and cities. (1) Monthly the state treasurer must make distribution from the local leasehold excise tax account to the counties and cities the amount of tax collected on behalf of each county or city.

(2) Monthly the state treasurer must disburse earnings from the local leasehold excise tax account to the counties or cities proportionate to the amount of tax collected on behalf of each county or city.

(3) The state treasurer shall make the distribution under this section without appropriation. [2021 c 145 § 17; 2002 c 177 § 1; 1981 2nd ex.s. c 4 § 9; 1975-'76 2nd ex.s. c 61 § 9.]

Additional notes found at www.leg.wa.gov

82.29A.100 Distributions by county treasurers. Any moneys received by a county from the leasehold excise tax provided for under RCW 82.29A.040 shall be distributed proportionately by the county treasurer in accordance with RCW 84.56.230 as though such moneys were receipts from regular ad valorem property tax levies within such county: PROVIDED, That no distribution shall be made to the state or any city: AND PROVIDED FURTHER, That the pro rata calculation for proportionate distribution to taxing districts shall not include consideration of any rate(s) of levy by the state or any city. [1975-'76 2nd ex.s. c 61 § 10.]

82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance. It is the intent of this chapter that any local leasehold excise tax adopted pursuant to this chapter be as consistent and uniform as possible with the state leasehold excise tax. It is further the intent of this chapter that the local leasehold excise tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state leasehold excise tax upon the same taxable event. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model ordinance. [1975-'76 2nd ex.s. c 61 § 11.]

82.29A.120 Allowable credits. (1)(a) After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040, the following credits are allowed in determining the tax payable:

(i) For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit must be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381; and

(ii) A credit of thirty-three percent of the tax otherwise due is allowed with respect to a product lease.

(b)(i) For a leasehold interest in real property owned by a state university, a credit is allowed equal to the amount that the tax under this chapter exceeds the property tax that would apply if the real property were privately owned by the taxpayer.

(ii) The credit under this subsection (1)(b) is available only if the tax parcel that is subject to the leasehold interest has a market value in excess of ten million dollars. If the leasehold interest attaches to two or more parcels, the credit is available if at least one of the tax parcels has a market value in excess of ten million dollars. In either case, the market value must be determined as of January 1st of the year prior to the year for which the credit is claimed.

(iii) For purposes of calculating the credit under this subsection (1)(b):

(A) If a tax parcel does not have current assessed value in accordance with RCW 84.40.020, a market value appraisal performed by a Washington state-certified general real estate appraiser, as defined in RCW 18.140.010, is sufficient to establish the market value. If the underlying real property that is the subject of the leasehold interest consists of a part of one or more tax parcels, this appraisal must include the market value of the part of the parcel or parcels to which the leasehold interest applies; and

(B) The property tax that would otherwise apply to the real property that is the subject of the leasehold interest is calculated using the existing consolidated levy rate for the property's tax code area.

(iv) The definitions in this subsection apply throughout this subsection (1)(b) unless the context clearly requires otherwise.

(A) "Market value" means the true and fair value of the property as that term is used in RCW 84.40.030, based on the property's highest and best use and determined by any reasonable means approved by the department.

(B) "Real property" has the same meaning as in RCW 84.04.090 and also includes all improvements upon the land the fee of which is still vested in the public owner.

(C) "State university" has the same meaning as "state universities" as provided in RCW 28B.10.016.

(v) The credit provided under this subsection (1)(b) may not be claimed for tax reporting periods beginning on or after January 1, 2032.

(2) No credit under subsection (1)(b) of this section may be claimed or approved on or after January 1, 2032. [2020 c 139 § 37; 2017 3rd sp.s. c 37 § 1302; 2013 c 235 § 3; 1994 c 95 § 2; 1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

Effective date—2020 c 139 § 37: "Section 37 of this act takes effect January 1, 2022." [2020 c 139 § 66.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 1302: "(1) This section is the tax preference performance statement for the tax preference provided in section 1302, chapter 37, Laws of 2017 3rd sp. sess. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the state tax structure, as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to reduce the leasehold excise tax for certain taxpayers where the amount of leasehold excise tax exceeds what would be owed in property taxes if the property was owned by the taxpayer.

(4) To measure the effectiveness of the tax preference provided in section 1302, chapter 37, Laws of 2017 3rd sp. sess. in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must determine the amount of leasehold excise tax paid by taxpayers claiming the credit under section 1302, chapter 37, Laws of 2017 3rd sp. sess. in comparison to the amount of leasehold excise taxes or property taxes paid by a sample of taxpayers occupying property geographically proximate to taxpayers claiming the credit under

section 1302, chapter 37, Laws of 2017 3rd sp. sess. The amount of leasehold excise tax or property tax must be expressed in dollars per thousand dollars of assessed value and any other way the joint legislative audit and review committee deems necessary to clearly convey the data.

(5)(a) The information provided by taxpayers to the department of revenue and publicly available property tax data is intended to provide the informational basis for the evaluation under subsection (4) of this section.

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

(6) The amount of credit reported by a taxpayer to the department is not confidential tax information under RCW 82.32.330 and is subject to disclosure." [2017 3rd sp.s. c 37 § 1301.]

Effective date—2017 3rd sp.s. c 37 §§ 1301 and 1302: "Sections 1301 and 1302 of this act take effect January 1, 2022." [2017 3rd sp.s. c 37 § 1408.]

Additional notes found at www.leg.wa.gov

82.29A.125 Exemptions—Electric vehicle infrastructure. (Expires July 1, 2025.) (1) Leasehold excise tax may not be imposed on leases to tenants of public lands for purposes of installing, maintaining, and operating electric vehicle infrastructure.

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

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities.

(d) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(e) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(f) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for energy input into the production process.

(g) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops

raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(3) This section expires July 1, 2025. [2022 c 292 § 403; 2019 c 287 § 14; 2009 c 459 § 3.]

Findings—Intent—2022 c 292: See note following RCW 43.330.565.

Effective date—2019 c 287: "Sections 1 through 7, 12, and 14 through 23 of this act take effect August 1, 2019." [2019 c 287 § 24.]

Tax preference performance statement—2019 c 287 §§ 8-14: See note following RCW 82.04.4496.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

82.29A.130 Exemptions—Certain property. (Effective until January 1, 2023.) The following leasehold interests are exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility that is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions. However, this exemption does not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. However, this exemption applies only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020 (2)(g).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of

this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor are deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee are deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest is deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 must be imposed and must be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment

areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665.

(20) All leasehold interests in facilities owned or used by a community college or technical college, which leasehold interest provides:

- (a) Food services for students, faculty, and staff;
- (b) The operation of a bookstore on campus; or
- (c) Maintenance, operational, or administrative services to the community college or technical college.

(21)(a) All leasehold interests in the public or entertainment areas of an arena if it:

- (i) Has a seating capacity of more than two thousand;
- (ii) Is located on city-owned land; and
- (iii) Is owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand.

(b) For the purposes of this subsection (21), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section. [2019 c 335 § 1; 2017 3rd sp.s. c 37 § 1303. Prior: 2008 c 194 § 1; 2008 c 84 § 2; 2007 c 90 § 1; prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved

June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-76 2nd ex.s. c 61 § 13.]

Automatic expiration date and tax preference performance statement exemption—2019 c 335: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 335 § 2.]

Effective date—2019 c 335: "This act takes effect January 1, 2020." [2019 c 335 § 3.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1303: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to section 1303 of this act." [2017 3rd sp.s. c 37 § 1304.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

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82.29A.130 Exemptions—Certain property. (Effective January 1, 2023, until January 1, 2034.) The following leasehold interests are exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility that is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions. However, this exemption does not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. However, this exemption applies only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(g).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor are deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee are deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest is deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 must be imposed and must be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998.

For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665.

(20) All leasehold interests in facilities owned or used by a community college or technical college, which leasehold interest provides:

- (a) Food services for students, faculty, and staff;
- (b) The operation of a bookstore on campus; or
- (c) Maintenance, operational, or administrative services to the community college or technical college.

(21)(a) All leasehold interests in the public or entertainment areas of an arena if it:

- (i) Has a seating capacity of more than two thousand;
- (ii) Is located on city-owned land; and
- (iii) Is owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand.

(b) For the purposes of this subsection (21), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section.

(22) All leasehold interests in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage

register. [2022 c 147 § 1; 2019 c 335 § 1; 2017 3rd sp.s. c 37 § 1303. Prior: 2008 c 194 § 1; 2008 c 84 § 2; 2007 c 90 § 1; prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Tax preference performance statement—2022 c 147 § 1: "(1) This section is the tax preference performance statement for the tax preferences contained in section 1, chapter 147, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage contributions to historically significant places listed on the national register of historic places or the Washington heritage register.

(4) If a review finds that the statewide amount of contributions made by lessees of state parks and recreation commission-owned historical sites for the purposes of maintaining or improving such sites has increased, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2022 c 147 § 2.]

Expiration date—2022 c 147 § 1: "Section 1 of this act expires January 1, 2034." [2022 c 147 § 3.]

Effective date—2022 c 147: "This act takes effect January 1, 2023." [2022 c 147 § 4.]

Automatic expiration date and tax preference performance statement exemption—2019 c 335: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 335 § 2.]

Effective date—2019 c 335: "This act takes effect January 1, 2020." [2019 c 335 § 3.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1303: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to section 1303 of this act." [2017 3rd sp.s. c 37 § 1304.]

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(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

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(2022 Ed.)

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(i) Has a seating capacity of more than two thousand;

(ii) Is located on city-owned land; and

(iii) Is owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand.

(b) For the purposes of this subsection (21), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section. [2019 c 335 § 1; 2017 3rd sp.s. c 37 § 1303. Prior: 2008 c 194 § 1; 2008 c 84 § 2; 2007 c 90 § 1; prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Automatic expiration date and tax preference performance statement exemption—2019 c 335: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 335 § 2.]

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Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1303: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to section 1303 of this act." [2017 3rd sp.s. c 37 § 1304.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

82.29A.132 Exemptions—Operation of state route No. 16. All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from tax under this chapter. [1998 c 179 § 6.]

Finding—1998 c 179: See note following RCW 35.21.718.

82.29A.134 Exemptions—Sales/leasebacks by regional transit authorities. All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from tax under this chapter. [2000 2nd sp.s. c 4 § 25.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

82.29A.135 Exemptions—Property used for the operation of an anaerobic digester. (1) For the purposes of this section, "anaerobic digester" has the same meaning as provided in RCW 82.08.900.

(2) All leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land

upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(3) Claims for exemptions authorized by this section must be filed with the department of revenue on forms prescribed by the department of revenue and furnished by the department of revenue. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department of revenue must verify and approve claims as the department of revenue determines to be justified and in accordance with this section. No claims may be filed after December 31, 2024.

(4) The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as are necessary to properly administer this section. [2018 c 164 § 9; 2010 1st sp.s. c 11 § 6; 2008 c 268 § 2. Prior: 2003 c 339 § 10; 2003 c 261 § 10; 1985 c 371 § 3; 1980 c 157 § 2.]

Tax preference performance statement—Effective date—2018 c 164: See notes following RCW 82.08.900.

Additional notes found at www.leg.wa.gov

82.29A.136 Exemptions—Certain residential and recreational lots. All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from tax under this chapter. [2001 c 26 § 1.]

Additional notes found at www.leg.wa.gov

82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (Expires July 1, 2040.) (1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person claiming the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) This section expires July 1, 2040. [2017 c 135 § 35; 2013 3rd sp.s. c 2 § 13; 2010 c 114 § 134; 2003 2nd sp.s. c 1 § 13.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.29A.138 Exemptions—Certain amateur radio repeaters. (1) All leasehold interests in property used for the placement of amateur radio repeaters that are made available for use by, or are used in support of, a public agency in the event of an emergency or potential emergency to which the

agency is, or may be, a qualified responder, are exempt from tax under this chapter.

(2) For purposes of this section, "amateur radio repeater" means an electronic device that receives a weak or low-level amateur radio signal and retransmits it at a higher level or higher power, so that the signal can cover longer distances without degradation, and is used by amateur radio operators possessing a valid license issued by the federal communications commission. [2007 c 21 § 1.]

82.29A.140 Rules and regulations. The department of revenue of the state of Washington shall make such rules and regulations consistent with chapter 34.05 RCW and the provisions of this chapter, RCW 84.36.451 and 84.40.175 as shall be necessary to permit its effective administration including procedures for collection and remittance of taxes imposed by this chapter, and for intervention by the cities and counties levying under RCW 82.29A.040, in proceedings involving such levies and taxes collected pursuant thereto. [1975-'76 2nd ex.s. c 61 § 16.]

82.29A.160 Improvements not defined as contract rent taxable under Title 84 RCW. Notwithstanding any other provision of this chapter, RCW 84.36.451 and 84.40.175, improvements owned or being acquired by contract purchase or otherwise by any lessee or sublessee which are not defined as contract rent shall be taxable to such lessee or sublessee under Title 84 RCW at their full true and fair value without any deduction for interests held by the lessor or others. [1986 c 251 § 1; 1975-'76 2nd ex.s. c 61 § 18.]

Chapter 82.32 RCW

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.010	Application of chapter stated.
82.32.020	Definitions.
82.32.023	Definition of product for agreement purposes.
82.32.026	Registration—Seller's agent—Streamlined sales and use tax agreement.
82.32.030	Registration certificates—Threshold levels—Central registration system.
82.32.033	Registration certificates—Special events—Promoter's duties—Penalties—Definitions.
82.32.045	Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements.
82.32.050	Deficient tax or penalty payments—Notice—Interest—Limitations—Time extension or correction of an assessment during state of emergency.
82.32.052	Interest and penalties—Waiver for amounts unpaid as of February 1, 2011.
82.32.055	Interest and penalties—Waiver for military personnel.
82.32.057	Application of interest to delinquent taxes—Extensions.
82.32.060	Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.
82.32.062	Additional offset for excess payment of sales tax.
82.32.065	Tax refund to consumer under new motor vehicle warranty laws—Credit or refund to new motor vehicle manufacturer.
82.32.070	Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records.
82.32.080	Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return.
82.32.085	Electronic funds transfer—Generally.
82.32.087	Direct pay permits.
82.32.090	Late payment—Disregard of written instructions—Evasion—Penalties.

- 82.32.100 Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.
- 82.32.105 Waiver or cancellation of penalties or interest—Rules.
- 82.32.110 Examination of books or records—Subpoenas—Contempt of court.
- 82.32.117 Application for court approval of subpoena prior to issuance—No notice required.
- 82.32.120 Oaths and acknowledgments.
- 82.32.130 Notice and orders—Service.
- 82.32.135 Notice, assessment, other information—Electronic delivery.
- 82.32.140 Taxpayer quitting business—Liability of successor.
- 82.32.145 Limited liability business entity—Terminated, dissolved, abandoned, insolvent—Collection of unpaid trust fund taxes.
- 82.32.150 Contest of tax—Prepayment required—Restraining orders and injunctions barred.
- 82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department.
- 82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department.
- 82.32.180 Court appeal—Procedure.
- 82.32.190 Stay of collection pending suit—Interest.
- 82.32.200 Stay of collection—Bond—Interest.
- 82.32.210 Tax warrant—Filing—Lien—Effect.
- 82.32.212 Tax warrant—Notice of lien.
- 82.32.215 Revocation of certificate of registration.
- 82.32.220 Execution of warrant—Levy upon property—Satisfaction.
- 82.32.230 Agent of the department of revenue may execute.
- 82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default.
- 82.32.237 Notice and order to withhold and deliver—Continuing lien—Effective date.
- 82.32.240 Tax constitutes debt to the state—Priority of lien.
- 82.32.245 Search for and seizure of property—Warrant—Procedure.
- 82.32.260 Payment condition to dissolution or withdrawal of corporation.
- 82.32.265 Use of collection agencies to collect taxes outside the state.
- 82.32.270 Accounting period prescribed.
- 82.32.280 Tax declared additional.
- 82.32.290 Unlawful acts—Penalties.
- 82.32.291 Reseller permit—Unlawful use—Penalty—Rules.
- 82.32.300 Department of revenue to administer—Chapters enforced by liquor and cannabis board.
- 82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith.
- 82.32.320 Revenue to state treasurer—Allocation for return or payment for less than the full amount due.
- 82.32.330 Disclosure of return or tax information.
- 82.32.340 Chargeoff of uncollectible taxes—Destruction of files and records.
- 82.32.350 Closing agreements authorized.
- 82.32.360 Conclusive effect of agreements.
- 82.32.380 Revenues to be deposited in general fund.
- 82.32.385 General fund transfers to multimodal transportation account, connecting Washington account.
- 82.32.394 Revenues from sale or use of leaded racing fuel to be deposited into the advanced environmental mitigation revolving account.
- 82.32.410 Written determinations as precedents.
- 82.32.430 Liability for tax rate calculation errors—Geographic information system.
- 82.32.440 Project on sales and use tax exemption requirements.
- 82.32.450 Natural or manufactured gas, electricity—Maximum combined credits and deferrals allowed—Availability of credits and deferrals.
- 82.32.470 Transfer of sales and use tax on toll projects.
- 82.32.480 Washington forest products commission—Disclosure of taxpayer information.
- 82.32.490 Electronic database for use by mobile telecommunications service provider.
- 82.32.495 Liability of mobile telecommunications service provider if no database provided.
- 82.32.500 Determination of taxing jurisdiction for telecommunications services.
- 82.32.505 Telecommunications services—Place of primary use.
- 82.32.510 Scope of mobile telecommunications act—Identification of taxable and nontaxable charges.
- 82.32.515 Applicability of telephone and telecommunications definitions.
- 82.32.520 Sourcing of calls.
- 82.32.525 Purchaser's cause of action for over-collected sales or use tax.
- 82.32.530 Seller nexus.
- 82.32.531 Nexus—Trade convention attendance or participation.
- 82.32.532 Digital products—Nexus.
- 82.32.533 Digital products—Amnesty.
- 82.32.534 Annual report requirement for tax preferences.
- 82.32.537 Silicon smelters—Annual survey or report.
- 82.32.550 "Commercial airplane," "component," and "superefficient airplane"—Definitions.
- 82.32.555 Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges.
- 82.32.558 Tax deferral—Eligible projects—Application.
- 82.32.559 Tax deferral—Eligible projects—Deposit of funds.
- 82.32.580 Sales and use tax deferral—Historic automobile museum.
- 82.32.590 Annual tax performance reports—Failure to file.
- 82.32.600 Annual tax performance reports—Electronic filing.
- 82.32.605 Annual tax performance report—Hog fuel.
- 82.32.607 Annual tax performance report for tax exemption for sales of machinery and equipment used in generating electricity.
- 82.32.655 Tax avoidance.
- 82.32.660 Tax avoidance—Statutory application.
- 82.32.670 Tax evasion by electronic means—Seizure and forfeiture.
- 82.32.680 Tax evasion by electronic means—Search and seizure.
- 82.32.700 Administration of the sales and use tax for hospital benefit zones.
- 82.32.710 Professional employer organizations—Eligibility for tax incentives—Responsibility for tax performance reports.
- 82.32.715 Monetary allowances—Streamlined sales and use tax agreement.
- 82.32.720 Vendor compensation—Streamlined sales and use tax agreement.
- 82.32.725 Amnesty—Streamlined sales and use tax agreement.
- 82.32.730 Sourcing—Streamlined sales and use tax agreement.
- 82.32.735 Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement.
- 82.32.740 Taxability matrix—Liability—Streamlined sales and use tax agreement.
- 82.32.745 Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement.
- 82.32.750 Purchaser liability—Penalty—Streamlined sales and use tax agreement.
- 82.32.762 Remote seller nexus—Streamlined sales and use tax agreement or federal law conflict with state law.
- 82.32.765 Local revitalization financing—Reporting requirements.
- 82.32.770 Sourcing compliance—Taxpayer relief—Collection and remittance errors.
- 82.32.780 Reseller's permit—Taxpayer application.
- 82.32.783 Reseller's permit—Contractor application.
- 82.32.784 Reseller's permit—Information required.
- 82.32.785 Reseller's permit—Voluntary electronic verification.
- 82.32.787 Reseller's permit—Request for copies.
- 82.32.790 Tax incentives contingent upon semiconductor microchip fabrication facility siting and operation.
- 82.32.800 Contributions of high-technology research and development tax credit—Opportunity expansion account.
- 82.32.805 Tax preferences—Expiration dates.
- 82.32.808 Tax preferences—Performance statement requirement.
- 82.32.850 Significant commercial airplane manufacturing—Tax preference—Contingent effective date.
- 82.32.860 Liquefied natural gas—Estimated sales tax revenue.
- 82.32.865 Nonresident vessel permit.
- 82.32.870 Vapor products tax deposits.
- 82.32.900 Work group created—Transition plan—Taxing liquefied natural gas used for marine vessel transportation.

Debts owed state: RCW 43.17.240.

Refunds of erroneous or excessive payments: RCW 43.88.170.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

82.32.010 Application of chapter stated. The provisions of this chapter apply with respect to the taxes imposed under chapters 82.04 through 82.14 RCW, under chapter 82.14B RCW, under chapters 82.16 through 82.29A RCW of this title, under chapter 84.33 RCW, and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section. [2010 1st sp.s. c 19 § 13; 1998 c 304 § 12; 1984 c 204 § 26; 1983 c 3 § 219; 1981 c 148 § 12; 1961 c 15 § 82.32.010. Prior: 1935 c 180 § 185; RRS § 8370-185.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Additional notes found at www.leg.wa.gov

82.32.020 Definitions. For the purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agree-

ment by an affirmative vote of three-fourths of the other petitioning states; or

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

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

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

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

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

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

(i) "Source" means the location in which the sale or use of tangible personal property, a digital good or digital code, an extended warranty, or a digital automated service or other service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur. [2019 c 8 § 402; 2015 c 86 § 309; 2009 c 535 § 1111; 2007 c 6 § 101; 2003 1st sp.s. c 13 § 16; 1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370-186.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.023 Definition of product for agreement purposes. For purposes of construing those provisions of the streamlined sales and use tax agreement that have been incorporated into this title, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, digital goods, digital codes, digital automated services, other services, extended warranties, and anything else that can be sold or used. [2009 c 535 § 1112; 2007 c 6 § 104.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.
Additional notes found at www.leg.wa.gov

82.32.026 Registration—Seller's agent—Streamlined sales and use tax agreement. (1) A seller, by written agreement, may appoint a person to represent the seller as its agent. The seller's agent has authority to register the seller with the department under RCW 82.32.030. An agent may also be a certified service provider, with authority to perform all the seller's sales and use tax functions, except that the seller remains responsible for remitting the tax on its own purchases.

(2) The seller or its agent must provide the department with a copy of the written agreement upon request. [2007 c 6 § 201.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.
Additional notes found at www.leg.wa.gov

82.32.030 Registration certificates—Threshold levels—Central registration system. (1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she must, under such rules as the department prescribes, apply for and obtain from the department a registration certificate. Such registration certificate is personal and nontransferable and is valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public is required. Each certificate must be numbered and must show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and must be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section may engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

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

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

(d) The person is not otherwise required to obtain a license subject to the business license application procedure provided in chapter 19.02 RCW.

(2022 Ed.)

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by the department under the authority of RCW 19.02.075. [2017 c 323 § 505; 2011 c 298 § 38; 2007 c 6 § 202; 1996 c 111 § 2. Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030; prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370-187, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—Purpose—1996 c 111: "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.32.033 Registration certificates—Special events—Promoter's duties—Penalties—Definitions. (1) A promoter of a special event within the state of Washington shall not permit a vendor to make or solicit retail sales of tangible personal property or services at the special event unless the promoter makes a good faith effort to obtain verification that the vendor has obtained a certificate of registration from the department.

(2) A promoter of a special event shall:

(a) Keep, in addition to the records required under RCW 82.32.070, a record of the dates and place of each special event, and the name, address, and registration certificate number of each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event. The record of the date and place of a special event, and the name, address, and registration certificate number of each vendor at the event shall be preserved for a period of one year from the date of a special event; and

(b) Provide to the department, within twenty days of receipt of a written request from the department, a list of vendors permitted to make or solicit retail sales of tangible personal property or services. The list shall be in a form and contain such information as the department may require, and shall include the date and place of the event, and the name, address, and registration certificate number of each vendor.

[Title 82 RCW—page 319]

(3) If a promoter fails to make a good faith effort to comply with the provisions of this section, the promoter is liable for the penalties provided in this subsection (3).

(a) If a promoter fails to make a good faith effort to comply with the provisions of subsection (1) of this section, the department shall impose a penalty of one hundred dollars for each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event.

(b) If a promoter fails to make a good faith effort to comply with the provisions of subsection (2)(b) of this section, the department shall impose a penalty of:

(i) Two hundred fifty dollars if the information requested is not received by the department within twenty days of the department's written request; and

(ii) One hundred dollars for each vendor for whom the information as required by subsection (2)(b) of this section is not provided to the department.

(4) The aggregate of penalties imposed under subsection (3) of this section may not exceed two thousand five hundred dollars for a special event if the promoter has not previously been penalized under this section. Under no circumstances is a promoter liable for sales tax or business and occupation tax not remitted to the department by a vendor at a special event.

(5) The department shall notify a promoter by mail, or electronically as provided in RCW 82.32.135, of any penalty imposed under this section, and the penalty shall be due within thirty days from the date of the notice. If any penalty imposed under this section is not received by the department by the due date, there shall be assessed interest on the unpaid amount beginning the day following the due date until the penalty is paid in full. The rate of interest shall be computed on a daily basis on the amount of outstanding penalty at the rate as computed under RCW 82.32.050(2). The rate computed shall be adjusted annually in the same manner as provided in RCW 82.32.050(1)(c).

(6) For purposes of this section:

(a) "Promoter" means a person who organizes, operates, or sponsors a special event and who contracts with vendors for participation in the special event.

(b) "Special event" means an entertainment, amusement, recreational, educational, or marketing event, whether held on a regular or irregular basis, at which more than one vendor makes or solicits retail sales of tangible personal property or services. The term includes, but is not limited to: Auto shows, recreational vehicle shows, boat shows, home shows, garden shows, hunting and fishing shows, stamp shows, comic book shows, sports memorabilia shows, craft shows, art shows, antique shows, flea markets, exhibitions, festivals, concerts, swap meets, bazaars, carnivals, athletic contests, circuses, fairs, or other similar activities. "Special event" does not include an event that is organized for the exclusive benefit of any nonprofit organization as defined in RCW 82.04.3651. An event is organized for the exclusive benefit of a nonprofit organization if all of the gross proceeds of retail sales of all vendors at the event inure to the benefit of the nonprofit organization on whose behalf the event is being held. "Special event" does not include athletic contests that involve competition between teams, when such competition consists of more than five contests in a calendar year by at least one team at the same facility or site.

(c) "Vendor" means a person who, at a special event, makes or solicits retail sales of tangible personal property or services.

(7) "Good faith effort to comply" and "good faith effort to obtain" may be shown by, but is not limited to, circumstances where a promoter:

(a) Includes a statement on all written contracts with its vendors that a valid registration certificate number issued by the department of revenue is required for participation in the special event and requires vendors to indicate their registration certificate number on these contracts; and

(b) Provides the department with a list of vendors and their associated registration certificate numbers as provided in subsection (2)(b) of this section.

(8) This section does not apply to:

(a) A special event whose promoter does not charge more than two hundred dollars for a vendor to participate in a special event;

(b) A special event whose promoter charges a percentage of sales instead of, or in addition to, a flat charge for a vendor to participate in a special event if the promoter, in good faith, believes that no vendor will pay more than two hundred dollars to participate in the special event; or

(c) A person who does not organize, operate, or sponsor a special event, but only provides a venue, supplies, furnishings, fixtures, equipment, or services to a promoter of a special event. [2007 c 111 § 105; 2004 c 253 § 1; 2003 1st sp.s. c 13 § 15.]

Additional notes found at www.leg.wa.gov

82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements. (1) Except as otherwise provided in this chapter and subsection (6) of this section, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. Except as provided in subsection (3) of this section, for these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) For annual filers, tax payments, along with reports and returns on forms prescribed by the department, are due on or before April 15th of the year immediately following the end of the period covered by the return.

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

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

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business

activities taxable under chapter 82.04 RCW, is less than \$125,000;

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

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

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

(b) This subsection (6) does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

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

(ii) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to subsection (5) of this section. [2022 c 295 § 2. Prior: 2019 c 63 § 2; 2019 c 8 § 302; 2010 1st sp.s. c 23 § 1103; 2006 c 256 § 1; 2003 1st sp.s. c 13 § 8; 1999 c 357 § 1; 1996 c 111 § 3; 1983 2nd ex.s. c 3 § 63; 1982 1st ex.s. c 35 § 27; 1981 c 172 § 7; 1981 c 7 § 1.]

Application—2022 c 295: See note following RCW 82.04.4451.

Findings—Intent—2019 c 63: "The legislature finds that the filing of an annual excise tax return by January 31st can be a hardship for those many taxpayers, including self-employed taxpayers, who must wait to receive a 1099 form. Therefore, some state taxpayers do not receive the information they need to accurately file their taxes until on or shortly after the current state filing deadline. The legislature finds that it is an unnecessary burden on taxpayers, and an inefficient use of state time and resources, to require them to file their return under the current timeline using the best information available to them and then subsequently amend their return at a later date. The legislature intends to address this by extending the deadline for taxpayers who qualify to be annual filers." [2019 c 63 § 1.]

Effective date—2019 c 8 §§ 105, 301, 302, 401, and 704: See note following RCW 82.08.010.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—1999 c 357: "It is the intent of the legislature to allow the department of revenue to increase its ability to provide timely and cost-effective service to taxpayers." [1999 c 357 § 2.]

Findings—Purpose—Effective date—1996 c 111: See notes following RCW 82.32.030.

Additional notes found at www.leg.wa.gov

82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations—Time extension or correction of an assessment during state of emergency.

(Effective until January 1, 2023.) (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within thirty days

from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in (c)(ii) of this subsection (1), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3), interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend

the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206. [2022 c 41 § 2; 2020 c 139 § 60; 2008 c 181 § 501; 2007 c 111 § 106; 2003 c 73 § 1; 1997 c 157 § 1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Retroactive application—2020 c 139 §§ 60 and 61: "Sections 60 and 61 of this act apply both prospectively and retroactively to January 1, 2020." [2020 c 139 § 62.]

Effective date—2020 c 139 §§ 60-62: "Sections 60 through 62 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2020]." [2020 c 139 § 63.]

Findings—Intent—1996 c 149: "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

Additional notes found at www.leg.wa.gov

82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations—Time extension or correction of an assessment during state of emergency. (Effective January 1, 2023.) (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of Jan-

uary of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3), interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

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

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206. [2022 c 282 § 2; 2022 c 41 § 2; 2020 c 139 § 60; 2008 c 181 § 501; 2007 c 111 § 106; 2003 c 73 § 1; 1997 c 157 § 1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Reviser's note: This section was amended by 2022 c 41 § 2 and by 2022 c 282 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Effective date—2022 c 282: See notes following RCW 82.32.057.

Retroactive application—2020 c 139 §§ 60 and 61: "Sections 60 and 61 of this act apply both prospectively and retroactively to January 1, 2020." [2020 c 139 § 62.]

Effective date—2020 c 139 §§ 60-62: "Sections 60 through 62 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2020]." [2020 c 139 § 63.]

Findings—Intent—1996 c 149: "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

Additional notes found at www.leg.wa.gov

82.32.052 Interest and penalties—Waiver for amounts unpaid as of February 1, 2011. (1) Except as otherwise provided in subsections (4) and (5) of this section, the department must waive all penalties and interest otherwise due under this chapter and that are unpaid as of February 1, 2011, if all of the following circumstances are met:

(a) The penalties and interest are imposed with respect to: (i) State business and occupation tax, state public utility tax, state or local sales tax, or state or local use tax; and (ii) tax liability that first became due to the department before February 1, 2011, which includes taxes billed to the taxpayer, or disclosed by the taxpayer to the department, on or after February 1, 2011, but that were required by this chapter to have been reported and paid by the taxpayer before February 1, 2011;

(b) The taxpayer must file with the department no later than April 18, 2011: (i) All outstanding tax returns for the taxes specified in (a)(i) of this subsection (1); and (ii) any amended returns covering tax liabilities with respect to which a penalty and interest waiver under this section is requested;

(c) Before May 1, 2011, the taxpayer must remit full payment to the department of the balance due on all tax liabilities for which a penalty and interest waiver under this section is requested. If a waiver is requested for penalties or interest associated with an invoice that has been billed to the tax-

payer, the taxpayer must remit full payment to the department of the entire balance due on that invoice other than any penalty and interest eligible for waiver under this section, even if the invoice includes taxes not specified in (a)(i) of this subsection (1). If the invoice is a tax warrant, the taxpayer must also remit full payment to the department of any filing or other fees added to the tax warrant, including the filing fees provided in RCW 36.18.012 (2) and (10), the fee imposed in RCW 36.18.016(4), and the surcharge imposed in RCW 40.14.027;

(d) The taxpayer must file and pay in full by the due date all tax returns that become due after January 31, 2011, and before May 1, 2011, for all taxes administered by the department under this chapter;

(e) No later than April 18, 2011, the department must receive a completed application for penalty and interest waiver under this section in a form and manner prescribed by the department;

(f) The taxpayer must never have had an evasion penalty assessed against the taxpayer by the department under RCW 82.32.090 or a penalty assessed against the taxpayer by the department under RCW 82.32.291 for misusing a reseller permit or resale certificate; and

(g) The taxpayer must never have been a defendant in a criminal prosecution related to an offense involving the failure to collect or pay the proper amount of any tax administered by the department under this chapter.

(2) Taxpayers receiving penalty or interest relief under this section may not seek a refund, or otherwise challenge the amount, of any tax liability paid as required by subsection (1)(c) of this section. This subsection (2) applies to refund requests or appeals filed directly with the department and to proceedings brought in any court or administrative tribunal.

(3) All tax liability reported and paid as required in subsection (1)(b), (c), and (d) of this section is subject to verification by the department as provided in RCW 82.32.050. This section does not preclude the assessment of taxes, penalties, and interest with respect to any amounts determined by the department to have been underpaid for any tax period for which the taxpayer previously received penalty or interest relief under this section.

(4) This section does not authorize the department to waive the evasion penalty currently authorized by RCW 82.32.090(7) or the penalty currently authorized by RCW 82.32.291 for misusing a reseller permit or resale certificate.

(5) If taxpayers are current for tax returns due as of November 25, 2010, tax liability that accrues after that date would not qualify under this section.

(6) Nothing in this section may be construed as requiring a taxpayer to have first paid any penalty or interest for which a waiver is sought under this section.

(7) Solely for purposes of determining whether a taxpayer qualifies for a waiver of penalties or interest under this section with respect to a balance owing as of February 1, 2011, on any invoice issued by the department, any payments made to the department on that taxpayer's account before May 1, 2011, are deemed to have been applied first to any of the taxes specified in subsection (1)(a)(i) of this section, then to any other taxes, and then to penalties or interest, if such payments were applied either:

(a) To that invoice; or

(b) Against any liability reflected in that invoice before that invoice was issued by the department.

(8) A taxpayer in a bankruptcy proceeding is ineligible for relief under this section to the extent that the payment of any tax debt by the taxpayer to the department as required under this section violates the federal bankruptcy code. [2010 2nd sp.s. c 2 § 1.]

Additional notes found at www.leg.wa.gov

82.32.055 Interest and penalties—Waiver for military personnel. (1) Subject to the requirements in subsections (2) through (4) of this section, the department shall waive or cancel interest and penalties imposed under this chapter if the interest and penalties are:

(a) Imposed during any period of armed conflict; and

(b) Imposed on a taxpayer where a majority owner of the taxpayer is an individual who is on active duty in the military, and the individual is participating in a conflict and assigned to a duty station outside the territorial boundaries of the United States.

(2) To receive a waiver or cancellation of interest and penalties under this section, the taxpayer must submit to the department a copy of the individual's deployment orders for deployment outside the territorial boundaries of the United States.

(3) The department may not waive or cancel interest and penalties under this section if the gross income of the business exceeded one million dollars in the calendar year prior to the individual's initial deployment outside the United States for the armed conflict. The department may not waive or cancel interest and penalties under this section for a taxpayer for more than twenty-four months.

(4) During any period of armed conflict, for any notice sent to a taxpayer that requires a payment of interest, penalties, or both, the notice must clearly indicate on or in the notice that interest and penalties may be waived under this section for qualifying taxpayers. [2008 c 184 § 1.]

82.32.057 Application of interest to delinquent taxes—Extensions. (Effective January 1, 2023.) Except as otherwise provided in this chapter, interest applies to taxes that are not paid by the original due date even though the department has granted an extension as authorized under this chapter. However, the department may not assess penalties for late payment of any such tax that is paid in full by the extended due date. [2022 c 282 § 1.]

Application—2022 c 282: "With regard to the imposition of interest, sections 1 and 2 of this act apply to taxes due under an extension granted by the department of revenue on or after January 1, 2023, except in cases where the department of revenue received the request for the extension before January 1, 2023." [2022 c 282 § 3.]

Effective date—2022 c 282: "Except for section 4 of this act, this act takes effect January 1, 2023." [2022 c 282 § 5.]

82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund. (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has

been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a

notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3), interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice. [2020 c 139 § 61; 2009 c 176 § 4; 2004 c 153 § 306; 2003 c 73 § 2; 1999 c 358 § 13; 1997 c 157 § 2; 1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Retroactive application—Effective date—2020 c 139 §§ 60-62: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.062 Additional offset for excess payment of sales tax. (1) In addition to the procedure set forth in RCW 82.32.060 and as an exception to the four-year period explicitly set forth in RCW 82.32.060, an offset for a tax that has been paid in excess of that properly due may be taken under the following conditions:

(a) The tax paid in excess of that properly due was sales or use tax paid on property purchased for the purpose of leasing;

(b) The taxpayer was at the time of purchase entitled to purchase the property at wholesale under RCW 82.04.060; and

(c) The taxpayer substantiates that the taxpayer paid sales or use tax on the purchase of the property and that there was no intervening use of the property by the taxpayer.

(2) The offset under this section is applied to and reduced by the amount of retail sales tax otherwise due from the beginning of lease of the property until the offset is extinguished. [2020 c 139 § 38; 2002 c 57 § 1.]

(2022 Ed.)

82.32.065 Tax refund to consumer under new motor vehicle warranty laws—Credit or refund to new motor vehicle manufacturer. If a manufacturer makes a refund of sales tax to a consumer upon return of a new motor vehicle under chapter 19.118 RCW, the department shall credit or refund to the manufacturer the amount of the tax refunded, upon receipt of documentation as required by the department. [1987 c 344 § 16.]

Additional notes found at www.leg.wa.gov

82.32.070 Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records. (1) Every taxpayer liable for any tax collected by the department must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which the taxpayer may be liable. Such records must include copies of all of the taxpayer's federal income tax and state tax returns and reports. All of the taxpayer's books, records, and invoices must be open for examination at any time by the department of revenue. In the case of an out-of-state taxpayer that does not keep the necessary books and records within this state, it is sufficient if the taxpayer produces within the state such books and records as are required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any taxpayer who fails to comply with the requirements of this section is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

(2) A person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW must obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the director, but not to exceed two hundred fifty dollars. The department must notify the taxpayer and collect the penalty in the same manner as penalties under RCW 82.32.100. [2015 c 86 § 310; 2013 c 23 § 322; 1999 c 358 § 14; 1997 c 54 § 4; 1983 c 3 § 221; 1967 ex.s. c 89 § 2; 1961 c 15 § 82.32.070. Prior: 1951 1st ex.s. c 9 § 7; 1935 c 180 § 190; RRS § 8370-190.]

Additional notes found at www.leg.wa.gov

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return. (1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties and interest, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer,

as defined in RCW 82.32.085. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as payment by credit card. All taxes administered by this chapter are subject to this requirement, except that the department may exclude any taxes not reported on the combined excise tax return or any successor return from the electronic payment requirement in this subsection.

(b) The department may waive the electronic payment requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(b) The department may waive the electronic filing requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic filing requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which is approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any

deposit as a condition for granting an extension under this subsection (4)(b).

(5)(a) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105, 82.32.052, and 82.32.350, the department must apply the payment of the taxpayer in the following order, without regard to any direction of the taxpayer: (i) Interest; (ii) penalties; (iii) fees that are not within the definition of tax in RCW 82.32.020; (iv) other nontax amounts; (v) taxes, except spirits taxes; and (vi) spirits taxes.

(b) For purposes of this subsection, "spirits taxes" has the same meaning as in RCW 82.08.155.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department. [2015 c 86 § 311; 2012 c 39 § 2. Prior: 2011 c 24 § 1; 2010 2nd sp.s. c 2 § 2; prior: 2010 c 111 § 304; 2010

c 106 § 226; 2009 c 176 § 2; 2008 c 181 § 502; 1999 c 357 § 3; 1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080; prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Construction—Effective date—2012 c 39: See notes following RCW 82.08.155.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Effective date—1999 c 357: See notes following RCW 82.32.045.

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: See note following RCW 82.32.045.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

Additional notes found at www.leg.wa.gov

82.32.085 Electronic funds transfer—Generally. (1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

(2)(a) An electronic funds transfer using the automated clearinghouse credit method must be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method or any other method of electronic payment authorized by the department will be deemed to be received on the due date if the electronic funds transfer or other electronic payment is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3) The department must adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules must include but are not limited to: (a) Coordinating the filing of tax returns with payment by electronic funds transfer or other form of electronic payment as authorized by the department; (b) form and content of electronic funds transfer; (c) voluntary use of electronic funds transfer with permission of the department for those taxpayers that are not subject to the mandatory electronic payment requirement in RCW 82.32.080; (d) use of commonly accepted means of electronic funds transfer; (e) means of crediting and recording proof of payment; and (f) means of correcting errors in transmission. [2011 c 24 § 2; 2009 c 176 § 3; 2006 c 256 § 4; 1990 c 69 § 3.]

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: "(1) The legislature recognizes the following with respect to the payment of excise taxes to the department of revenue by electronic funds transfer:

(a) Taxpayers required to pay their taxes by electronic funds transfer must do so through the use of either the automated clearinghouse debit method or automated clearinghouse credit method;

(b) For a remittance by electronic funds transfer to be considered timely, the transfer must be completed so that the state receives collectible funds on or before the next banking day following the due date;

(c) For the state to receive collectible funds on or before the next banking day following the due date, taxpayers using the automated clearinghouse debit method must initiate the transfer before 5:00 p.m. pacific time on the due date;

(2022 Ed.)

(d) The department of revenue receives information identifying the precise date and time the electronic funds transfer is initiated when a taxpayer uses the debit method; and

(e) The department receives information identifying only the date that the state receives collectible funds when a taxpayer uses the automated clearinghouse credit method.

(2) The legislature therefore finds that a remittance made using the automated clearinghouse debit method should be deemed to be received on the due date if the transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. The legislature further finds that because the department does not receive information about when an electronic funds transfer is initiated when a taxpayer uses the automated clearinghouse credit method, such transfers must be completed so that the state receives collectible funds on or before the next banking day following the due date." [2006 c 256 § 5.]

Additional notes found at www.leg.wa.gov

82.32.087 Direct pay permits. (1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit must remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The taxpayer's cumulative tax liability is reasonably expected to be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director must review a direct pay permit application in a timely manner and must notify the applicant, in writing, of the approval or denial of the application. The department must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit must clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved

of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, must return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

- (a) Purchases of meals or beverages;
- (b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;
- (c) Purchases for which a reseller permit or other documentation authorized under RCW 82.04.470 may be used;
- (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (c), (e), (f), and (g), (5), and (15); or
- (e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used. [2015 c 169 § 11; 2010 c 112 § 10. Prior: 2009 c 563 § 210; 2009 c 176 § 5; 2001 c 188 § 2.]

Effective date—2015 c 169: See note following RCW 82.04.050.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Finding—Intent—2001 c 188: "The legislature finds that programs to allow buyers to remit sales and use tax, rather than traditional collection and remittance by the seller of sales and use tax, can assist in tax compliance, ease administrative burdens, and reduce impacts on buyers and sellers. It is the intent of the legislature to grant the department of revenue the authority to permit certain buyers direct payment authority of tax in those instances where it can be shown, to the satisfaction of the department, that direct payment does not burden sellers and does not complicate administration for the department. Buyers authorized for direct payment will remit tax directly to the department, and will pay use tax on tangible personal property and sales tax on retail labor and/or services.

This act does not affect the requirements to use a resale certificate nor does it affect the business and occupation tax treatment of the seller." [2001 c 188 § 1.]

Additional notes found at www.leg.wa.gov

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of nineteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of twenty-nine percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the

department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of ten percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of forty-five days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable here-

under, a further penalty of fifty percent of the additional tax found to be due must be added.

(8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(9) The department may not impose the evasion penalty in combination with the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. [2015 3rd sp.s. c 5 § 401; 2011 c 24 § 3; 2010 1st sp.s. c 23 § 203; 2006 c 256 § 6; 2003 1st sp.s. c 13 § 13; 2000 c 229 § 7; 1999 c 277 § 11; 1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.100 Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within thirty days from the date of such notice.

(3) No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall

also extend the period for making a refund or credit as provided in RCW 82.32.060(2). [2007 c 111 § 107; 1992 c 169 § 3; 1989 c 378 § 21; 1971 ex.s. c 299 § 20; 1965 ex.s. c 141 § 4; 1961 c 15 § 82.32.100. Prior: 1951 1st ex.s. c 9 § 10; 1935 c 180 § 194; RRS § 8370-194.]

Additional notes found at www.leg.wa.gov

82.32.105 Waiver or cancellation of penalties or interest—Rules. (1) If the department finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department must waive or cancel any penalties imposed under this chapter with respect to such tax.

(2) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 54.28.040, 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department must waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department must adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter. [2017 c 323 § 106; 1998 c 304 § 13; 1996 c 149 § 17; 1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.110 Examination of books or records—Subpoenas—Contempt of court. The department of revenue or its duly authorized agent may examine any books, papers, records, or other data, or stock of merchandise bearing upon the amount of any tax payable or upon the correctness of any return, or for the purpose of making a return where none has been made, or in order to ascertain whether a return should be made; and may require the attendance of any person at a time and place fixed in a summons served by any sheriff in the same manner as a subpoena is served in a civil case, or served in like manner by an agent of the department of revenue.

The persons summoned may be required to testify and produce any books, papers, records, or data required by the department with respect to any tax, or the liability of any person therefor.

The director of the department of revenue, or any duly authorized agent thereof, shall have power to administer an oath to the person required to testify; and any person giving false testimony after the administration of such oath shall be guilty of perjury in the first degree.

If any person summoned as a witness before the department, or its authorized agent, fails or refuses to obey the summons, or refuses to testify or answer any material questions, or to produce any book, record, paper, or data when required to do so, the person is subject to proceedings for contempt, and the department shall thereupon institute contempt of court proceedings in the superior court of Thurston county or of the county in which such person resides. [1989 c 373 § 27; 1975 1st ex.s. c 278 § 79; 1961 c 15 § 82.32.110. Prior: 1935 c 180 § 194; RRS § 8370-194.]

Additional notes found at www.leg.wa.gov

82.32.117 Application for court approval of subpoena prior to issuance—No notice required. (1) The department or its duly authorized agent may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(a) State that an order is sought pursuant to this subsection;

(b) Adequately specify the records, documents, or testimony; and

(c) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(2) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(3) The department or its duly authorized agent may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) The department may not disclose any return or tax information, as defined in RCW 82.32.330, obtained in response to a subpoena issued under this section, except as authorized in RCW 82.32.330.

(6) A third party may not be held civilly liable for any harm resulting from that person's compliance with a subpoena issued under the authority of this section.

(7) The entire court file of any proceeding instituted under this section must be sealed and is not open to public

inspection by any person except upon order of the court as authorized by law. [2011 c 174 § 401; 2010 c 22 § 4.]

Findings—Intent—2010 c 22: See note following RCW 51.04.040.

82.32.120 Oaths and acknowledgments. All officers empowered by law to administer oaths, the director of the department of revenue, and such officers as he or she may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return or report required by law or the rules and regulations of the department of revenue. [2013 c 23 § 323; 1975 1st ex.s. c 278 § 80; 1961 c 15 § 82.32.120. Prior: 1935 c 180 § 195; RRS § 8370-195.]

Additional notes found at www.leg.wa.gov

82.32.130 Notice and orders—Service. Notwithstanding any other law, any notice or order required by this title to be mailed to any taxpayer may be provided electronically as provided in RCW 82.32.135, served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state. However if the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served, mailed, or provided electronically as provided in RCW 82.32.135 shall not release the taxpayer from any tax or any increases or penalties thereon. [2007 c 111 § 108; 1979 ex.s. c 95 § 2; 1975 1st ex.s. c 278 § 81; 1967 c 237 § 20; 1961 c 15 § 82.32.130. Prior: 1935 c 180 § 196; RRS § 8370-196.]

Additional notes found at www.leg.wa.gov

82.32.135 Notice, assessment, other information—Electronic delivery. (1) Except as otherwise provided in this subsection, whenever the department is required to send any assessment, notice, or any other information to persons by regular mail, the department must instead provide the assessment, notice, or other information electronically. The department may implement the requirement in this subsection in phases. The department, for good cause, may waive the requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(2) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, the department must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection (2) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A person may provide a waiver with respect to a particular item of information or may give a blanket waiver with respect to any item of information or certain items of information to be provided electronically. A blanket waiver will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(3) Any assessment, notice, or other information provided by the department electronically to a person is deemed

to be received by the taxpayer on the date that the department electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(4) This section also applies to any information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the department using regular mail, to persons entitled to receive the information.

(5)(a) For purposes of this section, "good cause" includes the inability of the department to comply with this section for any reason, including lacking information necessary to send information to a person electronically or to electronically notify a person that information is available to be accessed by the person.

(b) "Good cause" also includes the inability of a person to receive or otherwise obtain information from the department electronically because:

(i) The person does not have the equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically;

(ii) The equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically is not functioning properly;

(iii) The person does not have access to the internet using the person's own equipment; or

(iv) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from receiving or otherwise obtaining information from the department electronically. [2009 c 176 § 1; 2007 c 111 § 113.]

Additional notes found at www.leg.wa.gov

82.32.140 Taxpayer quitting business—Liability of successor. (1) Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due, unless an extension is granted under RCW 82.32.080.

(2) Any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax. If the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

(3) The payment of any tax by a successor shall, to the extent thereof, be deemed a payment upon the purchase price; and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due the successor from the taxpayer.

(4) No successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the

department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor or provided electronically to the successor in accordance with RCW 82.32.135. [2008 c 181 § 503; 2007 c 111 § 109; 2003 1st sp.s. c 13 § 12; 1985 c 414 § 7; 1975 1st ex.s. c 278 § 82; 1961 c 15 § 82.32.140. Prior: 1957 c 88 § 1; 1935 c 180 § 197; RRS § 8370-197.]

Additional notes found at www.leg.wa.gov

82.32.145 Limited liability business entity—Terminated, dissolved, abandoned, insolvent—Collection of unpaid trust fund taxes. (1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state and local trust fund taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the trust fund taxes due from the limited liability business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(5) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes is due to reasons beyond their control as determined by the department by rule.

(6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(7) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(8) Collection authority and procedures prescribed in this chapter apply to collections under this section.

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

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.006.

(e) "Member" has the same meaning as in RCW 25.15.006, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means

a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Trust fund taxes" means taxes collected from purchasers and held in trust under RCW 82.08.050, including taxes imposed under RCW 82.08.020, 82.08.150, and 82.51.010.

(i) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. [2020 c 301 § 6; 2015 c 188 § 121; 2012 c 39 § 8; 2010 1st sp.s. c 23 § 801; 1995 c 318 § 2; 1987 c 245 § 1.]

Automatic expiration date and tax preference performance statement exemption—2020 c 301: See RCW 82.51.900.

Effective date—2015 c 188: See RCW 25.15.903.

Construction—Effective date—2012 c 39: See notes following RCW 82.08.155.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.32.150 Contest of tax—Prepayment required—Restraining orders and injunctions barred. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1961 c 15 § 82.32.150. Prior: 1935 c 180 § 198; RRS § 8370-198.]

82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department. Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall fix the time and place therefor and notify the petitioner thereof by mail or electronically as provided in RCW 82.32.135. After the conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. If no such petition is filed within the thirty-day period the assessment covered by the notice shall become final.

The procedures provided for herein shall apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmen-

(2022 Ed.)

tal rules and regulations as may be necessary to accommodate a claim for exemption or credit. [2007 c 111 § 110; 1989 c 378 § 22; 1975 1st ex.s. c 158 § 4; 1967 ex.s. c 26 § 49; 1963 ex.s. c 28 § 8; 1961 c 15 § 82.32.160. Prior: 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Additional notes found at www.leg.wa.gov

82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department within the time limitation for refund provided in this chapter, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition he or she shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall notify the petitioner by mail, or electronically as provided in RCW 82.32.135, of the time and place fixed therefor. After the hearing, the department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. [2013 c 23 § 324; 2007 c 111 § 111; 1967 ex.s. c 26 § 50; 1961 c 15 § 82.32.170. Prior: 1951 1st ex.s. c 9 § 11; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Additional notes found at www.leg.wa.gov

82.32.180 Court appeal—Procedure. Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24 RCW, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county, within the time limitation for a refund provided in chapter 82.32 RCW or, if an application for refund has been made to the department within that time limitation, then within thirty days after rejection of the application, whichever time limitation is later. In the appeal the taxpayer shall set forth the amount of the tax imposed upon the taxpayer which the taxpayer concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the department within the time herein specified and by filing the original thereof with proof of service with the clerk of the superior court of Thurston county.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden shall rest upon the taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either party may seek

appellate review in the same manner as other civil actions are appealed to the appellate courts.

It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

The provisions of this section shall not apply to any tax payment which has been the subject of an appeal to the board of tax appeals with respect to which appeal a formal hearing has been elected. [1997 c 156 § 4; 1992 c 206 § 4; 1989 c 378 § 23; 1988 c 202 § 67; 1971 c 81 § 148; 1967 ex.s. c 26 § 51; 1965 ex.s. c 141 § 5; 1963 ex.s. c 28 § 9; 1961 c 15 § 82.32.180. Prior: 1951 1st ex.s. c 9 § 12; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Appeal to board of tax appeals, formal hearing: RCW 82.03.160.

Additional notes found at www.leg.wa.gov

82.32.190 Stay of collection pending suit—Interest.

(1) The department, by its order, may hold in abeyance the collection of tax from any taxpayer or any group of taxpayers when a question bearing on their liability for tax hereunder is pending before the courts. The department may impose such conditions as may be deemed just and equitable and shall require the payment of interest at the rate of three-quarters of one percent of the amount of the tax for each thirty days or portion thereof from the date upon which such tax became due until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for taxes held in abeyance under this section before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at three-quarters of one percent per each thirty days or portion thereof. [1996 c 149 § 3; 1971 ex.s. c 299 § 21; 1965 ex.s. c 141 § 6; 1961 c 15 § 82.32.190. Prior: 1937 c 227 § 19; 1935 c 180 § 200; RRS § 8370-200.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.200 Stay of collection—Bond—Interest.

(1) When any assessment or additional assessment has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department of revenue may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion thereof from the date the bond is filed until the date of payment.

(2) Interest imposed under this section after January 1, 1997, shall be computed on a daily basis on the amount of tax

at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for bonds filed before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at one percent per each thirty days or portion thereof. [1996 c 149 § 4; 1975 1st ex.s. c 278 § 83; 1961 c 15 § 82.32.200. Prior: 1935 c 180 § 201; RRS § 8370-201.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.210 Tax warrant—Filing—Lien—Effect. (1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department may issue a warrant in the amount of the unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, is computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, is computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) Except as provided in RCW 82.32.212, the department must file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk will enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed. The amount of the warrant so docketed is a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien is not superior, however, to bona fide interests of third persons that vested before the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than to secure payment of a debt or to receive a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed

the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed is also a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state as provided by law for judgments wholly or partially unsatisfied. [2011 c 131 § 1; 2001 c 146 § 12; 1998 c 311 § 8; 1997 c 157 § 3; 1987 c 405 § 15; 1983 1st ex.s. c 55 § 8; 1967 ex.s. c 89 § 3; 1961 c 15 § 82.32.210. Prior: 1955 c 389 § 38; prior: 1951 1st ex.s. c 9 § 13; 1949 c 228 § 225, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Additional notes found at www.leg.wa.gov

82.32.212 Tax warrant—Notice of lien. (1) To secure payment of a tax warrant issued by the department under RCW 82.32.210, the department may issue a notice of lien against any real property in which the taxpayer against whom the warrant was issued has an ownership interest, if the total amount for which the warrant was issued exceeds twenty-five thousand dollars and the department determines that issuing the notice of lien would best protect the state's interest in collecting the amount due on the warrant. The department must file the notice of lien with the recording officer of the county where the real property is located. The recording officer is entitled to a filing fee as provided under RCW 36.18.010.

(2)(a) Except as otherwise provided in this section, recording a notice of lien as authorized in this section is in lieu of filing with the clerk of the superior court a copy of the warrant secured by the notice of lien.

(b) Notwithstanding (a) of this subsection (2), the department may file with the superior court a warrant that is secured by a notice of lien under this section if: (i) The department determines that filing the warrant is in the best interest of collecting the amount due on the tax warrant; or (ii) the warrant remains unpaid six months after the notice of lien was issued.

(3) If a warrant has been filed with the clerk of the superior court, the department may issue and record a notice of lien against real property of the taxpayer and file a conditional satisfaction of the warrant with the clerk of the superior court of the county in which the warrant was filed, if the department determines that such actions are in the best interest of collecting the amount due on the warrant.

(a) A warrant for which a conditional satisfaction is filed will continue to accrue interest on the unpaid balance as provided in RCW 82.32.210.

(b)(i) The department may refile a warrant for which a conditional satisfaction has been filed if: (A) The department determines that refiling the warrant is in the best interest of collecting the amount due on the warrant; or (B) the warrant remains unpaid six months after the notice of lien was issued.

(ii) A warrant is refiled in the same manner as it was originally filed.

(c) A warrant that is refiled as provided in this subsection (3) reinstates the liens provided under RCW 82.32.210 as of the date the warrant is refiled.

(d) For the purposes of this subsection (3), a "conditional satisfaction" is a document issued by the department, which,

(2022 Ed.)

when filed with the clerk of the superior court of the county in which the warrant was filed, releases the liens provided under RCW 82.32.210 without prejudice to refile the warrant at a later date.

(4) When a taxpayer has requested the department to use the collection authority under this section, in order to determine if the issuance of a notice of lien would best protect the state's interest in collecting the amount due on the warrant, the department may require the taxpayer to:

(a) Provide, at the taxpayer's expense, the department with a current abstract of title as defined by RCW 48.29.010 from a title insurer that possesses a certificate of authority issued under Title 48 RCW; and

(b) Authorize the department to obtain the taxpayer's current credit report.

(5) A notice of lien issued under this section must include the following information:

(a) The name of the taxpayer who has an interest in the real property against which the notice of lien is filed;

(b) The taxpayer's tax registration number issued as provided in RCW 82.32.030;

(c) The number of the warrant issued by the department;

(d) The amount for which the warrant was issued;

(e) The legal description, tax parcel number assigned under RCW 84.40.160, and the street address, if available, of the real property against which the notice of lien is issued; and

(f) Any other information the department determines would be useful.

(6) The notice of lien issued under this section is superior to all other liens and encumbrances, except:

(a) Bona fide interests of third persons that had vested prior to the recording of the notice of lien, if the third persons do not have a beneficial interest, direct or indirect, in the operation of the taxpayer's business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. For purposes of this subsection, "bona fide interests of third persons" has the same meaning as in RCW 82.32.210; and

(b) Property taxes and special assessments against the property.

(7) The department must release a notice of lien issued under this section as soon as practicable after receipt of payment in full of the amount due on the warrant secured by the notice of lien, including interest accrued as provided in RCW 82.32.210(1) and all recording fees claimed by the recording officer for the recording of the notice of lien and the release of the lien.

(8) The department must release a notice of lien issued under this section within fourteen days if the notice of lien was issued in error. [2011 c 131 § 2.]

Additional notes found at www.leg.wa.gov

82.32.215 Revocation of certificate of registration.

(1) The department may, by order, revoke the certificate of registration of a taxpayer for any of the following reasons:

(a) A warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court;

(b) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290(4)(b) (i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290(4)(b) (i) through (iii).

(ii) For the purposes of this subsection (1)(c), the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(2) If the department enters a final order revoking a taxpayer's certificate of registration, a copy of the order must, if practicable, be posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a final order revoking a taxpayer's certificate of registration in any public facility, such as a courthouse or post office, as may be allowed by the public entity that owns or occupies the facility. A final order posted at the taxpayer's place of business must remain posted until such time as the taxpayer is eligible to have its certificate of registration reinstated as provided in subsection (3) of this section or has abandoned the premises. A taxpayer will not be deemed to have abandoned the premises if the taxpayer or any person with an ownership interest in the taxpayer continues to operate a substantially similar type of business under a different legal entity at the same location.

(3) Any certificate revoked under subsection (1) of this section may not be reinstated, nor may a new certificate of registration be issued to the taxpayer, until:

(a) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer; or

(b) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290(4)(b) (i) through (iii), if the certificate of registration was revoked under the provisions of subsection (1)(c) of this section. [2013 c 309 § 1; 1998 c 311 § 9; 1983 1st ex.s. c 55 § 9.]

Additional notes found at www.leg.wa.gov

82.32.220 Execution of warrant—Levy upon property—Satisfaction. The department of revenue may issue an order of execution, pursuant to a filed warrant, directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the sheriff's county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department of reve-

nue and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

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

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lienholder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1998 c 311 § 10; 1983 1st ex.s. c 55 § 10; 1961 c 304 § 6; 1961 c 15 § 82.32.220. Prior: 1955 c 389 § 39; prior: 1951 1st ex.s. c 9 § 14; 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Fee for filing tax warrant by county clerk: RCW 36.18.020.

Additional notes found at www.leg.wa.gov

82.32.230 Agent of the department of revenue may execute. In the discretion of the department of revenue, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1983 1st ex.s. c 55 § 11; 1975 1st ex.s. c 278 § 84; 1961 c 15 § 82.32.230. Prior: 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Additional notes found at www.leg.wa.gov

82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default. (1) In addition to the remedies provided in this chapter the department is authorized to issue to any person, including the department, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, property which is or will become due, owing, or belonging to any taxpayer against whom a warrant has been filed.

(2) The sheriff of the county where the service is made, or his or her deputy, or any duly authorized representative of the department may personally serve the notice and order to withhold and deliver upon the person to whom it is directed or may do so by certified mail, with return receipt requested. Upon written consent of the person to be served, a notice and order to withhold and deliver issued under subsection (1) of this section may be served electronically.

(3)(a) The department is authorized to issue a notice and order to withhold and deliver to any financial institution in the form of a listing of all or a portion of the unsatisfied tax warrants filed under this chapter and outstanding warrants under RCW 49.48.086 with the clerk of the superior court of a county of the state, except tax warrants subject to a payment agreement, which is not in default, between the department and the taxpayer. The department may also issue a notice and order to withhold and deliver in the form authorized in this subsection (3)(a) to itself or any other person upon that person's written consent.

(b) The department may serve the notice and order to withhold and deliver authorized under this subsection electronically. The remedy in this subsection (3) is in addition to any other remedies authorized by law.

(c) No more than one notice and order to withhold and deliver under this subsection (3) may be served on the same person in a calendar month except upon the person's written consent.

(d) A notice and order to withhold and deliver served on a financial institution under this subsection (3) must include the federal taxpayer identification number of each taxpayer listed in the notice.

(e) For purposes of this subsection, "financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(f) The department may provide a financial institution relief from a notice and order to withhold and deliver in the form provided under this subsection (3) upon the request of the financial institution. The department must consider the size, customer base, and geographic location of the financial institution when considering whether to provide relief. The department must serve any financial institution so relieved under subsection (1) of this section.

(4) Any person who has been served with a notice and order to withhold and deliver under subsection (1) of this section must answer the notice within twenty days, exclusive of the day of service. Any person who has been served with a notice and order to withhold and deliver under subsection (3) of this section must answer the notice within thirty days, exclusive of the day of service. The answer must be in writing, under oath if required by the department, and include true answers to the matters inquired of in the notice. Any person served under subsection (3) of this section may answer in aggregate within thirty days, but must answer separately as to each taxpayer listed and specify any property by taxpayer which is delivered. The department must allow any person served electronically as authorized in subsection (2) or (3) of this section to answer the notice and order to withhold and deliver electronically in a format provided or approved by the department.

(5) In the event there is in the possession of any person served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property must be delivered immediately to the department of revenue or its duly authorized representative upon demand. The department must hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of

liability or nonliability. Instead of delivering the property to the department or the department's duly authorized representative, the person may furnish a bond satisfactory to the department conditioned upon final determination of liability.

(6) Should any person, having been served with a notice and order to withhold and deliver, fail to answer the notice and order to withhold and deliver within the time prescribed in this section or otherwise fail to comply with the duties imposed in this section, the department may bring a proceeding, in the superior court of Thurston county or of the county in which service of the notice was made, to enforce the notice and order to withhold and deliver. The court may render judgment by default against such person for the full amount claimed by the department in the notice and order to withhold and deliver or may grant such other relief as the court deems just, together with costs.

(7) For purposes of this section, "person" has the same meaning as in RCW 82.04.030 and also includes any agency, department, or institution of the state. [2014 c 210 § 2; 2014 c 97 § 104; 2009 c 562 § 1; 1987 c 208 § 1; 1975 1st ex.s. c 278 § 85; 1971 ex.s. c 299 § 22; 1963 ex.s. c 28 § 11.]

Reviser's note: This section was amended by 2014 c 97 § 104 and by 2014 c 210 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2009 c 562: "(1) The legislature finds that the state's vital interest in collecting lawfully due taxes must be balanced against the burden of complying with section 1(3) of this act, particularly for small financial institutions.

(2)(a) Therefore, the legislature directs the department of revenue to work with interested financial institutions to develop policies regarding the frequency of service under section 1(3) of this act and under what circumstances a notice and order to withhold and deliver will contain only a partial list of unsatisfied tax warrants eligible to be included in the notice. The policies should take into account the size of a financial institution, location of a financial institution, number of business accounts that a financial institution has, and any other factors the department may choose to consider.

(b) The department is also directed to develop a policy regarding the information to be contained in a notice and order to withhold and deliver to ensure that financial institutions can accurately match their records with the names of tax debtors.

(3) The department must report to the fiscal committees of the legislature on the implementation of section 1(3) of this act by January 1, 2012. The report should describe the policies developed by the department as directed in subsection (2) of this section. The report should also describe any difficulties the department encountered in implementing section 1(3) of this act and any suggestions the department may have to improve the effectiveness of section 1(3) of this act, reduce the burden on financial institutions in complying with section 1(3) of this act, or both." [2009 c 562 § 2.]

Additional notes found at www.leg.wa.gov

82.32.237 Notice and order to withhold and deliver—Continuing lien—Effective date. Upon service, the notice and order to withhold and deliver shall constitute a continuing lien on property of the taxpayer and upon wages due, owing, or belonging to the taxpayer. The department shall include in the caption of the notice and order to withhold and deliver "continuing lien." The effective date of a notice and order to withhold and deliver served under RCW 82.32.235 shall be the date of service thereof. [1987 c 208 § 2.]

82.32.240 Tax constitutes debt to the state—Priority of lien. Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any

other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer who is, or decedent who was, engaging in business, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of revenue of such administration, receivership or assignment within sixty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: PROVIDED, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon to the extent of the value of the property subject to administration that otherwise would have been available for the payment of such taxes, increases, and penalties by the administrator, executor, guardian, receiver, or assignee.

As used in this section, "probate" includes the nonprobate claim settlement procedure under chapter 11.42 RCW, and "executor" and "administrator" includes any notice agent acting under chapter 11.42 RCW. [1994 c 221 § 69; 1988 c 64 § 21; 1975 1st ex.s. c 278 § 86; 1961 c 15 § 82.32.240. Prior: 1949 c 228 § 26; 1935 c 180 § 203; Rem. Supp. 1949 § 8370-203.]

Additional notes found at www.leg.wa.gov

82.32.245 Search for and seizure of property—Warrant—Procedure. (1) When there is probable cause to believe that there is property within this state, not otherwise exempt from process or execution, in the possession or control of any taxpayer against whom a tax warrant has been filed which remains unsatisfied, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to such officers commanding the search for and seizure of the property described in the request for warrant.

(2) Application for, issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be in accordance with the criminal rules of the superior court and the justice court.

(3) The sheriff or agent of the department shall levy execution upon property seized pursuant to this section as provided in RCW 82.32.220 and 82.32.230.

(4) Nothing in this section shall require the application for and issuance of any warrant not otherwise required by law. [1985 c 414 § 3.]

[Title 82 RCW—page 338]

82.32.260 Payment condition to dissolution or withdrawal of corporation. In the case of any corporation organized under the laws of this state, the courts shall not enter or sign any decree of dissolution, nor shall the secretary of state file in his or her office any certificate of dissolution, and in the case of any corporation organized under the laws of another jurisdiction and admitted to do business in this state, the secretary of state shall withhold the issuance of any certificate of withdrawal, until proof, in the form of a certificate from the department of revenue, has been furnished by the applicant for such dissolution or withdrawal, that every license fee, tax, increase, or penalty has been paid or provided for. [2013 c 23 § 325; 1975 1st ex.s. c 278 § 87; 1961 c 15 § 82.32.260. Prior: 1935 c 180 § 204; RRS § 8370-204.]

Additional notes found at www.leg.wa.gov

82.32.265 Use of collection agencies to collect taxes outside the state. (1) The department may retain, by written contract, collection agencies licensed under chapter 19.16 RCW or licensed under the laws of another state or the District of Columbia for the purpose of collecting from sources outside the state of Washington taxes including interest and penalties thereon imposed under this title and RCW 84.33.041.

(2) Only accounts represented by tax warrants filed in the superior court of a county in the state as provided by RCW 82.32.210 may be assigned to a collection agency, and no such assignment may be made unless the department has previously notified or has attempted to notify the taxpayer of his or her right to petition for correction of assessment within the time provided and in accordance with the procedures set forth in chapter 82.32 RCW.

(3) Collection agencies assigned accounts for collection under this section shall have only those remedies and powers that would be available to them as assignees of private creditors. However, nothing in this section limits the right to enforce the liability for taxes lawfully imposed under the laws of this state in the courts of another state or the District of Columbia as provided by the laws of such jurisdictions and RCW 4.24.140 and 4.24.150.

(4) The account of the taxpayer shall be credited with the amounts collected by a collection agency before reduction for reasonable collection costs, including attorneys fees, that the department is authorized to negotiate on a contingent fee or other basis. [1987 c 80 § 5; 1985 c 414 § 4.]

82.32.270 Accounting period prescribed. The taxes imposed hereunder, and the returns required therefor, shall be upon a calendar year basis; but, if any taxpayer in transacting his or her business, keeps books reflecting the same on a basis other than the calendar year, he or she may, with consent of the department of revenue, make his or her returns, and pay taxes upon the basis of his or her accounting period as shown by the method of keeping the books of his or her business. [2013 c 23 § 326; 1975 1st ex.s. c 278 § 88; 1961 c 15 § 82.32.270. Prior: 1935 c 180 § 205; RRS § 8370-205.]

Additional notes found at www.leg.wa.gov

82.32.280 Tax declared additional. Taxes imposed hereunder shall be in addition to any and all other licenses, taxes, and excises levied or imposed by the state or any

municipal subdivision thereof. [1961 c 15 § 82.32.280. Prior: 1935 c 180 § 206; RRS § 8370-206.]

82.32.290 Unlawful acts—Penalties. (1)(a) It is unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department in violation of this chapter;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a seller documentation authorized under RCW 82.04.470 without intent to resell the property purchased or with intent to otherwise use the property in a manner inconsistent with the claimed wholesale purchase; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) is guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It is unlawful:

(i) For any person to engage in business after revocation of a certificate of registration unless the person's certification of registration has been reinstated;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration unless the company's certificate of registration has been reinstated; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) is guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, is guilty of the offense of perjury in the second degree and must be punished, upon conviction thereof, by a fine of not more than one thousand dollars.

(4)(a) It is unlawful for any person to knowingly sell, purchase, install, transfer, manufacture, create, design, update, repair, use, possess, or otherwise make available, in this state, any automated sales suppression device or phantom-ware. However, it is not unlawful for persons to possess or use automated sales suppression devices or phantom-ware as authorized in RCW 82.32.670(6).

(b) It is unlawful for any person who has been convicted of violating this section to engage in business, or participate

(2022 Ed.)

in any business as an owner, officer, director, partner, trustee, member, or manager of the business, unless:

(i) All taxes, penalties, and interest lawfully due are paid;

(ii) The person pays in full all penalties and fines imposed on the person for violating this section; and

(iii) The person, if the person is engaging in business subject to tax under this title, or the business in which the person participates, enters into a written agreement with the department for the electronic monitoring of the business's sales, by a method acceptable to the department, for five years at the business's expense.

(c)(i) Any person violating the provisions of this subsection, including material breach of the monitoring agreement under (b)(iii) of this subsection, is guilty of a class C felony in accordance with chapter 9A.20 RCW and, as applicable, (c)(ii) of this subsection.

(ii) Any person violating the provisions of this subsection by furnishing an automated sales suppression device or phantom-ware to another person or by updating or repairing another person's automated sales suppression device or phantom-ware is, in addition to the punishments prescribed in chapter 9A.20 RCW, subject to a mandatory fine fixed by the court in an amount equal to the greater of ten thousand dollars, the defendant's gain from the commission of the crime, or the state's loss from the commission of the crime. For purposes of this subsection (4)(c)(ii), "loss" means the total of all taxes, penalties, and interest certified by the department to be due, as of the date of sentencing, as a result of any violation of the provisions of this subsection by a person using the automated sales suppression device or phantom-ware obtained from, or updated or repaired by, the defendant, which results in the defendant's conviction for violating the provisions of this subsection.

(d) For the purposes of this subsection (4), the terms "manager," "member," and "officer" have the same meaning as in RCW 82.32.145.

(e) The definitions in RCW 82.32.670 apply to this subsection (4).

(5) All penalties or punishments provided in this section are in addition to all other penalties provided by law.

(6) For the purposes of this section, "return" has the same meaning as in RCW 82.32.050. [2022 c 41 § 3; 2013 c 309 § 2; 2010 c 112 § 11; 2009 c 563 § 211; 1985 c 414 § 2; 1975 1st ex.s. c 278 § 89; 1961 c 15 § 82.32.290. Prior: 1935 c 180 § 207; RRS § 8370-207.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Additional notes found at www.leg.wa.gov

82.32.291 Reseller permit—Unlawful use—Penalty—Rules. (1) Except as otherwise provided in this section, if any buyer improperly uses a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services at retail without payment of sales tax that was legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service.

(2) The department must waive the penalty imposed under subsection (1) of this section if it finds that the use of

the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 was due to circumstances beyond the taxpayer's control or if the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes. The department must define by rule what circumstances are considered to be beyond the taxpayer's control.

(3) A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the items or services without payment of sales tax and is subject to the penalty in subsection (1) of this section if the buyer:

(a) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(b) Made the purchase from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that it did not improperly use its reseller permit to make the purchase without payment of sales tax. [2010 c 112 § 12. Prior: 2009 c 563 § 212; 2009 c 289 § 4; 1993 sp.s. c 25 § 703.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Seller's permit and uniform exemption certificate: RCW 82.04.470 and 82.08.130.

Additional notes found at www.leg.wa.gov

82.32.300 Department of revenue to administer—Chapters enforced by liquor and cannabis board. (1) The department must administer this chapter and such other provisions of the Revised Code of Washington as specifically provided by law. To that end, the department may prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment, and collection of taxes and penalties imposed thereunder.

(2)(a) The department may make and publish rules, not inconsistent therewith, necessary to enforce provisions of this chapter and such other provisions of the Revised Code of Washington that the department is empowered by law to enforce. The liquor and cannabis board may make and publish rules necessary to enforce chapters 82.24, 82.26, and 82.25 RCW.

(b) Rules adopted by the department or liquor and cannabis board under the authority of this subsection have the same force and effect as if specifically included in law, unless declared invalid by the judgment of a court of record not appealed from.

(3) The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees must be fixed by the department and charged to the proper appropriation for the department.

(4) The department must exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper. [2020 c 139 § 39; 2019 c 445 § 209; 1997 c 420 § 9; 1983 c 3 § 222; 1975 1st ex.s. c 278 § 90; 1961 c 15 § 82.32.300. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Additional notes found at www.leg.wa.gov

82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department of revenue for any act done by him or her or for the recovery of any money exacted by or paid to him or her and by him or her paid over to the department, in the performance of his or her official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [2013 c 23 § 327; 1975 1st ex.s. c 278 § 91; 1961 c 15 § 82.32.310. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

Additional notes found at www.leg.wa.gov

82.32.320 Revenue to state treasurer—Allocation for return or payment for less than the full amount due. The department of revenue, on the next business day following the receipt of any payments hereunder, shall transmit them to the state treasurer, taking his or her receipt therefor. If a return or payment is submitted with less than the full amount of all taxes, interest, and penalties due, the department may allocate payments among applicable funds so as to minimize administrative costs to the extent practicable. [1995 c 318 § 7; 1975 1st ex.s. c 278 § 92; 1961 c 15 § 82.32.320. Prior: 1935 c 180 § 209; RRS § 8370-209.]

Additional notes found at www.leg.wa.gov

82.32.330 Disclosure of return or tax information.

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investi-

gation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is

required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This

subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is maintained by a court of record and is not otherwise prohibited from disclosure;

(m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted;

(r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.117;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers;

(u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington;

(v) Disclosing to an individual to whom the department has issued an assessment under RCW 82.32.145 for unpaid trust fund taxes of a defunct or insolvent entity, return or tax information of that entity pertaining to those unpaid trust fund taxes;

(w) Disclosing any such return or tax information pursuant to a federal grand jury subpoena or subpoena issued by a United States attorney, only to be used in the criminal investigation and related court proceedings, or in the court proceeding for which the return or tax information originally was sought; or

(x) Disclosing any return or tax information to an individual when the return or tax information is related directly to that person's individual liability, as part of a marital commu-

nity, for amounts due under a warrant issued under the authority of RCW 59.30.090 or 82.32.210.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.117 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under

RCW 82.32.117 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), (m), (v), and (w) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter. [2022 c 56 § 9; 2021 c 145 § 18; 2011 c 174 § 404. Prior: 2010 c 112 § 13; 2010 c 106 § 104; prior: 2009 c 563 § 213; 2009 c 309 § 2; 2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7; prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.340 Chargeoff of uncollectible taxes—Destruction of files and records. (1) Any tax or penalty which the department of revenue deems to be uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted an asset. Any item transferred shall continue to be a debt due the state from the taxpayer and may at any time within twelve years from the filing of a warrant covering such amount with the clerk of the superior court be transferred back to accounts receivable for the purpose of collection. The department of revenue may charge off as finally uncollectible any tax or penalty which it deems uncollectible at any time after twelve years from the date that the last tax return for the delinquent taxpayer was or should have been filed if the department of revenue is satisfied that there are no cost-effective means of collecting the tax or penalty.

After any tax or penalty has been charged off as finally uncollectible under the provisions of this section, the department of revenue may destroy any or all files and records pertaining to the liability of any taxpayer for such tax or penalty.

The department of revenue, subject to the approval of the state records committee, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer for such taxable year, who has fully paid all taxes, penalties and interest for such taxable year, or any preceding taxable year for which such taxes, penalties and interest have been fully paid. In the event that such files and records are reproduced on film pursuant to RCW 40.20.020 for use in accordance with RCW 40.20.030, the original files and records may be destroyed immediately after reproduction and such reproductions may

(2022 Ed.)

be destroyed at the expiration of the above five-year period, subject to the approval of the state records committee.

(2) Notwithstanding subsection (1) of this section, the department may charge off any tax within its jurisdiction to collect that is owed by a taxpayer, including any penalty or interest thereon, if the department ascertains that the cost of collecting that tax would be greater than the total amount which is owed or likely in the near future to be owed by, and collectible from, the taxpayer. [1989 c 78 § 3; 1985 c 414 § 1; 1979 ex.s. c 95 § 3; 1979 c 151 § 184; 1967 ex.s. c 89 § 4; 1965 ex.s. c 141 § 7; 1961 c 15 § 82.32.340. Prior: 1955 c 389 § 40; 1939 c 225 § 30; 1937 c 227 § 21; 1935 c 180 § 210(a); RRS § 8370-210a.]

82.32.350 Closing agreements authorized. The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title, or any tax in respect to which this section is specifically made applicable, for any taxable period or periods. [2017 c 323 § 107; 1971 ex.s. c 299 § 23; 1961 c 15 § 82.32.350. Prior: 1945 c 251 § 1; Rem. Supp. 1945 § 8370-225.]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

82.32.360 Conclusive effect of agreements. Upon approval of such agreement, evidenced by execution thereof by the department of revenue and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or of misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by any officer, employee, or agent of the state, or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. [1975 1st ex.s. c 278 § 93; 1961 c 15 § 82.32.360. Prior: 1945 c 251 § 2; Rem. Supp. 1945 § 8370-226.]

Additional notes found at www.leg.wa.gov

82.32.380 Revenues to be deposited in general fund. The state treasurer, upon receipt of any payments of tax, penalty, interest, or fees collected hereunder shall deposit them to the credit of the state general fund or such other fund as may be provided by law. [1961 c 15 § 82.32.380. Prior: 1945 c 249 § 10; 1943 c 156 § 12A, 1941 c 178 § 19(a); 1939 c 225 § 31; 1937 c 227 § 32; 1935 c 180 § 211; Rem. Supp. 1945 § 8370-211.]

82.32.385 General fund transfers to multimodal transportation account, connecting Washington account. (1) Beginning September 2019 and ending December 2019, by the last day of September and December, the state trea-

surer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$13,680,000.

(2) Beginning March 2020 and ending June 2021, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the multimodal transportation account created in RCW 47.66.070 \$13,680,000.

(3) Beginning September 2021 and ending June 2023, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$13,805,000.

(4) Beginning September 2023 and ending June 2025, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$13,987,000.

(5) Beginning September 2025 and ending June 2027, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$11,658,000.

(6) Beginning September 2027 and ending June 2029, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$7,564,000.

(7) Beginning September 2029 and ending June 2031, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 \$4,056,000.

(8) For fiscal year 2026 through fiscal year 2038, the state treasurer must transfer from the general fund to the move ahead WA flexible account created in RCW 46.68.520 \$31,000,000 each fiscal year in four equal quarterly transfers. This amount represents the estimated state sales and use tax generated from new transportation projects and activities funded as a result of this act.

(9) For fiscal year 2024 through fiscal year 2038, the state treasurer must transfer from the general fund to the move ahead WA flexible account created in RCW 46.68.520 \$57,000,000 each fiscal year in four equal quarterly transfers. [2022 c 182 § 301; 2020 c 219 § 703; 2015 3rd sp. s. c 44 § 420.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Effective date—2020 c 219: See note following RCW 46.68.310.

Effective date—2015 3rd sp. s. c 44: See note following RCW 46.68.395.

82.32.394 Revenues from sale or use of leaded racing fuel to be deposited into the advanced environmental mitigation revolving account. The department of revenue shall deposit into the advanced environmental mitigation revolving account, created in RCW 47.12.340, all moneys received from the imposition on consumers of the taxes under chapters 82.08 and 82.12 RCW on the sales or use of leaded racing fuel which is exempted from the motor vehicle fuel tax under *RCW 82.38.081. [1998 c 115 § 7.]

*Reviser's note: RCW 82.38.081 was repealed by 2007 c 515 § 34.

Intent—1998 c 115 §§ 6 and 7: "It is the intent of the legislature that leaded racing fuel be exempted from payment of the motor vehicle fuel tax, as provided in RCW 82.38.081, since it is illegal for use on the public highways of the state under federal law. The legislature further intends that leaded racing fuel be subject to the retail sales and use taxes under chapters 82.08 and 82.12 RCW and that the revenue collected will be earmarked as provided in RCW 82.32.394." [1998 c 115 § 5.]

82.32.410 Written determinations as precedents. (1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.56 RCW or any other statute applicable to the department of revenue. [2005 c 274 § 362; 2001 c 320 § 10; 1997 c 409 § 211; 1991 c 330 § 2.]

Additional notes found at www.leg.wa.gov

82.32.430 Liability for tax rate calculation errors—Geographic information system. (1) A person who collects and remits sales or use tax to the department and who calculates the tax using geographic information system technology developed and provided by the department shall be held harmless and is not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of such technology.

(2) Except as provided in subsection (3) of this section, the department shall notify sellers who collect and remit sales or use tax to the department of changes in boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than sixty days before the effective date of the change.

(3) The department shall notify sellers who collect and remit sales or use tax to the department and make sales from printed catalogs of changes, as to such sales, of boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than one hundred twenty days before the effective date of the change.

(4) Sellers who have not received timely notice of rate and boundary changes under subsections (2) and (3) of this

section due to actions or omissions of the department are not liable for the difference in the amount due until they have received the appropriate period of notice. Purchasers are liable for any uncollected amounts of tax.

(5)(a) Except as provided in (b) of this subsection, sellers registered with the department under RCW 82.32.030(3) and certified service providers must use the address-based geographic information technology system developed and provided by the department to calculate the tax to be collected and remitted to the department and to determine the appropriate local jurisdictions entitled to the tax.

(b)(i) Upon a showing that using the address-based geographic information technology system would cause undue hardship, a seller may be temporarily held harmless and not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of zip code-based technology provided by the department for the period in which relief is granted. The department shall notify local taxing jurisdictions of the identity of sellers granted relief under this section and the period for which relief is granted.

(ii) The department shall reimburse local taxing jurisdictions for differences in amount due on account of such rate calculation errors occurring during the period in which relief is granted. Purchasers are liable for any uncollected amounts of tax. The department shall retain amounts collected from purchasers that have been reimbursed to local taxing jurisdictions under this subsection (5)(b)(ii). [2007 c 6 § 1501; 2003 c 168 § 207; 2001 c 320 § 11; 2000 c 104 § 4.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

Additional notes found at www.leg.wa.gov

82.32.440 Project on sales and use tax exemption requirements. (1) The department is authorized to enter into agreements with sellers who meet the criteria in this section for a project on sales and use tax exemption requirements. This project will allow the use of electronic data collection in lieu of paper certificates otherwise required by law, including the use of electronic signatures.

(2) The object of the project is to determine whether using an electronic system and reviewing the data regarding the exempt transactions provides the same level of reliability as the current system while lessening the burden on the seller.

(3) A business making both sales taxable and exempt under chapter 82.08 or 82.12 RCW, that has electronic data-collecting capabilities, and that wishes to participate in the project may make application to the department in such form and manner as the department may require. To be eligible for such participation, a seller must demonstrate its capability to take part in the project and to provide data to the department in a form in which the data can be used by the department. The department is not required to accept all applicants in this project and is not required to provide any reason for not selecting a participant. A seller selected as a participant may be relieved of other sales and use tax exemption documentation requirements provided by law as covered by the project. [2010 c 106 § 227; 2001 c 116 § 2.]

Findings—2001 c 116: "The legislature finds that current sales and use tax exemption documentation requirements are often confusing and burdensome for retailers, taxpayers, and the state. Additionally, the legislature notes the national efforts under way to simplify and streamline the sales and use tax, and that those efforts include a new system for retailers to use in processing sales and use tax exemptions. The legislature further finds that it would be beneficial to the state and its residents to allow for the simplification of sales and use tax exemption requirements." [2001 c 116 § 1.]

Additional notes found at www.leg.wa.gov

82.32.450 Natural or manufactured gas, electricity—Maximum combined credits and deferrals allowed—Availability of credits and deferrals. (1) The total combined credits and deferrals that may be taken under RCW 82.04.447, 82.12.024, and 82.16.0495 shall not exceed two million five hundred thousand dollars in any fiscal year. Each person is limited to no more than a total of one million five hundred thousand dollars in tax deferred and credit allowed in any fiscal year in which more than one person takes tax credits and claims tax deferral. The department may require reporting of the credits taken and amounts deferred in a manner and form as is necessary to keep a running total of the amounts.

(2) Credits and deferred tax are available on a first come basis. Priority for tax credits and deferrals among approved applicants shall be designated based on the first actual consumption of gas under RCW 82.04.447 or 82.12.024, or on the first actual use of electricity under RCW 82.16.0495, by each approved applicant. The department shall disallow any credits or deferred tax, or portion thereof, that would cause the total amount of credits taken and deferred taxes claimed to exceed the fiscal year cap or to exceed the per person fiscal year cap. If the fiscal cap is reached or exceeded[,], the department shall notify those persons who have approved applications under RCW 82.04.447, 82.12.024, and 82.16.0495 that no more credits may be taken or tax deferred during the remainder of the fiscal year. In addition, the department shall provide written notice to any person who has taken any tax credits or claimed any deferred tax in excess of the fiscal year cap. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice.

(3) No portion of an application for credit or deferral disallowed under this section may be carried back or carried forward nor may taxes ineligible for credit or deferral due to the fiscal cap having been reached or exceeded be carried forward or carried backward. [2001 c 214 § 12.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

82.32.470 Transfer of sales and use tax on toll projects. (1) The tax imposed and collected under chapters 82.08 and 82.12 RCW, less any credits allowed under chapter 82.14 RCW, on initial construction for a transportation project to be constructed under chapter 36.120 RCW, must be transferred to the transportation project to defray costs or pay debt service on that transportation project. In the case of a toll project, this transfer or credit must be used to lower the overall cost of the project and thereby the corresponding tolls.

(2) This transaction is exempt from the requirements in *RCW 43.135.035(4).

(3) Government entities constructing transportation projects under chapter 36.120 RCW shall report to the department

ment the amount of state sales or use tax covered under this section. [2002 c 56 § 407.]

***Reviser's note:** RCW 43.135.035 was repealed by 2011 c 1 § 3 (Initiative Measure No. 1053) without cognizance of its amendment by 2010 c 4 § 2. 2010 c 4 § 2 was subsequently repealed by 2013 c 1 § 3 (Initiative Measure No. 1185, approved November 6, 2012).

82.32.480 Washington forest products commission—Disclosure of taxpayer information. The forest products commission, created pursuant to chapter 15.100 RCW, constitutes a state agency for purposes of applying the exemption contained in RCW 82.32.330(3)(e) for the disclosure of taxpayer information by the department. Disclosure of return or tax information may be made only to employees of the commission and not to commission members. Employees are authorized to use this information in accordance with RCW 15.100.100(4). Employees are subject to all civil and criminal penalties provided under RCW 82.32.330 for disclosures made to another person not entitled under the provisions of this section or RCW 15.100.100 to knowledge of such information. [2010 c 106 § 105; 2001 c 314 § 20.]

Findings—Construction—2001 c 314: See RCW 15.100.010 and 15.100.900.

Additional notes found at www.leg.wa.gov

82.32.490 Electronic database for use by mobile telecommunications service provider. (1)(a) The department may provide an electronic database as described in this section to a mobile telecommunications service provider, or if the department does not provide an electronic database to mobile telecommunications service providers, then the designated database provider may provide an electronic database to a mobile telecommunications service provider.

(b)(i) An electronic database, whether provided by the department or the designated database provider, shall be provided in a format approved by the American national standards institute's accredited standards committee X12, that after allowing for de minimis deviations, designates for each street address in the state, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

(ii) An electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

(iii) The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the federation of tax administrators and the multistate tax commission, or their successors. Each address shall be provided in standard postal format.

(2) The department or designated database provider, as applicable, that provides or maintains an electronic database described in subsection (1) of this section shall provide notice of the availability of the then-current electronic database, and any subsequent revisions, by publication in the manner nor-

mally employed for the publication of informational tax, charge, or fee notices to taxpayers in the state.

(3) A mobile telecommunications service provider using the data contained in an electronic database described in subsection (1) of this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the database provided by the department or designated database provider. The mobile telecommunications service provider shall reflect changes made to the database during a calendar quarter not later than thirty days after the end of the calendar quarter if the department or designated database provider, as applicable, has issued notice of the availability of an electronic database reflecting the changes under subsection (2) of this section. [2002 c 67 § 11.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.495 Liability of mobile telecommunications service provider if no database provided. (1) If neither the department nor the designated database provider provides an electronic database under RCW 82.32.490, a mobile telecommunications service provider shall be held harmless from any tax, charge, or fee liability in any taxing jurisdiction in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to RCW 82.32.500, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with RCW 82.32.500 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

(a) Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(b) Implemented and maintained reasonable internal controls to correct misassignments of street addresses to taxing jurisdictions promptly; and

(c) Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the database.

(2) Subsection (1) of this section applies to a mobile telecommunications service provider that is in compliance with the requirements of subsection (1) of this section, if in this state an electronic database has not been provided under RCW 82.32.490, until the later of:

(a) Eighteen months after the nationwide standard numeric code described in RCW 82.32.490(1) has been approved by the federation of tax administrators and the multistate tax commission; or

(b) Six months after the department or a designated database provider in this state provides the database as prescribed in RCW 82.32.490(1). [2002 c 67 § 12.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.500 Determination of taxing jurisdiction for telecommunications services. A taxing jurisdiction, or the department on behalf of any taxing jurisdiction or taxing jurisdictions within this state, may:

(1) Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in RCW 82.04.065 and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. Before the taxing jurisdiction gives the notice of determination, the customer must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the address is the customer's place of primary use; and

(2) Determine that the assignment of a taxing jurisdiction by a home service provider under RCW 82.32.495 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. The home service provider must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the assignment reflects the correct taxing jurisdiction. [2002 c 67 § 13.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.505 Telecommunications services—Place of primary use. (1) A home service provider is responsible for obtaining and maintaining information regarding the customer's place of primary use as defined in RCW 82.04.065. Subject to RCW 82.32.500, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall:

(a) Allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and

(b) Not hold a mobile telecommunications service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use.

(2) Except as provided in RCW 82.32.500, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on August 1, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service con-

(2022 Ed.)

tract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted. [2002 c 67 § 14.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.510 Scope of mobile telecommunications act—Identification of taxable and nontaxable charges. (1) Chapter 67, Laws of 2002 does not modify, impair, supersede, or authorize the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(2) If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the mobile telecommunications service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

(3) If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges. [2002 c 67 § 15.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.515 Applicability of telephone and telecommunications definitions. The definitions in RCW 82.04.065 apply to RCW 82.32.490 through 82.32.510 and 35.21.873. [2002 c 67 § 17.]

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

82.32.520 Sourcing of calls. (1) Except for the defined telecommunications services listed in subsection (3) of this section, the sale of telecommunications service as defined in RCW 82.04.065 sold on a call-by-call basis is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in subsection (3) of this section, a sale of telecommunications service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telecommunications service as defined in RCW 82.04.065 that are listed in subsection (3) of this section is sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced as follows:

(i) When a prepaid calling service or a prepaid wireless calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service or a prepaid wireless calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, the sale is sourced as provided in RCW 82.32.730(1)(e);

(vi) In the case of a sale of prepaid wireless calling service, (c)(v) of this subsection includes as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number

of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile

wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(m) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(n) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (n)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(iii) If the locations in (n)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use. [2010 c 106 § 228. Prior: 2007 c 54 § 18; 2007 c 6 § 1001; 2004 c 153 § 403; 2003 c 168 § 501.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.525 Purchaser's cause of action for over-collected sales or use tax. (1) A purchaser's cause of action against the seller for over-collected sales or use tax does not accrue until the purchaser has provided written notice to the seller and the seller has sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(2) In connection with a purchaser's request from a seller for over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(a) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(b) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances. [2004 c 153 § 408; 2003 c 168 § 211.]

Additional notes found at www.leg.wa.gov

82.32.530 Seller nexus. The department may not use registration under the streamlined sales and use tax agreement and collection of sales and use taxes in member states as a factor in determining whether the seller has nexus with Washington for any tax at any time. [2004 c 153 § 404; 2003 c 168 § 213.]

Additional notes found at www.leg.wa.gov

82.32.531 Nexus—Trade convention attendance or participation. (1) For purposes of the taxes imposed or authorized under chapters 82.04, 82.08, 82.12, and 82.14

(2022 Ed.)

RCW, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state.

(2) Subsection (1) of this section does not apply to persons making retail sales at a trade convention, including persons taking orders for products or services where receipt will occur in Washington state.

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

(a) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(b) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(c) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(i) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(ii) The exchange of information, ideas, and attitudes in regards to that industry or profession. [2016 c 137 § 3.]

Reviser's note: Section 3, chapter 137, Laws of 2016 expires January 1, 2027, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Tax preference performance statement—2016 c 137 § 3: "(1) This section is the tax preference performance statement for the tax preference contained in section 3 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage participation in Washington trade conventions. It is the legislature's intent to allow a business to participate in one trade convention in Washington each year without that participation being the sole basis for establishing physical presence nexus with the state for tax purposes. Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the new tax preference established under section 3 of this act by December 31, 2025.

(4) If a review finds that the number of businesses participating in trade conventions in Washington has increased from 2015 levels, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference. If the joint legislative audit and review committee finds that the number of businesses participating in trade conventions in Washington has not increased above 2015 levels, then the joint legislative audit and review committee must make recommendations on how the tax preference can be improved to accomplish that legislative objective. To obtain the data necessary to perform this review, the joint legislative audit and review committee must request the required information from the department of revenue and the Washington state convention center operated under chapter 36.100 RCW." [2016 c 137 § 1.]

Effective date—2016 c 137: See note following RCW 82.04.067.

82.32.532 Digital products—Nexus. (1) For purposes of the taxes imposed in this title, the department of revenue may not consider a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; digital goods or digital codes

residing on servers located in this state in determining whether the person has substantial nexus with this state.

(2) For purposes of this section, "substantial nexus" means the requisite connection that a person has with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution. [2010 c 111 § 701; 2009 c 535 § 901.]

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.32.533 Digital products—Amnesty. (1) Except as provided in subsection (2) of this section, no person may be held liable for the failure to collect or pay state and local sales and use taxes accrued before July 26, 2009, on the sale or use of digital goods or of services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(2) Subsection (1) of this section does not relieve any person from liability for state and local sales taxes that the person collected from buyers but did not remit to the department of revenue.

(3) Nothing in this section may be construed as authorizing the refund of state and local sales and use taxes properly paid on the sale or use, before July 26, 2009, of digital goods or of services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(4) A person is not entitled to a credit or refund of any business and occupation tax paid in excess of that properly due as a result of the person paying tax on its income earned from the sale of eligible digital products and services at the tax rate provided in RCW 82.04.290(2)(a) rather than the tax rate provided in RCW 82.04.250(1), unless the person requesting the credit or refund has paid the proper amount of state and local sales taxes due on the sales of the eligible digital products and services that generated the income in respect to which the business and occupation tax credit or refund is sought. For purposes of this subsection, "eligible digital products and services" means: (a) Digital goods; and (b) services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(5) For purposes of this section, "digital goods" has the same meaning as in RCW 82.04.192. [2010 c 111 § 801; 2009 c 535 § 1001.]

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.32.534 Annual report requirement for tax preferences. (1)(a)(i) Beginning in calendar year 2018, every person claiming a tax preference that requires an annual tax performance report under this section must file a complete annual report with the department. The report is due by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section.

(ii) If the tax preference is a deferral of tax, the first annual tax performance report must be filed by May 31st of the calendar year following the calendar year in which the investment project is certified by the department as opera-

tionally complete. An annual tax performance report must also be filed by May 31st of each succeeding calendar year through the calendar year in which the deferred taxes are fully repaid or are immediately due and payable because the recipient of the deferral is no longer eligible for the deferral.

(iii) The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment and wages for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment and wage information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed. In lieu of reporting employment and wage data required under this subsection, taxpayers may instead opt to allow the employment security department to release the same employment and wage information from unemployment insurance records to the department and the joint legislative audit and review committee. This option is intended to reduce the reporting burden for taxpayers, and each taxpayer electing to use this option must affirm that election in accordance with procedures approved by the employment security department.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment and wage information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2)(a) As part of the annual report, the department and the joint legislative audit and review committee may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(b) The report must include the amount of the tax preference claimed for the calendar year covered by the report. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(3) Other than information requested under subsection (2)(a) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due

date or any extension under RCW 82.32.590, the department must declare:

(i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable;

(ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable if the person has previously been assessed under this subsection (4) for failure to submit a report under this section for the same tax preference; and

(iii) If the tax preference is a deferral of tax, the amount immediately due under this subsection is the deferred tax divided by the number of years in the repayment period. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department may not assess interest or penalties on amounts due under this subsection.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by December 31st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a report under this section. [2022 c 56 § 10; 2021 c 145 § 19; 2017 c 135 § 1; 2016 c 175 § 1; 2014 c 97 § 102; 2010 c 114 § 103.]

Effective date—2017 c 135: "This act takes effect January 1, 2018." [2017 c 135 § 48.]

Effective date—2016 c 175: "This act takes effect July 1, 2016." [2016 c 175 § 4.]

Application—Prospective and retroactive—2016 c 175: "(1) In addition to applying prospectively, sections 1(4) and 2(6) of this act apply retroactively for a taxpayer who has filed an appeal regarding taxes, penalties, and interest owed under RCW 82.32.534 or *82.32.585 before January 1, 2016, and the appeal is pending before the department of revenue or the board of tax appeals as of July 1, 2016.

(2) Except for taxpayers described in subsection (1) of this section, sections 1(4) and 2(6) of this act apply to amounts due and payable under sections 1(4) and 2(6) of this act on or after July 1, 2017." [2016 c 175 § 3.]

***Reviser's note:** RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Annual surveys and reports—Recommendations to update and improve—2013 2nd sp.s. c 13: "By December 1, 2013, the department of revenue, in consultation with the joint legislative audit and review committee, must make recommendations to the appropriate fiscal committees of the legislature on ways to update and improve the annual report and annual survey. The recommendations must include suggested revisions to the report and survey that would make the data more relevant and reduce the administrative burden on the taxpayer." [2013 2nd sp.s. c 13 § 1801.]

Finding—Intent—2010 c 114: "(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax preference is used. In recent years, the legislature has enacted or extended numerous tax preferences that require the reporting of information to the department of revenue. Although there are many similarities in the requirements, and only two distinct accountability documents, there is a lack of uniformity in the information reported, penalties for failure to file, due dates, filing extensions, and filing requirements. Greater uniformity in the data reported is necessary to adequately compare tax preference programs. The legislature intends to create

(2022 Ed.)

two sets of uniform reporting requirements that apply to the existing tax preferences and can be used in future legislation granting additional tax preferences.

(2) The legislative fiscal committees or the department of revenue are required to study many of the existing tax preferences and report to the legislature at least once. Because chapter 43.136 RCW now requires the joint legislative audit and review committee, with support from the department of revenue, to comprehensively review most tax preferences every ten years and provide a report to the legislature, a number of redundant studies by the legislative fiscal committees and the department of revenue have been eliminated. However, the department of revenue will continue to prepare summary descriptive statistics by category and report the statistics to the legislature each year." [2010 c 114 § 101.]

Additional notes found at www.leg.wa.gov

82.32.537 Silicon smelters—Annual survey or report. (Contingent expiration date.) (1)(a) A silicon smelter operated by a person required to submit an annual survey or report under RCW 82.16.315, 82.04.545, or 82.12.022 must repay an amount equal to the entire economic benefit accruing to the person for the previous two calendar years due to the tax preferences under RCW 82.16.315, 82.04.545, or 82.12.022 if:

(i) The average number of employment positions at a silicon smelter operated by the person is less than one hundred employment positions, as reported to the employment security department for the previous two calendar years; and

(ii) The average annual wage for all employment positions is equal to or less than the average annual wage for the county in which the silicon smelter operation is located for the previous two calendar years. The department must use the finalized 2015 county wage data from the census of employment and wages as reported by the employment security department.

(b) The department must make the determinations under (a)(i) and (ii) of this subsection (1) by August 31, 2023.

(2) If any tax preference amounts must be repaid under subsection (1) of this section, the department must declare the tax preference amounts to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The department must assess interest at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and such interest accrues until the tax preference amounts are repaid.

(3) If any tax preference amounts must be repaid under subsection (1) of this section, the person may not continue to benefit from the tax preferences under RCW 82.16.315, 82.04.545, or 82.12.022. [2017 3rd sp.s. c 37 § 708.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: "(1)(a) Except as provided in (b) of this subsection, part VII of this act expires July 1, 2027.

(b)(i) If a person must make repayment under section 708 of this act, part VII of this act expires January 1, 2024.

(ii) Section 706 of this act expires January 1, 2018.

(2) If the contingent expiration date in subsection (1)(b) of this section occurs, the department of revenue must provide written notice of the expiration date of part VII of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

(3) If the contingent expiration date in subsection (1)(b) of this section occurs, the joint legislative audit and review committee is not required to perform the evaluation required in section 701 of this act." [2017 3rd sp.s. c 37 § 1407.]

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

82.32.550 "Commercial airplane," "component," and "superefficient airplane"—Definitions. (1) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.

(2) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

(3) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market. [2010 1st sp.s. c 23 § 517; 2008 c 81 § 12; 2007 c 54 § 20; 2003 2nd sp.s. c 1 § 17.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.32.555 Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges. If a taxing jurisdiction does not subject some charges for ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, to taxation, but these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, may be subject to taxation unless the telecommunications service provider or ancillary services provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business and for purposes other than merely allocating the sales price of an aggregated charge to the individually aggregated items. [2007 c 54 § 21; 2007 c 6 § 1011; 2004 c 76 § 1.]

Reviser's note: This section was amended by 2007 c 6 § 1011 and by 2007 c 54 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.558 Tax deferral—Eligible projects—Application. (Expires January 1, 2030.) (1) Until October 1, 2019, a qualifying business may apply for a deferral of taxes on an eligible project. Application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department must rule on the application within sixty days.

(2) If the department approves an application for a deferral of taxes under this section, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW. This certificate expires on the date the eligible project becomes operationally complete. The certificate may

only be used for sales and use tax liability incurred after the date the department issued the certificate.

(3) A recipient of a certificate must notify the department when its eligible project is operationally complete. The department must review the qualifying business's records after the eligible project is operationally complete to ensure the correct amount of taxes has been reported and will be repaid.

(4)(a) For local sales and use taxes, the recipient of the certificate must begin paying deferred sales and use taxes in the first calendar year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on January 1st of the first calendar year after such certified date, with subsequent annual payments due on January 1st of the following seven years. Each payment must equal twelve and one-half percent of the tax due plus interest.

(b) For state sales and use taxes, the recipient of the certificate must repay all deferred state sales and use taxes by June 30, 2023.

(c) The department must assess interest, but not penalties, on the deferred taxes. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the project was certified to be operationally complete, and will accrue until the deferred taxes are repaid.

(5) The department may authorize an accelerated repayment schedule upon request of the qualifying business.

(6) The debt for taxes due is not extinguished by insolvency or other failure of the qualifying business. Transfer of ownership does not terminate the deferral if the transferee agrees in writing to be bound by the requirements of this section and receives approval from the department. If the department approves the transfer of the deferral to a transferee, such approval not to be unreasonably withheld, conditioned, or delayed, the transferee is solely liable for repayment of the deferred taxes.

(7) If the eligible project is not operationally complete within three calendar years from the date that the department issued the certificate for the project, or if at any time the department finds that the project is not eligible for a deferral under this section, the amount of taxes outstanding for the project is immediately due and payable. If taxes must be repaid under this subsection, the department must assess interest at the rate provided for delinquent taxes under this chapter retroactively to the date of issuance of the certificate, but not penalties, on amounts due under this subsection.

(8) Applications and any other information received by the department under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

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

(a) "Eligible project" means a project consisting of either or both (i) a qualifying arena, associated parking structures, plazas, public spaces, and one or more tunnels connecting the arena and parking structures, or (ii) an ice hockey practice facility.

(b) "Ice hockey practice facility" means one or more contiguous structures of up to two hundred thousand square feet located within ten miles of a qualifying arena that (i) con-

tains at least three ice rinks, and (ii) is being developed to attract a professional ice hockey franchise. An "ice hockey practice facility" may include ice rinks, spectator viewing locations, locker rooms, strength and conditioning rooms, administrative offices, retail space, food service facilities, and other amenities related to the operation of a state-of-the-art ice hockey center.

(c) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(d) "Personal property" means tangible personal property with a useful life of one year or more that is used in the operation of the eligible project.

(e) "Project" means the construction of new improvements, the renovation of existing improvements, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those improvements, personal property, and site preparation. "Project" includes materials used and labor and services rendered in respect to the planning, site preparation, construction, renovation, and installation.

(f) "Qualifying arena" means a multipurpose sports and entertainment facility owned by the largest city in a county with a population of at least one million five hundred thousand that is being redeveloped to attract professional ice hockey and basketball league franchises.

(g) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and has entered into a lease or occupancy agreement with the fee owner of a qualifying arena and/or ice hockey practice facility to engage in the development of an eligible project.

(h) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction.

(10) This section expires January 1, 2030. [2019 c 347 § 2.]

Tax preference performance statement—2019 c 347: "(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 347, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals and to accomplish a general purpose as indicated in RCW 82.32.808(2) (e) and (f).

(3) It is the legislature's specific public policy objective to increase the fiscal stability of multipurpose sports and entertainment arenas in Washington state and thereby strengthen the economic vitality of the communities in which the arenas and practice facilities are located.

(4) To measure the effectiveness of the tax preference in achieving the specific public policy objective described in this act, the joint legislative audit and review committee must evaluate this tax preference. In evaluating the tax preference, the joint legislative audit and review committee may refer to data provided to the department of revenue." [2019 c 347 § 1.]

Effective date—2019 c 347: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2019]." [2019 c 347 § 4.]

82.32.559 Tax deferral—Eligible projects—Deposit of funds. (1) The state treasurer must deposit the repayment of deferred state sales and use taxes due under RCW 82.32.558 into the general fund.

(2)(a) Subject to the requirements provided in (b) of this subsection (2), the state treasurer must deposit deferred local sales and use taxes due under RCW 82.32.558 into the local sales and use tax account created in RCW 82.14.050.

(b) Half of the repayment of deferred local sales and use taxes due under RCW 82.32.558 must be distributed to a county where an eligible project under RCW 82.32.558 (9)(a)(i) is located for the exclusive purpose of funding the construction or rehabilitation of capital facilities used for youth educational programming related to discovery, experimentation, and critical thinking in the sciences. Funds may also be used for the maintenance and operation of such capital facilities, which may include off-site operations that directly relate to the core mission of curiosity, discovery, experimentation, and critical thinking. The capital facility must be located on the same premises as a qualifying arena.

(3) The state treasurer must deposit any interest assessed and accrued on taxes due pursuant to RCW 82.32.558(4) that is part of any annual repayment as follows:

(a) Interest on state taxes must be deposited into the state general fund.

(b) Interest on local taxes must be deposited into the local sales and use tax account.

(4) In the event that an accelerated repayment schedule is authorized by the department pursuant to RCW 82.32.558(5), the state treasurer must deposit any amount in excess of taxes due pursuant to RCW 82.32.558(4) into the state general fund and into the local sales and use account, with the respective amounts deposited based on the proportionate shares of the state taxes and local taxes due. [2021 c 178 § 1; 2019 c 347 § 3.]

Tax preference performance statement—Effective date—2019 c 347: See notes following RCW 82.32.558.

82.32.580 Sales and use tax deferral—Historic automobile museum. (1) The governing board of a nonprofit organization, corporation, or association may apply for deferral of taxes on an eligible project. Application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department must rule on the application within sixty days. All applications for the tax deferral under this section must be received no later than December 31, 2008.

(2) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible project.

(3) The nonprofit organization, corporation, or association must begin paying the deferred taxes in the tenth year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on December 31st of the tenth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment must equal ten percent of the deferred tax.

(4) The department may authorize an accelerated repayment schedule upon request of the nonprofit organization, corporation, or association.

(5) Except as provided in subsection (6) of this section, interest may not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the non-profit organization, corporation, or association.

(6) If the project is not operationally complete within five calendar years from issuance of the tax deferral or if at any time the department finds that the project is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the project is immediately due and payable. If deferred taxes must be repaid under this subsection, the department must assess interest, but not penalties, on amounts due under this subsection. Interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and accrues until the deferred taxes due are repaid.

(7) Applications and any other information received by the department of revenue under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

(8) This section applies to taxable eligible project activity that occurs on or after July 1, 2007.

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

(a) "Eligible project" means a project that is used primarily for a historic automobile museum.

(b) "Historic automobile museum" means a facility owned and operated by a nonprofit organization, corporation, or association that is used to maintain and exhibit to the public a collection of at least five hundred motor vehicles.

(c) "Nonprofit organization, corporation, or association" means an organization, corporation, or association exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10)).

(d) "Project" means the construction of new structures, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those structures, and site preparation. For purposes of this subsection, structures do not include parking facilities used for motor vehicles that are not on display or part of the museum collection.

(e) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction. Site preparation does not include landscaping services or landscaping materials. [2017 3rd sp.s. c 37 § 902; 2005 c 514 § 701.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 902:

"(1) This section is the tax preference performance statement for the tax preference contained in section 902, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals and to accomplish a general purpose as indicated in RCW 82.32.808(2) (e) and (f).

(3) It is the legislature's specific public policy objective to increase the fiscal stability of historic automobile museums in Washington state and thereby strengthen the economic vitality of the communities in which the museums are located.

(4) To measure the effectiveness of the tax preference in section 902, chapter 37, Laws of 2017 3rd sp. sess. in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must evaluate this tax preference. In evaluating the

tax preference, the joint legislative audit and review committee may refer to data provided to the department of revenue." [2017 3rd sp.s. c 37 § 901.]

Additional notes found at www.leg.wa.gov

82.32.590 Annual tax performance reports—Failure to file. (1) If the department finds that the failure of a taxpayer to file an annual tax performance report under RCW 82.32.534 by the due date was the result of circumstances beyond the control of the taxpayer, the department must extend the time for filing the tax performance report. The extension is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual tax performance report required under subsection (1) of this section by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual tax performance reports, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual tax performance report.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3). [2017 c 135 § 3; 2011 c 174 § 306. Prior: 2010 c 137 § 1; 2010 c 114 § 135; 2009 c 461 § 7; prior: 2008 c 81 § 13; 2008 c 15 § 7; prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.32.600 Annual tax performance reports—Electronic filing. (1) Persons required to file annual tax performance reports under RCW 82.32.534 must electronically file with the department all reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2017 c 135 § 4; 2010 c 114 § 136; 2009 c 461 § 8. Prior: 2008 c 81 § 14; 2008 c 15 § 8; prior: 2007 c 54 § 23; 2007 c 54 § 22; prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 1002.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.32.605 Annual tax performance report—Hog fuel. (Expires June 30, 2024.) (1) Every taxpayer claiming an exemption under RCW 82.08.956 or 82.12.956 must file with the department a complete annual tax performance report under RCW 82.32.534, except that the taxpayer must file a separate tax performance report for each facility owned or operated in the state of Washington.

(2) This section expires June 30, 2024. [2017 c 135 § 5; 2013 2nd sp.s. c 13 § 1004.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Intent—Effective date—2013 2nd sp.s. c 13: See notes following RCW 82.08.956.

82.32.607 Annual tax performance report for tax exemption for sales of machinery and equipment used in generating electricity. Every taxpayer claiming an exemption under RCW 82.08.962 or 82.12.962 must file with the department a complete annual tax performance report under RCW 82.32.534, except that the taxpayer must file a separate tax performance report for each facility owned or operated in the state of Washington developed with machinery, equipment, services, or labor for which the exemption under RCW *43.136.058, 82.08.962, and 82.12.962 is claimed. [2017 c 135 § 6; 2013 2nd sp.s. c 13 § 1503.]

*Reviser's note: RCW 43.136.058 expired January 1, 2020.

Effective date—2017 c 135: See note following RCW 82.32.534.

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.962.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

82.32.655 Tax avoidance. (1) It is the legislature's intent to require all taxpayers to pay their fair share of taxes. To accomplish this purpose, it is the legislature's intent to stop transactions or arrangements that are designed to unfairly avoid taxes.

(2) The department must disregard, for tax purposes, the tax avoidance transactions or arrangements that are described in subsection (3) of this section. The department must deny the tax benefit that would otherwise result from the tax avoidance transaction or arrangement. In determining whether the department must disregard a transaction or arrangement described under subsection (3) of this section, the department may consider:

(a) Whether an arrangement or transaction changes in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole;

(b) Whether substantial nontax reasons exist for entering into an arrangement or transaction;

(c) Whether an arrangement or transaction is a reasonable means of accomplishing a substantial nontax purpose;

(d) An entities' relative contributions to the work that generates income;

(e) The location where work is performed; and

(f) Other relevant factors.

(3) This section applies only to the following transactions or arrangements:

(a) Arrangements that are, in form, a joint venture or similar arrangement between a construction contractor and the owner or developer of a construction project but that are, in substance, substantially guaranteed payments for the purchase of construction services characterized by a failure of the parties' agreement to provide for the contractor to share substantial profits and bear significant risk of loss in the venture;

(b) Arrangements through which a taxpayer attempts to avoid tax under chapter 82.04 RCW by disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer from business activities that would be taxable in Washington by moving that income to another entity that would not be taxable in Washington; and

(c) Arrangements through which a taxpayer attempts to avoid tax under chapter 82.08 or 82.12 RCW by engaging in a transaction to disguise its purchase or use of tangible personal property by vesting legal title or other ownership interest in another entity over which the taxpayer exercises control in such a manner as to effectively retain control of the tangible personal property.

(4) In determining whether a transaction or arrangement comes within the scope of subsection (3) of this section, the department is not required to prove a taxpayer's subjective intent in engaging in the transaction or arrangement.

(5) The department must adopt rules to assist in determining whether a transaction or arrangement is within the scope of subsection (3) of this section. The adoption of a rule as required under this subsection is not a condition precedent for the department's exercise of the authority provided in this section. Any rules adopted under this section must include examples of transactions that the department will disregard for tax purposes.

(6) This section does not affect the department's authority to apply any other remedies available under statutory or common law.

(7) For purposes of this section, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. [2010 1st sp.s. c 23 § 201.]

Findings--Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.32.660 Tax avoidance—Statutory application.

(1)(a) The department may not use RCW 82.32.655 to disregard any transaction or arrangement initiated before May 1, 2010, if, in respect to such transaction or arrangement, the

taxpayer had reported its tax liability in conformance with either specific written instructions provided by the department to the taxpayer, a determination published under the authority of RCW 82.32.410, or other document made available by the department to the general public.

(b) This section does not apply if the transaction or arrangement engaged in by the taxpayer differs materially from the transaction or arrangement that was addressed in the specific written instructions, published determination, or other document made available by the department to the general public.

(2) RCW 82.32.655 does not apply to any tax periods ending before May 1, 2010, that were included in a completed field audit conducted by the department.

(3) For purposes of this section, "specific written instructions" means tax reporting instructions provided to a taxpayer and which specifically identify the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request. [2010 1st sp.s. c 23 § 202.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.32.670 Tax evasion by electronic means—Seizure and forfeiture. (1)(a) Automated sales suppression devices, phantom-ware, electronic cash registers or point of sale systems used with automated sales suppression devices or phantom-ware, and any property constituting proceeds traceable to any violation of RCW 82.32.290(4) are considered contraband and are subject to seizure and forfeiture.

(b) Property subject to forfeiture under (a) of this subsection (1) may be seized by any agent of the department authorized to assess or collect taxes, or law enforcement officer of this state, upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant; or

(ii) The department or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 82.32.290(4) and exigent circumstances exist making procurement of a search warrant impracticable.

(2) Forfeiture authorized by this section is deemed to have commenced by the seizure. Notice of seizure must be given to the department if the seizure is made by a law enforcement officer without the presence of any agent of the department. The department must cause notice of the seizure and intended forfeiture to be served on the owner of the property seized, if known, and on any other person known by the department to have a right or interest in the seized property. Such service must be made within fifteen days following the seizure or the department's receipt of notification of the seizure. The notice may be served by any method authorized by law or court rule, by certified mail with return receipt requested, or electronically in accordance with RCW 82.32.135. Service by certified mail or electronic means is deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or

persons entitled to the notice that the notice is available to be accessed by the person or persons, within the fifteen-day period following the seizure or the department's receipt of notification of the seizure.

(3) If no person notifies the department in writing of the person's claim of lawful ownership or right to lawful possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the item or items seized are deemed forfeited.

(4)(a) If any person notifies the department, in writing, of the person's claim of lawful ownership or lawful right to possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the person or persons must be afforded a reasonable opportunity to be heard as to the claim. The hearing must be before the director or the director's designee. A hearing and any administrative or judicial review is governed by chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the item or items seized.

(b) The department must return the item or items to the claimant as soon as possible upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the item or items seized.

(5) When property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of RCW 82.32.290(4), the department must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of RCW 82.32.290(4).

(6)(a) When automated sales suppression devices or phantom-ware voluntarily surrendered to an agent of the department, or property forfeited under this section, other than proceeds traceable to a violation of RCW 82.32.290(4), is no longer required for evidentiary purposes, the department may:

(i) Destroy or have the property destroyed;

(ii) Retain the property for training or other official purposes; or

(iii) Loan or give the property to any law enforcement or tax administration agency of any state, political subdivision or municipal corporation of a state, or the United States for training or other official purposes. For purposes of this subsection (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

(b) When proceeds traceable to a violation of RCW 82.32.290(4) forfeited under this section are no longer required for evidentiary purposes, they must be deposited into the general fund.

(7) The definitions in this subsection apply to this section:

(a) "Automated sales suppression device" means a software program that falsifies the electronic records of electronic cash registers or other point of sale systems, including transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record

transaction data for the purpose of computing, compiling, or processing sales transaction data in whatever manner.

(c) "Phantom-ware" means a programming option that is hidden, preinstalled, or installed-at-a-later-time in the operating system of an electronic cash register or other point of sale device, or hardwired into the electronic cash register or other point of sale device, and that can be used to create a virtual second till or may eliminate or manipulate transaction reports that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register or other point of sale device.

(d) "Transaction data" means information about sales transactions, including items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(e) "Transaction reports" means a report that includes information associated with sales transactions, taxes collected, media totals, and discount voids at an electronic cash register that can be printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register or other point of sale device and that is stored electronically. [2017 c 323 § 401; 2013 c 309 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

82.32.680 Tax evasion by electronic means—Search and seizure. When the department has good reason to believe that any property subject to seizure and forfeiture under RCW 82.32.670 is being used or maintained in this state in violation of RCW 82.32.290(4)(a), the department may make affidavit of facts describing the place or thing to be searched before any judge of any superior or district court in this state. The judge may issue a search warrant directed to a law enforcement officer or agent of the department authorized under RCW 82.32.670 to seize contraband, commanding him or her to diligently search any place or thing as designated in the affidavit and search warrant, and to seize such suspected contraband and hold it until disposed of as provided by RCW 82.32.670. [2013 c 309 § 4.]

82.32.700 Administration of the sales and use tax for hospital benefit zones. (1) As a condition to imposing a sales and use tax under RCW 82.14.465, a city, town, or county must apply to the department at least seventy-five days before the effective date of any such tax. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information establishing that the applicant is eligible to impose such a tax, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. The department shall make available forms to be used for this purpose. As part of the application, a city, town, or county must provide to the department a copy

(2022 Ed.)

of the ordinance creating the benefit zone as required in RCW 39.100.040. The department shall rule on completed applications within sixty days of receipt. The department may begin accepting and approving applications August 1, 2006. No new applications shall be considered by the department after the thirtieth day of September of the third year following the year in which the first application was received by the department.

(2) The authority to impose the local option sales and use taxes under RCW 82.14.465 is on a first-come basis. Priority for collecting the taxes authorized under RCW 82.14.465 among approved applicants shall be based on the date that the approved application was received by the department. As a part of the approval of applications under this section, the department shall approve the amount of tax under RCW 82.14.465 that an applicant may impose. The amount of tax approved by the department shall not exceed the lesser of two million dollars or the average amount of tax revenue that the applicant estimates that it will receive in all fiscal years through the imposition of a sales and use tax under RCW 82.14.465. A city, town, or county shall not receive, in any fiscal year, more revenues from taxes imposed under RCW 82.14.465 than the amount approved by the department. The department shall not approve the receipt of more credit against the state sales and use tax than is authorized under subsection (3) of this section.

(3) No more than two million dollars of credit against the state sales and use tax provided for under RCW 82.14.465(2), may be received in any fiscal year by all cities, towns, and counties imposing a tax under RCW 82.14.465.

(4)(a) The credit against the state sales and use tax shall be available to any city, town, or county imposing a tax under RCW 82.14.465 only as long as the city, town, or county has outstanding indebtedness under chapter 39.100 RCW or the tax allocation revenues are used for public improvement costs, but in no case shall the credit be available for more than thirty years after the tax is first imposed by the city, town, or county.

(b) Local governments may pledge any receipts from taxes levied and collected under chapter 39.100 RCW and RCW 82.14.465 to the repayment of its bonds or bond anticipation notes. A local government shall notify the department when all outstanding indebtedness secured in whole or in part from receipts is no longer outstanding or tax allocation revenues are no longer used for public improvement costs, and the credit provided for under RCW 82.14.465 shall be terminated.

(5) The department may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of chapter 39.100 RCW. [2007 c 266 § 9; 2006 c 111 § 9.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Additional notes found at www.leg.wa.gov

82.32.710 Professional employer organizations—Eligibility for tax incentives—Responsibility for tax performance reports. (1) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of eligibility for any tax credit, exemption, or other tax incentive, arising as the result of the employment of covered employees, provided in RCW

[Title 82 RCW—page 357]

*82.04.4333, 82.04.44525, 82.04.448, **82.04.4483, 82.08.965, 82.12.965, 82.16.0495, or 82.60.049 or chapter 82.62 or 82.70 RCW, or any other provision in this title. A client, and not the professional employer organization, is entitled to the benefit of any tax credit, exemption, or other tax incentive arising as the result of the employment of covered employees of that client.

(2) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of tax performance reports that require the reporting of employment information relating to covered employees of the client, as provided in RCW 82.32.534. A client, and not the professional employer organization, is required to complete any tax performance report that requires the reporting of employment information relating to covered employees of that client.

(3) For the purposes of this section, "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540. [2017 c 135 § 7; 2010 c 114 § 137; 2006 c 301 § 4.]

Reviser's note: *(1) RCW 82.04.4333 was repealed by 2015 c 86 § 101.

***(2) RCW 82.04.4483 was repealed by 2017 c 323 § 504; and subsequently repealed by 2018 c 22 § 14.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.32.715 Monetary allowances—Streamlined sales and use tax agreement. (1) The department must adopt by rule monetary allowances for certified service providers selected by model 1 sellers and also for model 2 sellers. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the allowances and the conditions under which they are allowed. The monetary allowances must be reasonable and provide adequate incentive for certified service providers and sellers to collect and remit sales and use taxes under the agreement. Monetary allowances will be funded solely from state sales and use taxes. The department may modify its rules for monetary allowances in light of the holding of the United States supreme court in *South Dakota v. Wayfair, Inc.*, Docket No. 17-494, issued June 21, 2018.

(2) For certified service providers, the monetary allowance may include a base rate that applies to taxable transactions processed by the certified service provider.

(3) For model 2 sellers, the monetary allowance may include a base rate and a percentage of revenue generated by a seller registering under RCW 82.32.030(3), but may not exceed a period of twenty-four months. [2019 c 8 § 403; 2007 c 6 § 301.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.720 Vendor compensation—Streamlined sales and use tax agreement. (1) The department may adopt by rule vendor compensation for sellers collecting and remitting sales and use taxes. The vendor compensation may include a base rate or a percentage of tax revenue collected by the seller, and may vary by type of seller. The department may be guided by the findings of the cost of collection study performed under the agreement, by cost of collection studies performed by the department, and by vendor compensation provided by other states, to determine reasonable vendor compensation for sellers for the costs to collect and remit sales and use taxes. Vendor compensation will be funded solely from state sales and use taxes.

(2) A seller is not entitled to vendor compensation while the seller or its certified service provider receives a monetary allowance under RCW 82.32.715. [2007 c 6 § 302.]

Reviser's note: The contingency in section 302(1)(b), chapter 6, Laws of 2007 appears to have occurred June 21, 2018, causing this section to take effect June 21, 2018.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.725 Amnesty—Streamlined sales and use tax agreement. (1) No assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be made by the department against a seller who:

(a) Within twelve months of the effective date of this state becoming a member state of the agreement, registers under RCW 82.32.030(3) to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW on sales made to buyers in this state in accordance with the terms of the agreement, if the seller was not otherwise registered in this state in the twelve-month period preceding the effective date of this state becoming a member state of the agreement; and

(b) Continues to be registered and continues to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-six months, absent the seller's fraud or intentional misrepresentation of a material fact.

(2) The provisions of subsection (1) of this section preclude an assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for sales made to buyers during the period the seller was not registered in this state.

(3) The provisions of this section do not apply to any seller with respect to:

(a) Any matter or matters for which the seller, before registering to collect and remit the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, received notice from the department of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes;

(b) Taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW and collected or remitted to the department by the seller; or

(c) That seller's liability for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a buyer.

(4) The limitation periods for making an assessment or correction of an assessment prescribed in RCW

*82.32.050(3) and 82.32.100(3) do not run during the thirty-six month period in subsection (1)(b) of this section. [2007 c 6 § 401.]

*Reviser's note: RCW 82.32.050 was amended by 2008 c 181 § 501, changing subsection (3) to subsection (4).

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.730 Sourcing—Streamlined sales and use tax agreement. (1) Except as provided in subsections (5) through (8) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or digital code or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or digital automated service or other service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be

as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5) This subsection applies to direct mail transactions not governed by subsection (6) of this section.

(a) This subsection (5)(a) applies to sales of advertising and promotional direct mail.

(i) A purchaser of advertising and promotional direct mail may provide the seller with either:

(A) A direct pay permit;

(B) A streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department); or

(C) Information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.

(ii) If the purchaser provides the permit, certificate, or statement referred to in (a)(i)(A) or (B) of this subsection (5), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser must source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and must report and pay any applicable tax due.

(iii) If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller must source the sale to the jurisdictions to which the advertiser

ing and promotional direct mail is to be delivered and must collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser.

(iv) If the purchaser does not provide the seller with any of the items listed in (a)(i)(A), (B), or (C) of this subsection (5), the sale must be sourced according to subsection (1)(e) of this section.

(b) This subsection (5)(b) applies to sales of other direct mail.

(i) Except as otherwise provided in this subsection (5)(b), sales of other direct mail are sourced in accordance with subsection (1)(c) of this section.

(ii) A purchaser of other direct mail may provide the seller with either:

(A) A direct pay permit; or

(B) A streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department).

(iii) If the purchaser provides the permit, certificate, or statement referred to in (b)(ii)(A) or (B) of this subsection (5), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding (b)(i) of this subsection (5), the sale must be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients, and the purchaser must report and pay any applicable tax due.

(6)(a) This subsection applies only with respect to transactions in which direct mail is delivered or distributed from a location within this state to a location within this state.

(b) If the purchaser of direct mail provides the seller with a direct pay permit or a streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax on any transaction involving direct mail to which the permit, certificate, or statement applies. The purchaser must report and pay any applicable tax due. A streamlined sales and use tax agreement certificate of exemption claiming direct mail will remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(c)(i) Except as provided in (b), (c)(ii), and (c)(iii) of this subsection (6), the seller must collect the tax according to subsection (1)(e) of this section.

(ii) To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to locations in another state, the seller must collect the tax on that portion according to subsection (5) of this section.

(iii) Notwithstanding (c)(i) and (ii) of this subsection (6), a seller may elect to use the provisions of subsection (5) of this section to source all sales of advertising and promotional direct mail.

(7) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home;

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and

(d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(8)(a) A retail sale of the providing of telecommunications services, as that term is defined in RCW 82.04.065, is sourced in accordance with RCW 82.32.520.

(b) A retail sale of the providing of ancillary services, as that term is defined in RCW 82.04.065, is sourced to the customer's place of primary use of the telecommunications services in respect to which the ancillary services are associated with or incidental to. The definitions of "customer" and "place of primary use" in RCW 82.32.520 apply to this subsection (8)(b).

(9) The definitions in this subsection apply throughout this section.

(a) "Advertising and promotional direct mail" means printed material that meets the definition of direct mail, the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subsection (9)(a), the word "product" means tangible personal property, a product transferred electronically, or a service.

(b) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

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

(d)(i) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

(ii) Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(e) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection

(9)(e), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

(f) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(g) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semi-trailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (g)(i) through (iii) of this subsection.

(10) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property, digital good, digital code, or of a digital automated service or other service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection. [2010 c 106 § 229. Prior: 2009 c 535 § 704; 2009 c 289 § 1; 2008 c 324 § 1; 2007 c 6 § 501.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.735 Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement. (1) A fundamental precept of allowing the use of a certified service provider is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(2) The department shall provide public notification to consumers, including purchasers claiming exemption from tax, of its practices relating to the collection, use, and retention of personally identifiable information.

(3) When personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation by reason of the consumer's status or the intended use of the goods or services

(2022 Ed.)

purchased, the information shall no longer be retained by the state of Washington.

(4) When personally identifiable information regarding an individual is retained by or on behalf of the state of Washington, this state shall provide reasonable access for the individual to his or her own information and a right to correct any inaccurately recorded information.

(5) If anyone other than a member state of the agreement, or other than a person authorized by Washington law or the agreement, seeks to discover personally identifiable information, the state of Washington shall make a reasonable and timely effort to notify the individual of the request.

(6) The provisions of this section may be enforced by petitioning the superior court of Thurston county for injunctive relief. [2007 c 6 § 601.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.740 Taxability matrix—Liability—Streamlined sales and use tax agreement. (1) The department must complete a taxability matrix maintained by the member states of the agreement in downloadable format. The matrix contains terms defined in the agreement and the disclosure of the state's practices in the administration of sales and use taxes as required under section 335 of the agreement. The department must provide notice of changes in the taxability of products or services listed in the matrix. The department must also provide notice of changes in the state's treatment of practices identified in the matrix.

(2)(a) Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the department in the taxability matrix.

(b) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the immediately preceding version of the state's taxability matrix. Relief under this subsection (2)(b) is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board. [2015 c 86 § 401; 2007 c 6 § 701.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.745 Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement. (1) The department shall review software submitted to the governing board of the agreement for certification as a certified automated system under the terms of the agreement. The review shall include a determination of whether the software adequately classifies this state's product-based sales tax exemptions. Upon completing the review, the department shall certify to the governing board its acceptance or rejection of the classifications made by the system.

(2) Certified service providers and model 2 sellers shall be held harmless and are not liable for sales or use taxes, nor interest or penalties on those taxes, not collected due to reli-

ance on the certification of the department under subsection (1) of this section.

(3) The relief from liability provided to certified service providers and model 2 sellers under subsection (2) of this section does not apply with respect to the incorrect classification of an item or transaction into a product-based exemption certified by the department unless that item or transaction is contained in a listing of items or transactions within a product definition approved by the governing board or the department.

(4) If the department determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller has ten days to revise the classification after receipt of notice from the department. Upon the expiration of the ten days, the certified service provider or model 2 seller is liable for the failure to collect the correct amount of sales or use taxes. [2007 c 6 § 702.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.750 Purchaser liability—Penalty—Streamlined sales and use tax agreement. (1) Purchasers are relieved from liability for tax, interest, and penalty for having failed to pay the correct amount of sales or use tax in any of the following circumstances:

(a) A purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(b) A purchaser holding a direct pay permit relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(c) A purchaser relied on erroneous data provided by the department in the taxability matrix completed by the department pursuant to RCW 82.32.740; or

(d) A purchaser relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments.

(2) For purposes of this section, "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional that is in addition to the correct amount of sales or use tax and interest. [2007 c 6 § 703.]

Findings—Intent—2007 c 6: See note following RCW 82.14.390.

Additional notes found at www.leg.wa.gov

82.32.762 Remote seller nexus—Streamlined sales and use tax agreement or federal law conflict with state law. (1) If the department determines that a change, taking effect after March 14, 2019, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of chapter 8, Laws of 2019, such conflicting provision or provisions of chapter 8, Laws of 2019, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with chapter 8, Laws of 2019 if the change clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for under chapter 8, Laws of 2019.

(b) A change in the streamlined sales and use tax agreement conflicts with chapter 8, Laws of 2019 if one or more provisions of chapter 8, Laws of 2019 causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3)(a) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of chapter 8, Laws of 2019:

(i) For purposes of conflicts between the streamlined sales and use tax agreement and chapter 8, Laws of 2019, the department may adopt rules in accordance with chapter 34.05 RCW, including emergency rules, that are consistent with the streamlined sales and use tax agreement; and

(ii) For purposes of conflicts between federal law and chapter 8, Laws of 2019, the department must, by rule or rules adopted in accordance with chapter 34.05 RCW, including emergency rules:

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

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

(b) For purposes of (a)(i) and (ii) of this subsection (3), the department must include information on its website informing taxpayers and the public (i) of the provision or provisions of chapter 8, Laws of 2019 that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a)(i) and (ii) of this subsection (3).

(4) For purposes of this section, "remote seller" and "marketplace facilitator" have the same meaning as in RCW 82.13.010 through June 30, 2019, and RCW 82.08.010 beginning July 1, 2019. [2019 c 8 § 404; 2015 3rd sp.s. c 5 § 205.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

82.32.765 Local revitalization financing—Reporting requirements. (1) A sponsoring local government receiving a project award under RCW 39.104.100 must provide a report to the department by March 1st of each year beginning March 1st after the project award has been approved. The report must contain the following information:

(a) The amounts of local property tax allocation revenues received in the preceding calendar year broken down by sponsoring local government and participating taxing district;

(b) The amount of state property tax allocation revenues estimated to have been received by the state in the preceding calendar year;

(c) The amount of local sales and use tax and other revenue from local public sources dedicated by any participating local government used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(d) The amount of local sales and use tax dedicated by the sponsoring local government, as it relates to the sponsoring local government's local sales and use tax increment, used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis;

(e) The amounts, other than those listed in (a) through (d) of this subsection, from local public sources, broken down by type or source, used for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(f) The anticipated date when bonds under RCW 39.104.110 are expected to be retired;

(g) The names of any businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(h) An estimate of the cumulative number of permanent jobs created in the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(i) An estimate of the average wages and benefits received by all employees of businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(j) A list of public improvements financed by bonds issued under RCW 39.104.110 and the date on which the bonds are anticipated to be retired;

(k) That the sponsoring local government is in compliance with RCW 39.104.030;

(l) At least once every three years, updated estimates of the amounts of state and local sales and use tax increments estimated to have been received since the approval of the project award under RCW 39.104.100;

(m) The amount of revenues from local public sources that (i) were expended in prior years for the payment of bonds

(2022 Ed.)

under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis in prior calendar years that were in excess of the project award amount for that year and are carried forward for dedication in future years, (ii) are deemed dedicated to payment of bonds or public improvement costs in the calendar year for which the report is prepared, and (iii) remain available for dedication in future years; and

(n) Any other information required by the department to enable the department to fulfill its duties under this chapter and RCW 82.14.510.

(2) The department must make a report available to the public and the legislature by June 1st of each year. The report must include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section. [2016 c 207 § 5; 2010 c 164 § 10; 2009 c 270 § 501.]

82.32.770 Sourcing compliance—Taxpayer relief—Collection and remittance errors. (1) Notwithstanding any other provision in this chapter, no interest or penalties may be imposed on any taxpayer because of errors in collecting or remitting the correct amount of local sales or use tax arising out of changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and section 502, chapter 6, Laws of 2007 if the taxpayer demonstrates that it made a good faith effort to comply with the sourcing rules.

(2) The relief from penalty and interest provided by subsection (1) of this section only applies to taxpayers with a gross income of the business of less than five hundred thousand dollars in the prior calendar year.

(3) The relief from penalty and interest provided by subsection (1) of this section does not apply with respect to sales occurring after December 31, 2012. [2009 c 289 § 5.]

82.32.780 Reseller's permit—Taxpayer application. (1)(a) Taxpayers seeking to obtain a new reseller permit or to renew or reinstate a reseller permit, other than taxpayers subject to the provisions of RCW 82.32.783, must apply to the department in a form and manner prescribed by the department. The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

(b) An application must be denied if:

(i) The department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit;

(ii) The application contains any material misstatement; or

(iii) The application is incomplete.

(c) The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title.

(d) The department's decision to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(e) The department must refuse to accept an application to renew a reseller permit that is received more than ninety days before the expiration of the reseller permit.

(2) Notwithstanding subsection (1) of this section, the department may issue or renew a reseller permit for a taxpayer that has not applied for the permit or renewal of the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

(3)(a) Except as otherwise provided in this section, reseller permits issued, renewed, or reinstated under this section will be valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(b)(i) A reseller permit is valid for a period of twenty-four months and may be renewed for the period prescribed in (a) of this subsection (3) if the permit is issued to a taxpayer who:

(A) Is not registered with the department under RCW 82.32.030;

(B) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(C) Was on nonreporting status as authorized under RCW 82.32.045(5) at the time that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(D) Has filed tax returns reporting no business activity for purposes of sales and business and occupation taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(E) Has failed to file tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(ii) The provisions of this subsection (3)(b) do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recognized Indian tribe, if the business does not engage in any business activity that subjects the business to any tax imposed by the state under chapter 82.04 RCW. Permits issued to such businesses are valid for the period provided in (a) of this subsection (3).

(iii) Nothing in this subsection (3)(b) may be construed as affecting the department's right to deny a taxpayer's application for a reseller permit or to renew or reinstate a reseller permit as provided in subsection (1)(b) and (c) of this section.

(c) A reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the permit holder otherwise ceases to engage in business.

(d) The department may provide by rule for a uniform expiration date for reseller permits issued, renewed, or reinstated under this section, if the department determines that a uniform expiration date for reseller permits will improve administrative efficiency for the department. If the department adopts a uniform expiration date by rule, the department may extend or shorten the twenty-four or forty-eight month period provided in (a) and (b) of this subsection for a period not to exceed six months as necessary to conform the reseller permit to the uniform expiration date.

(4)(a) The department may revoke a taxpayer's reseller permit for any of the following reasons:

(i) The taxpayer used or allowed or caused its reseller permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the reseller permit for the purchase;

(ii) The department issued the reseller permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the reseller permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the taxpayer of its right to a review by the department.

(c) The department may refuse to reinstate a reseller permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose reseller permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide the public with access to reseller permit numbers on its website, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under RCW 82.32.330(3)(k).

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a reseller permit

or other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or other documentation. [2020 c 139 § 40; 2010 c 112 § 2; 2009 c 563 § 201.]

Finding—Intent—2010 c 112; 2009 c 563: "The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with reseller permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a reseller permit." [2010 c 112 § 1; 2009 c 563 § 101.]

Additional notes found at www.leg.wa.gov

82.32.783 Reseller's permit—Contractor application. (1)(a) Contractors seeking a new reseller permit or to renew or reinstate a reseller permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the total combined dollar amount of all purchases of materials and labor during the preceding twenty-four months for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding twenty-four months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting during the twelve-month or twenty-four month period for which the reseller permit will be valid. The contractor must also report the percentage of its total dollar amount of actual or, if applicable, estimated material and labor purchases that was for retail and wholesale construction activity performed by the applicant.

(c) The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit;

(B) The application contains any material misstatement;

(C) The application is incomplete; or

(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material and labor purchases as reported on the application is for retail and wholesale construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.

(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.

(iii) The department's decision to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(e) The department must refuse to accept an application to renew a reseller permit that is received more than ninety days before the expiration of the reseller permit.

(2) Notwithstanding subsection (1) of this section, the department may issue or renew a reseller permit for a contractor that has not applied for the permit or renewal of the permit if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit is unlikely to jeopardize collection of sales taxes due under this title based on criteria established by the department by rule. Such criteria may include but is not limited to whether the taxpayer has a previous history of misusing resale certificates or reseller permits or there is any other indication that issuing or renewing the reseller permit would jeopardize collection of sales taxes due from the contractor.

(3)(a) Except as otherwise provided in (b) of this subsection:

(i) Except as provided in (a)(ii) of this subsection, until June 30, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement; and

(ii) Beginning July 1, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twenty-four months from the date of issuance, renewal, or reinstatement. However, the department may issue, renew, or reinstate permits for a period of twenty-four months beginning July 1, 2011, if the department is satisfied in the same manner as set forth in subsection (2) of this section.

(b)(i) A reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the permit holder otherwise ceases to engage in business.

(ii) The department may provide by rule for a uniform expiration date for reseller permits issued, renewed, or reinstated under this section, if the department determines that a uniform expiration date for reseller permits will improve administrative efficiency for the department. If the department adopts a uniform expiration date by rule, the department may extend or shorten the twelve or twenty-four month period provided in (a)(i) and (ii) of this subsection for a period not to exceed six months as necessary to conform the reseller permit to the uniform expiration date.

(4)(a) The department may revoke a contractor's reseller permit for any of the following reasons:

(i) The contractor used or allowed or caused its reseller permit to be used to purchase any item or service without payment of sales tax, but the contractor or other purchaser was not entitled to use the reseller permit for the purchase;

(ii) The department issued the reseller permit to the contractor in error;

(iii) The department determines that the contractor is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the reseller permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the contractor of its right to a review by the department.

(c) The department may refuse to reinstate a reseller permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a contractor whose reseller permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide the public with access to reseller permit numbers on its website, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under *RCW 82.32.330(3)(l).

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a reseller permit or other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or other documentation.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person whose primary business activity is as a contractor as defined in RCW 18.27.010 or an electrical contractor as defined in RCW 19.28.006.

(b) "Government contracting" means the activity described in RCW 82.04.190(6).

(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department.

(f) "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For purposes of this subsection (8)(f), "consumer" has the same meaning as in RCW 82.04.190. [2010 c 112 § 3; 2009 c 563 § 202.]

*Reviser's note: RCW 82.32.330 was amended by 2010 c 106 § 104, changing subsection (3)(l) to subsection (3)(k).

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Additional notes found at www.leg.wa.gov

82.32.784 Reseller's permit—Information required.

(1) Reseller permits issued by the department, as provided under RCW 82.32.780 and 82.32.783, will be in a form prescribed by the department, which may include an electronic form. Reseller permits must contain the following information:

- (a) A unique identifying number assigned by the department;
- (b) The name and address of the permit holder;
- (c) The type of business engaged in;
- (d) The date the permit was issued, renewed, or reinstated by the department; and
- (e) The expiration date of the permit.

(2) Reseller permits may also contain such other information as required by the department, including, but not limited to:

- (a) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale;
- (b) The date that the permit was provided to the seller;
- (c) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;
- (d) A statement that the permit holder acknowledges that misuse of [a] reseller permit or reseller permit number subjects the permit holder to revocation of the reseller permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;
- (e) Instructions for renewing the permit;
- (f) A statement that the department is authorized to obtain information concerning the permit holder's purchase of items or services under the permit from the seller to verify whether the permit holder was authorized to purchase such items or services without payment of retail sales tax; and
- (g) The signature of the permit holder, unless a copy of the permit is provided to the seller in a format other than paper. [2010 c 112 § 4.]

Additional notes found at www.leg.wa.gov

(g) The signature of the permit holder, unless a copy of the permit is provided to the seller in a format other than paper. [2010 c 112 § 4.]

(g) The signature of the permit holder, unless a copy of the permit is provided to the seller in a format other than paper. [2010 c 112 § 4.]

Additional notes found at www.leg.wa.gov

82.32.785 Reseller's permit—Voluntary electronic verification. The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means whether their customers' reseller permits are valid. [2010 c 112 § 5; 2009 c 563 § 203.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Additional notes found at www.leg.wa.gov

82.32.787 Reseller's permit—Request for copies. A person must, upon request of the department, provide the department with paper or electronic copies of all reseller permits, or other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department. [2010 c 112 § 6; 2009 c 563 § 204.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Additional notes found at www.leg.wa.gov

82.32.790 Tax incentives contingent upon semiconductor microchip fabrication facility siting and operation. (Contingent expiration date.) (1)(a) Sections 510, 512, 514, 516, 518, 520, 522, and 524, chapter 37, Laws of 2017 3rd sp. sess., sections 9, 13, 17, 22, 24, 30, 32, and 45, chapter 135, Laws of 2017, sections 104, 110, 117, 123, 125, 129, 131, and 150, chapter 114, Laws of 2010, and sections 1, 2, 3, and 5 through 10, chapter 149, Laws of 2003 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington by January 1, 2024.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) The sections referenced in subsection (1) of this section take effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, if the contract is signed and received by January 1, 2024, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and the sections referenced in subsection (1) of this section are effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department must make a determination that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting

(2022 Ed.)

tax under RCW 82.04.240(2) or claiming an exemption or credit under RCW 82.04.426, 82.04.448, 82.08.965, 82.12.965, 82.08.970, 82.12.970, or 84.36.645. The department is not authorized to make a second determination regarding the effective date of the sections referenced in subsection (1) of this section.

(4)(a) This section expires January 1, 2024, if the contingency in subsection (2) of this section does not occur by January 1, 2024, as determined by the department.

(b) The department must provide written notice of the expiration date of this section and the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department. [2022 c 56 § 11; 2019 c 449 § 2; 2017 3rd sp.s. c 37 § 526; (2017 3rd sp.s. c 37 § 525 expired January 1, 2018). Prior: 2017 c 323 § 509; 2017 c 135 § 47; prior: 2010 c 114 § 201; 2010 c 106 § 401; 2009 c 461 § 9; 2006 c 300 § 12; 2003 c 149 § 12.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.534.

82.32.800 Contributions of high-technology research and development tax credit—Opportunity expansion account.

A person eligible for the high-technology research and development tax credit under *RCW 82.04.4452 may contribute all or any portion of the credit to the opportunity expansion account hereby created in the state treasury. The department must create the forms and processes to allow a person to make such an election easily and quickly by means of checking a box. By May 1, 2012, and by May 1st of every year thereafter, the department must report the amount so contributed and certify the amount to the state treasurer. By July 1, 2012, and by July 1st of every year thereafter, the state treasurer must transfer the amount into the opportunity expansion account. Money in the account may only be appropriated for the purposes specified in RCW 28B.145.060. [2011 1st sp.s. c 13 § 10.]

*Reviser's note: RCW 82.04.4452 expired January 1, 2015.

Finding—Intent—Short title—Effective date—2011 1st sp.s. c 13: See RCW 28B.145.005, 28B.145.900, and 28B.145.901.

82.32.805 Tax preferences—Expiration dates. (1)(a) Except as otherwise provided in this section, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference. With respect to any new property tax exemption, the exemption does not apply to taxes levied for collection beginning in the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(b) If a new tax preference applies to both a state tax and a corresponding local tax that the department administers, such as a state and local sales and use tax exemption, the

expiration of that new tax preference under this subsection applies to both the state and local tax.

(c) A future amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the amendment.

(2) Subsection (1) of this section does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference or an exemption from this section in its entirety or from the provisions of subsection (1) of this section, whether or not such exemption is codified.

(3) Subsection (1) of this section does not apply to any existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate this intent.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending amendment includes any other change to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(5) The department must provide written notice to the office of the code reviser of a ten-year expiration date required under this section for a new tax preference. [2021 c 145 § 20; 2020 c 139 § 57; 2013 2nd sp.s. c 13 § 1701.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.32.808 Tax preferences—Performance statement requirement. (1) As provided in this section, every bill enacting a new tax preference must include a tax preference performance statement, unless the legislation enacting the new tax preference contains an explicit exemption from the requirements of this section.

(2) A tax preference performance statement must state the legislative purpose for the new tax preference. The tax preference performance statement must indicate one or more of the following general categories, by reference to the applicable category specified in this subsection, as the legislative purpose of the new tax preference:

(a) Tax preferences intended to induce certain designated behavior by taxpayers;

(b) Tax preferences intended to improve industry competitiveness;

(c) Tax preferences intended to create or retain jobs;

(d) Tax preferences intended to reduce structural inefficiencies in the tax structure;

(e) Tax preferences intended to provide tax relief for certain businesses or individuals; or

(f) A general purpose not identified in (a) through (e) of this subsection.

(3) In addition to identifying the general legislative purpose of the tax preference under subsection (2) of this section, the tax preference performance statement must provide

additional detailed information regarding the legislative purpose of the new tax preference.

(4) A new tax preference performance statement must specify clear, relevant, and ascertainable metrics and data requirements that allow the joint legislative audit and review committee and the legislature to measure the effectiveness of the new tax preference in achieving the purpose designated under subsection (2) of this section.

(5) If the tax preference performance statement for a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section, any taxpayer claiming the new tax preference must file an annual tax performance report in accordance with RCW 82.32.534.

(6)(a) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis. For a new sales and use tax exemption, the total purchase price or value of the exempt product or service subject to the exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

(b) This subsection does not apply to:

(i) Property tax exemptions;

(ii) Tax preferences required by constitutional law;

(iii) Tax preferences for which the tax benefit to the taxpayer is less than one thousand dollars per calendar year; or

(iv) Taxpayers who are annual filers.

(c) The department may waive the filing requirements of this subsection for taxpayers who are not required to file electronically any return or report under this chapter.

(7)(a) Except as otherwise provided in this subsection, the amount claimed by a taxpayer for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW 82.32.330, if the reporting periods subject to disclosure ended at least twenty-four months prior to the date of disclosure and the taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under subsection (6) of this section.

(b)(i) The department may waive the public disclosure requirement under (a) of this subsection (7) for good cause. Good cause may be demonstrated by a reasonable showing of economic harm to a taxpayer if the information specified under this subsection is disclosed. The waiver under this subsection (7)(b)(i) only applies to the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

(ii) The amount of the tax preference claimed by a taxpayer during a calendar year is confidential under RCW 82.32.330 and may not be disclosed under this subsection if the amount for the calendar year is less than ten thousand dollars.

(c) In lieu of the disclosure and waiver requirements under this subsection, the requirements under RCW 82.32.534 apply to any tax preference that requires a tax performance report.

(8) If a new tax preference does not include the information required under subsections (2) through (4) of this section, the joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW, and it is legislatively presumed that it is the intent of the legislature to allow the new tax preference to expire upon its scheduled expiration date.

(9) For the purposes of this section, "tax preference" and "new tax preference" have the same meaning as provided in RCW 82.32.805.

(10) The provisions of this section do not apply to the extent that legislation creating a new tax preference provides an exemption, in whole or in part, from this section, whether or not such exemption is codified. [2020 c 139 § 58; 2017 c 135 § 8; 2013 2nd sp.s. c 13 § 1702.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.32.850 Significant commercial airplane manufacturing—Tax preference—Contingent effective date. (1) Chapter 2, Laws of 2013 3rd sp. sess. takes effect contingent upon the siting of a significant commercial airplane manufacturing program in the state of Washington. If a significant commercial airplane manufacturing program is not sited in the state of Washington by June 30, 2017, chapter 2, Laws of 2013 3rd sp. sess. does not take effect.

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

(a) "Commercial airplane" has the same meaning provided in RCW 82.32.550.

(b) "New model, or any version or variant of an existing model, of a commercial airplane" means a commercial airplane manufactured with a carbon fiber composite fuselage or carbon fiber composite wings or both.

(c) "Significant commercial airplane manufacturing program" means an airplane program in which the following products, including final assembly, will commence manufacture at a new or existing location within Washington state on or after July 9, 2014:

(i) The new model, or any version or variant of an existing model, of a commercial airplane; and

(ii) Fuselages and wings of a new model, or any version or variant of an existing model, of a commercial airplane.

(d) "Siting" means a final decision, made on or after November 1, 2013, by a manufacturer to locate a significant commercial airplane manufacturing program in Washington state.

(3) The department must make a determination regarding whether the contingency in subsection (1) of this section occurs and must provide written notice of the date on which such contingency occurs and chapter 2, Laws of 2013 3rd sp. sess. takes effect. If the department determines that the contingency in subsection (1) of this section has not occurred by June 30, 2017, the department must provide written notice stating that chapter 2, Laws of 2013 3rd sp. sess. does not take effect. Written notice under this subsection (3) must be

(2022 Ed.)

provided to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department. [2013 3rd sp.s. c 2 § 2.]

Reviser's note: The department of revenue determined that the contingency in section 2, chapter 2 (Engrossed Substitute Senate Bill No. 5952), Laws of 2013 3rd sp.s. occurred and that the bill took effect July 9, 2014.

Findings—Intent—2013 3rd sp.s. c 2: "(1) The legislature finds that the people of Washington have benefited enormously from the presence of the aerospace industry in Washington state. The legislature further finds that the industry continues to provide good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The legislature further finds that suppliers and vendors that support the aerospace industry in turn provide a range of well-paying jobs. In 2003, and again in 2006, and 2007, the legislature determined it was in the public interest to encourage the continued presence of the aerospace industry through the provision of tax incentives. To this end, and in recognition of the continuing extreme importance of the aerospace industry in Washington, it is the legislature's intent to reaffirm and build upon prior aerospace tax incentive legislation in a fiscally prudent manner.

(2) The legislature categorizes the tax preferences extended in this act as intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(3) It is the legislature's specific public policy objective to maintain and grow Washington's aerospace industry workforce. To help achieve this public policy objective, it is the legislature's intent to conditionally extend aerospace industry tax preferences until July 1, 2040, in recognition of intent by the state's aerospace industry sector to maintain and grow its workforce within the state.

(4) The joint legislative audit and review committee must review the tax preferences provided in this act and report to the legislature by December 1, 2019, and every five years thereafter. As part of its tax preference reviews, the committee must specifically assess changes in aerospace industry employment in Washington in comparison with other states and internationally. To the extent practicable, the committee must use occupational data statistics provided by the bureau of labor statistics and state agencies responsible for administering unemployment insurance to perform this assessment." [2013 3rd sp.s. c 2 § 1.]

82.32.860 Liquefied natural gas—Estimated sales tax revenue. (Expires July 1, 2028.) (1) By the last workday of the second and fourth calendar quarters, the state treasurer must transfer the amount specified in subsection (2) of this section from the general fund to the motor vehicle fund established under RCW 46.68.070. The first transfer under this subsection must occur by December 31, 2017.

(2) By December 15th and by June 15th of each year, the department must estimate the increase in state general fund revenues from the taxes collected under RCW 82.08.0261(2)(a) on the nonexempt portion of liquefied natural gas sales in the current and prior calendar quarters and notify the state treasurer of the increase.

(3) This section expires July 1, 2028. [2014 c 216 § 406.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

82.32.865 Nonresident vessel permit. (Effective until January 1, 2029.) (1) A nonresident vessel owner that is not a natural person, or a nonresident vessel owner who intends to charter the vessel with a captain or crew as provided in RCW 88.02.620(1)(b)(ii), must apply directly to the department for written approval to obtain a nonresident vessel permit under RCW 88.02.620. The application must be made to the department in a form and manner prescribed by the department and must include:

(a) The name of the record owner of the vessel;

(b) The name, address, and telephone number of the individual that applied for the permit;

(c) The record owner's address and telephone number;

(d) The vessel's hull identification number;

(e) The vessel year, make, and model;

(f) The vessel length;

(g) The vessel's registration or numbering under the state of principal operation or the valid number under federal law;

(h) Proof of the person's current nonresident status, including, as applicable, certified copies of the filed articles of incorporation, a certificate of formation, or similar filings;

(i) Proof of the identity and current residency of the natural person owning the charter vessel or all principals of the nonresident person owning the vessel. Such proof may include a valid driver's license verifying out-of-state residency or a valid identification card that has a photograph of the holder and is issued by an out-of-state jurisdiction;

(j) An affidavit signed by the owner of the nonresident charter vessel, or by a principal of the entity owning the nonresident vessel, certifying that the owner is not a Washington resident or that no Washington residents are principals of the nonresident vessel owner, as the case may be; and

(k) Any other information the department may require.

(2) The department must determine the nonresident vessel owner's eligibility for the permit, as provided in RCW 88.02.620. The department may require additional proof of eligibility directly from the nonresident vessel owner.

(3)(a) If the department determines that the nonresident vessel owner has established by clear, cogent, and convincing evidence that it is eligible for the permit, the department must provide written approval to the nonresident vessel owner that authorizes issuance of the permit and includes the name of the nonresident vessel owner, the name of the vessel, and the hull identification number. Otherwise, the department must refuse to authorize the issuance of the permit.

(b) The department must also provide the information in the written approval to the department of licensing.

(4)(a) If, after a permit has been issued under RCW 88.02.620, the department has reason to believe that the nonresident vessel owner was not eligible for the permit approved under subsection (3) of this section, the department may request such information from the nonresident vessel owner as the department determines is necessary to conduct a review of the nonresident vessel owner's eligibility.

(b) If the department finds the nonresident person was not eligible for the permit, the department must assess against the nonresident person state and local use tax on the value of the vessel according to the "value of the article used" as defined in RCW 82.12.010. The department must also assess against the nonresident person any watercraft excise tax due under chapter 82.49 RCW. Penalties and interest as provided in this chapter and chapter 82.49 RCW apply to taxes assessed under this subsection (4).

(5) For purposes of this section, "principal" means a natural person that owns, directly or indirectly, including through any tiered ownership structure, more than a one percent interest in the nonresident person applying for a nonresident vessel permit.

(6) By January 1, 2026, the department must submit a report to the governor and the transportation and fiscal committees of the legislature. The report must include:

(a) The number of nonresident vessel permits the department authorized for approval in each calendar year since September 1, 2015, and the length of such vessels;

(b) The number of nonresident vessel permits the department authorized for approval in each calendar year since July 25, 2021, for vessels chartered with a captain or crew;

(c) Information about the state or country where the vessels described in (a) and (b) of this subsection are primarily operated;

(d) The amount of use tax collected on vessels described in (b) of this subsection;

(e) A discussion of any evidence of fraud or attempted fraud related to nonresident vessel permits or permit applications; and

(f) Any other information the department determines may be relevant.

(7) The department may adopt rules to implement this section. [2021 c 150 § 3; 2015 3rd sp.s. c 6 § 805.]

Expiration date—2021 c 150: See note following RCW 88.02.620.

Expiration date—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Findings—Intent—Tax preference performance statement—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.640.

Effective date—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.32.865 Nonresident vessel permit. (Effective January 1, 2029, until January 1, 2031.) (1) A nonresident vessel owner that is not a natural person must apply directly to the department for written approval to obtain a nonresident vessel permit under RCW 88.02.620. The application must be made to the department in a form and manner prescribed by the department and must include:

(a) The name of the record owner of the vessel;

(b) The name, address, and telephone number of the individual that applied for the permit on behalf of the nonresident person;

(c) The record owner's address and telephone number;

(d) The vessel's hull identification number;

(e) The vessel year, make, and model;

(f) The vessel length;

(g) The vessel's registration or numbering under the state of principal operation or the valid number under federal law;

(h) Proof of the person's current nonresident status, including certified copies of the filed articles of incorporation, a certificate of formation, or similar filings;

(i) Proof of the identity and current residency of all principals of the nonresident person. Such proof may include a valid driver's license verifying out-of-state residency or a valid identification card that has a photograph of the holder and is issued by an out-of-state jurisdiction;

(j) An affidavit signed by a principal of the nonresident vessel owner certifying that no Washington residents are principals of the nonresident vessel owner; and

(k) Any other information the department may require.

(2) The department must determine the nonresident vessel owner's eligibility for the permit, as provided in RCW 88.02.620, and may request additional information as needed directly from the nonresident vessel owner.

(3)(a) If the nonresident vessel owner appears eligible for the permit, the department must provide written approval to the nonresident vessel owner that authorizes issuance of the permit and includes the name of the nonresident vessel owner, the name of the vessel, and the hull identification number. After November 30, 2025, the department may not provide written approval for any permits under this subsection.

(b) The department must also provide the information in the written approval to the department of licensing.

(4)(a) If, after a permit has been issued under RCW 88.02.620, the department has reason to believe that the nonresident vessel owner was not eligible for the permit approved under subsection (3) of this section, the department may request such information from the nonresident vessel owner as the department determines is necessary to conduct a review of the nonresident vessel owner's eligibility.

(b) If the department finds the nonresident person was not eligible for the permit, the department must assess against the nonresident person state and local use tax on the value of the vessel according to the "value of the article used" as defined in RCW 82.12.010. The department must also assess against the nonresident person any watercraft excise tax due under chapter 82.49 RCW. Penalties and interest as provided in this chapter and chapter 82.49 RCW apply to taxes assessed under this subsection (4).

(5) For purposes of this section, "principal" means a natural person that owns, directly or indirectly, including through any tiered ownership structure, more than a one percent interest in the nonresident person applying for a nonresident vessel permit.

(6) The department may adopt rules to implement this section. [2015 3rd sp.s. c 6 § 805.]

Expiration date—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Findings—Intent—Tax preference performance statement—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.640.

Effective date—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.32.870 Vapor products tax deposits. (1) By October 15, 2020, and by each October 15th thereafter, the department must estimate any increase in state general fund revenue collections for the immediately preceding fiscal year resulting from the taxes imposed in chapter 445, Laws of 2019. The department must promptly notify the state treasurer of these estimated amounts.

(2) Beginning November 1, 2020, and by each November 1st thereafter, the state treasurer must transfer from the general fund the estimated amount determined by the department under subsection (1) of this section for the immediately preceding fiscal year as follows:

(a) Fifty percent into the Andy Hill cancer research endowment fund match transfer account created in RCW 43.348.080; and

(b) Fifty percent into the foundational public health services account created in RCW 82.25.015.

(3) The department may not make any adjustments to an estimate under subsection (1) of this section after the state treasurer makes the corresponding distribution under subsection

(2022 Ed.)

(2) of this section based on the department's estimate. [2019 c 445 § 401.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

82.32.900 Work group created—Transition plan—Taxing liquefied natural gas used for marine vessel transportation. (1) The department of licensing must convene a work group that includes, at a minimum, representatives from the department of transportation, the trucking industry, manufacturers of compressed natural gas and liquefied natural gas, and any other stakeholders as deemed necessary, for the following purposes:

(a) To evaluate the annual license fee in lieu of fuel tax under RCW 82.38.075 to determine a fee that more closely represents the average consumption of vehicles by weight and to make recommendations to the transportation committees of the legislature by December 1, 2014, on an updated fee schedule.

(b) To develop a transition plan to move vehicles powered by liquefied natural gas and compressed natural gas from the annual license fee in lieu of fuel tax to the fuel tax under RCW 82.38.030. The transition plan must incorporate stakeholder feedback and must include draft legislation and cost and revenue estimates. The transition plan must be submitted to the transportation committees of the legislature by December 1, 2015.

(2) The department of revenue must convene a work group that includes, at a minimum, representatives from the department of transportation, the marine shipping industry, manufacturers of liquefied natural gas, and any other stakeholders as deemed necessary, for the purpose of examining the appropriate level and manner of taxing liquefied natural gas used for marine vessel transportation. The department must make recommendations to the fiscal committees of the legislature by December 1, 2025. [2014 c 216 § 209.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Chapter 82.32A RCW

TAXPAYER RIGHTS AND RESPONSIBILITIES

Sections

82.32A.002	Short title.
82.32A.005	Finding.
82.32A.010	Administration of chapter.
82.32A.020	Rights.
82.32A.030	Responsibilities.
82.32A.040	Taxpayer rights advocate.
82.32A.050	Taxpayer services program.

Refunds of erroneous or excessive payments: RCW 43.88.170.

82.32A.002 Short title. This chapter shall be known and cited as "Washington taxpayers' rights and responsibilities." [1991 c 142 § 1.]

82.32A.005 Finding. (1) The legislature finds that taxes are one of the most sensitive points of contact between citizens and their government, and that there is a delicate balance between revenue collection and taxpayers' rights and responsibilities. The rights, privacy, and property of Wash-

ington taxpayers should be protected adequately during the process of the assessment and collection of taxes.

(2) The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act, Title 82 RCW, and where taxpayers cooperate in the administration of these provisions. [1991 c 142 § 2.]

82.32A.010 Administration of chapter. The department of revenue shall administer this chapter. The department of revenue shall adopt or amend rules as may be necessary to fully implement this chapter and the rights established under this chapter. [1991 c 142 § 3.]

82.32A.020 Rights. The taxpayers of the state of Washington have:

(1) The right to a written explanation of the basis for any tax deficiency assessment, interest, and penalties at the time the assessments are issued;

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

(3) The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases;

(4) The right to confidentiality and protection from public inquiry regarding financial and business information in the possession of the department of revenue in accordance with the requirements of RCW 82.32.330;

(5) The right to receive, upon request, clear and current tax instructions, rules, procedures, forms, and other tax information; and

(6) The right to a prompt and independent administrative review by the department of revenue of a decision to revoke a tax registration, and to a written determination that either sustains the revocation or reinstates the registration. [1991 c 142 § 4.]

82.32A.030 Responsibilities. To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility to:

(1) Register with the department of revenue;

(2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;

(3) Keep accurate and complete business records;

(4) File accurate returns and pay taxes in a timely manner;

(5) Ensure the accuracy of the information entered on their tax returns;

(6) Substantiate claims for refund;

(7) Timely pay all taxes after closing a business and request cancellation of registration number; and

(8) Timely respond to communications from the department of revenue. [1991 c 142 § 5.]

82.32A.040 Taxpayer rights advocate. The director of revenue shall appoint a taxpayer rights advocate. The advocate shall be responsible for directly assisting taxpayers and their representatives to assure their understanding and utilization of the policies, processes, and procedures available to them in the resolution of problems. [1991 c 142 § 6.]

82.32A.050 Taxpayer services program. The department of revenue shall maintain a taxpayer services program consisting of, but not limited to:

(1) Providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence;

(2) Conducting tax workshops at locations most conveniently accessible to the majority of taxpayers affected; and

(3) Publishing written bulletins, instructions, current revenue laws, rules, court decisions, and interpretive rulings of the department of revenue. [1991 c 142 § 7.]

Chapter 82.33 RCW

ECONOMIC AND REVENUE FORECASTS

Sections

82.33.010	Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts.
82.33.020	Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.
82.33.030	Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.
82.33.040	Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.
82.33.050	Employment growth forecast and general state revenue estimates.
82.33.060	State budget outlook—Requirements.
82.33.070	State budget outlook—Work group.

82.33.010 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts. (1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor, the state treasurer, and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts and the presentation of state budget outlooks. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the

compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least five members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least five members, the state budget outlook prepared under RCW 82.33.060. If the council is unable to approve a state budget outlook before a date required in RCW 82.33.060, the supervisor shall submit the outlook prepared under RCW 82.33.060 without approval and the outlook shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official economic and revenue forecast or the state budget outlook may request, and the supervisor shall provide, an alternative economic and revenue forecast or state budget outlook based on assumptions specified by the member including, for purposes of the state budget outlook, revenues to and expenditures from additional funds.

(6) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2012 1st sp.s. c 8 § 2; 1990 c 229 § 1; 1984 c 138 § 4. Formerly RCW 82.01.130.]

Additional notes found at www.leg.wa.gov

82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue. (1) Four times each year the supervisor must prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (a) An official state economic and revenue forecast;
- (b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and
- (c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor must submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 27th, and September 27th. In fiscal year 2015, the March 20th forecast shall be submitted on or before February 20, 2015. All forecasts must include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037. In odd-numbered years, the period covered by

(2022 Ed.)

forecasts for the state general fund and related funds must cover the current fiscal biennium and the next ensuing fiscal biennium. In even-numbered years, the period covered by the forecasts for the state general fund and related funds shall be current fiscal and the next two ensuing fiscal biennia.

(3) All agencies of state government must provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information must be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff must colocate and share information, data, and files with the tax research section of the department of revenue but may not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor must provide estimated revenue from tuition fees as defined in RCW 28B.15.020.

(6) The economic and revenue forecast council must, in consultation with the economic and revenue forecast work group created in RCW 82.33.040, review the existing economic and revenue forecast council revenue model, data, and methodologies and in light of recent economic changes, engage outside experts if necessary, and recommend changes to the economic and revenue forecast council revenue forecasting process to increase confidence and promote accuracy in the revenue forecast. The recommendations are due by September 30, 2012, and every five years thereafter. [2015 c 3 § 14; 2012 1st sp.s. c 8 § 3; 2012 c 182 § 1; 2005 c 319 § 137; 1992 c 231 § 34; 1990 c 229 § 2. Prior: 1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

Reviser's note: This section was amended by 2012 c 182 § 1 and by 2012 1st sp.s. c 8 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2015 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 19, 2015]." [2015 c 3 § 16.]

Effective date—2012 c 182: "This act takes effect October 1, 2012." [2012 c 182 § 2.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Additional notes found at www.leg.wa.gov

82.33.030 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee. The administrator of the legislative evaluation and accountability program committee may request, and the supervisor shall provide, alternative economic and revenue forecasts based on assumptions specified by the administrator. [1984 c 138 § 3. Formerly RCW 82.01.125.]

Legislative evaluation and accountability program committee: Chapter 44.48 RCW.

82.33.040 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings. (1) To promote the free flow of information and to promote legislative input in the preparation of forecasts, immediate access to all information relating to eco-

economic and revenue forecasts shall be available to the economic and revenue forecast work group, hereby created. Revenue collection information shall be available to the economic and revenue forecast work group the first business day following the conclusion of each collection period. The economic and revenue forecast work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of revenue;
- (b) Office of financial management;
- (c) Legislative evaluation and accountability program committee;
- (d) Ways and means committee of the senate; and
- (e) Ways and means committee of the house of representatives.

(2) The economic and revenue forecast work group shall provide technical support to the economic and revenue forecast council. Meetings of the economic and revenue forecast work group may be called by any member of the group for the purpose of assisting the economic and revenue forecast council, reviewing the state economic and revenue forecasts, or reviewing monthly revenue collection data or for any other purpose which may assist the economic and revenue forecast council. [1986 c 158 § 23; 1984 c 138 § 5. Formerly RCW 82.01.135.]

82.33.050 Employment growth forecast and general state revenue estimates. The state economic and revenue forecast council shall perform the state employment growth forecast and general state revenue estimates required by Article VII, section 12. [2007 c 484 § 3.]

Additional notes found at www.leg.wa.gov

82.33.060 State budget outlook—Requirements. (1) To facilitate compliance with, and subject to the terms of, RCW 43.88.055 and 43.88.030, the state budget outlook work group shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010, an official state budget outlook for state revenues and expenditures for the general fund and related funds. The revenue and caseload projections used in the outlook must reflect the most recent official forecasts adopted by the economic and revenue forecast council and the caseload forecast council for the years for which those forecasts are available.

(2) The outlook must:

(a) Estimate revenues to and expenditures from the state general fund and related funds. The estimate of ensuing biennium expenditures must include maintenance items including, but not limited to, continuation of current programs, forecasted growth of current entitlement programs, and actions required by law, including legislation with a future implementation date. Estimates of ensuing biennium expenditures must exclude policy items including, but not limited to, legislation not yet enacted by the legislature, collective bargaining agreements not yet approved by the legislature, and changes to levels of funding for employee salaries and benefits unless those changes are required by statute. Estimated maintenance level expenditures must also exclude costs of court rulings issued during or within fewer than ninety days before the beginning of the current legislative session;

(b) Address major budget and revenue drivers, including trends and variability in these drivers;

(c) Clearly state the assumptions used in the estimates of baseline and projected expenditures and any adjustments made to those estimates;

(d) Clearly state the assumptions used in the baseline revenue estimates and any adjustments to those estimates; and

(e) Include the impact of previously enacted legislation with a future implementation date.

(3) The outlook must also separately include projections based on the revenues and expenditures proposed in the governor's budget documents submitted to the legislature under RCW 43.88.030.

(4) The economic and revenue forecast council shall submit state budget outlooks prepared under this section to the governor and the members of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the committees, as required by this section.

(5) Each January, the state budget outlook work group shall also prepare, subject to the approval of the economic and revenue forecast council, a state budget outlook for state revenues and expenditures that reflects the governor's proposed budget document submitted to the legislature under chapter 43.88 RCW. Within thirty days following enactment of an operating budget by the legislature, the work group shall prepare, subject to the approval of the economic and revenue forecast council, a state budget outlook for state revenues and expenditures that reflects the enacted budget.

(6) All agencies of state government shall provide to the supervisor immediate access to all information relating to state budget outlooks.

(7) The state budget outlook work group must publish its proposed methodology on the economic and revenue forecast council website. The state budget outlook work group, in consultation with the economic and revenue forecast work group and outside experts if necessary, must analyze the extent to which the proposed methodology for projecting expenditures for the ensuing fiscal biennia may be reliably used to determine the future impact of appropriations and make recommendations to change the outlook process to increase reliability and accuracy. The recommendations are due by December 1, 2013, and every five years thereafter. [2020 c 218 § 5; 2012 1st sp.s. c 8 § 4.]

Effective date—2020 c 218: See note following RCW 43.88.030.

82.33.070 State budget outlook—Work group. (1) To promote the free flow of information and to promote legislative input in the preparation of the state budget outlook, immediate access to all information relating to the state budget outlook shall be available to the state budget outlook work group, hereby created. The state budget outlook work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Office of financial management;
- (b) Legislative evaluation and accountability program committee;
- (c) Office of the state treasurer;
- (d) Economic and revenue forecast council;

- (e) Caseload forecast council;
- (f) Ways and means committee of the senate; and
- (g) Ways and means committee of the house of representatives.

(2) The state budget outlook work group shall provide technical support to the economic and revenue forecast council. Meetings of the state budget outlook work group may be called by any member of the group for the purpose of assisting the economic and revenue forecast council, reviewing the state budget outlook, or for any other purpose which may assist the economic and revenue forecast council. [2012 1st sp.s. c 8 § 5.]

Chapter 82.33A RCW ECONOMIC CLIMATE COUNCIL

Sections

- 82.33A.005 Intent.
82.33A.010 Council—Created—Selection of benchmarks—Access to agency information.

82.33A.005 Intent. The citizens of Washington should enjoy a high quality of life, which requires a healthy state economy. To achieve this goal, the legislature recognizes that the state must be able to compete economically at a national and international level. It is critical to the economic well-being of the citizens of this state that the legislature strive to continually improve the state's economic climate. Therefore, the legislature intends to provide a mechanism whereby the information necessary to achieve this goal is available on a timely and reliable basis. [1996 c 152 § 1.]

82.33A.010 Council—Created—Selection of benchmarks—Access to agency information. (1) The economic climate council is hereby created.

(2) The council shall select a series of benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the workforce; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

- (a) The availability of comparative information for other states and countries;
- (b) The timeliness with which benchmark information can be obtained; and
- (c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

(3) Each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports. [2014 c 112 § 121; 2007 c 232 § 8; 1998 c 245 § 168; 1996 c 152 § 2.]

(2022 Ed.)

Chapter 82.34 RCW POLLUTION CONTROL FACILITIES—TAX EXEMPTIONS AND CREDITS

Sections

- 82.34.010 Definitions.
82.34.015 Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c).
82.34.020 Application for certificate—Filing—Form—Contents.
82.34.030 Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board.
82.34.040 Rules.
82.34.050 Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption.
82.34.060 Application for final cost determination as to existing or new facility—Filing—Form—Contents—Approval—Determination of costs—Credits against taxes imposed by chapters 82.04, 82.12, 82.16 RCW—Limitations.
82.34.090 Certified mail—Use of in sending certificates or notice of refusal to issue certificates.
82.34.100 Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement—Exemptions from revocation.
82.34.110 Administrative and judicial review.
82.34.900 Severability—1967 ex.s. c 139.

82.34.010 Definitions. Unless a different meaning is plainly required by the context, the following words as hereinafter used in this chapter shall have the following meanings:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined: (a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle. (b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste which if released to a water course could cause water pollution: PROVIDED, That the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed: For a municipal corporation other than for coal-fired, steam electric generating plants constructed and operated pursuant to chapter 54.44 RCW for which an application for a certificate was made no later than December 31, 1969, together with any air or water pollution control facility improvement which may be made hereafter to such plants; or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities: PROVIDED FURTHER, That the word "facility" shall not include any control device, machinery, equipment, structure, disposal system, or other property installed or constructed with the proceeds derived from the sale of industrial revenue bonds issued under chapter 39.84 RCW.

(2) "Industrial waste" shall mean any liquid, gaseous, radioactive or solid waste substance or combinations thereof resulting from any process of industry, manufacture, trade or

business, or from the development or recovery of any natural resources.

(3) "Treatment works" or "control device" shall mean any machinery, equipment, structure or property which is installed, constructed or acquired for the primary purpose of controlling air or water pollution and shall include, but shall not be limited to such devices as precipitators, scrubbers, towers, filters, baghouses, incinerators, evaporators, reservoirs, aerators used for the purpose of treating, stabilizing, incinerating, holding, removing or isolating sewage and industrial wastes.

(4) "Disposal system" shall mean any system containing treatment works or control devices and includes but is not limited to pipelines, outfalls, conduits, pumping stations, force mains, solids handling equipment, instrumentation and monitoring equipment, ducts, fans, vents, hoods and conveyors and all other construction, devices, appurtenances and facilities used for collecting or conducting, sewage and industrial waste to a point of disposal, treatment or isolation except that which is necessary to manufacture of products.

(5) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been made not later than December 31, 1969, except as follows:

(a) With respect to a facility required to be installed, such application will be deemed timely made if made not later than November 30, 1981, and within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency.

(b) With respect to a water pollution control facility for which an application was made in anticipation of specific requirements for such facility being promulgated by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(c) With respect to a facility for which plans and specifications were approved by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(d) For the purposes of (a), (b), and (c) of this subsection, "facility" means a facility installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967.

(6) "Appropriate control agency" shall mean the department of ecology; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located, or the department of ecology, where the facility is not or will not be located within the area of an operating local or regional air pollution control agency, or where the department of ecology has assumed jurisdiction.

(7) "Department" shall mean the department of revenue. [1988 c 127 § 36; 1984 c 42 § 1; 1981 2nd ex.s. c 9 § 1; 1980 c 175 § 1; 1967 ex.s. c 139 § 1.]

82.34.015 Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c). The department shall not issue a certificate under RCW 82.34.010(5)(b) before

July 1, 1985, or before the promulgation of specific requirements for such facility by the appropriate control agency, whichever is later. The department shall not issue a certificate under RCW 82.34.010(5)(c) before July 1, 1985. [1984 c 42 § 2.]

82.34.020 Application for certificate—Filing—Form—Contents. An application for a certificate shall be filed with the department not later than November 30, 1981, and in such manner and in such form as may be prescribed by the department. The application shall contain estimated or actual costs, plans and specifications of the facility including all materials incorporated or to be incorporated therein and a list describing, and showing the cost, of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the operating procedure for the facility, or a time schedule for the acquisition and installation or attachment of the facility and the proposed operating procedure for such facility. [1981 2nd ex.s. c 9 § 2; 1967 ex.s. c 139 § 2.]

82.34.030 Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board. A certificate shall be issued by the department within thirty days after approval of the application by the appropriate control agency. Such approval shall be given when it is determined that the facility is designed and is operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air or for the control and reduction of water pollution and that the facility is suitable, reasonably adequate, and meets the intent and purposes of chapter 70A.15 RCW or chapter 90.48 RCW, as the case may be, and it shall notify the department of its findings within thirty days of the date on which the application was submitted to it for approval. In making such determination, the appropriate control agency shall afford to the applicant an opportunity for a hearing: PROVIDED, That if the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local or regional air pollution control agency, such applicant may appeal to the state air pollution control board pursuant to rules and regulations established by that board. [2020 c 20 § 1486; 1967 ex.s. c 139 § 3.]

82.34.040 Rules. The department may adopt such rules as it deems necessary for the administration of this chapter subject to the provisions of RCW 34.05.310 through 34.05.395. Such rules shall not abridge the authority of the appropriate control agency as provided in this chapter or any other law. [1989 c 175 § 177; 1967 ex.s. c 139 § 4.]

Additional notes found at www.leg.wa.gov

82.34.050 Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption. (1) The original acquisition of a facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax imposed by chapter 82.12 RCW when the due date for payment of such taxes is subsequent to the effective date of the certificate: PROVIDED, That the exemption of this section shall not apply to servicing, maintenance, repairs, and replacement of

parts after a facility is complete and placed in operation. Sales and use taxes paid by a holder of a certificate with respect to expenditures incurred for acquisition of a facility prior to the issuance of a certificate covering such facility may be claimed as a tax credit as provided in subsection (2) of this section.

(2) Subsequent to July 30, 1967 the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the exemption for the facility covered by such certificate against any future taxes to be paid pursuant to chapters 82.04, 82.12 and 82.16 RCW. [2000 c 103 § 12; 1975 1st ex.s. c 158 § 1; 1967 ex.s. c 139 § 5.]

Additional notes found at www.leg.wa.gov

82.34.060 Application for final cost determination as to existing or new facility—Filing—Form—Contents—Approval—Determination of costs—Credits against taxes imposed by chapters 82.04, 82.12, 82.16 RCW—Limitations. (1) On and after July 30, 1967, an application for a determination of the cost of an existing or newly completed pollution control facility may be filed with the department in such manner and in such form as may be prescribed by the department. The application shall contain the final cost figures for the installation of the facility and reasonable supporting documents and other proof as required by the department. In the event such facility is not already covered by a certificate issued for the purpose of authorizing the tax exemption or credit provided for in this chapter, the department shall seek the approval of the facility from the appropriate control agency. For any application for a certificate or supplement which was filed with the department not later than November 30, 1981, the department shall determine the final cost of the pollution control facility and issue a supplement to the existing certificate or an original certificate stating the cost of the pollution control facility: PROVIDED, That the cost of an existing pollution control facility shall be the depreciated value thereof at the time of application filed pursuant to this section.

(2) When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a credit may be claimed against taxes imposed pursuant to chapters 82.04, 82.12 and 82.16 RCW. The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

(a) No credit exceeding fifty percent of the taxes payable under chapters 82.04, 82.12 and 82.16 RCW shall be allowed in any reporting period;

(b) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized: PROVIDED, That for the purposes of this chapter the determination of "net commercial value" shall not include a deduction for the cost or depreciation of the facility.

(c) The total cumulative amount of such credits allowed for any facility covered by a certificate shall not exceed fifty percent of the cost of such facility.

(d) The total cumulative amount of credits against state taxes authorized by this chapter shall be reduced by the total amount of any federal investment credit or other federal tax credit actually received by the certificate holder applicable to the facility. This reduction shall be made as an offset against the credit claimed in the first reporting period following the allowance of such investment credit, and thereafter as an offset against any credit balance as it shall become available to the certificate holder.

(3) Applicants and certificate holders shall provide the department with information showing the net commercial value of materials captured or recovered by a facility and shall make all pertinent books and records available for examination by the department for the purposes of determining the credit provided by this chapter. [1981 2nd ex.s. c 9 § 3; 1967 ex.s. c 139 § 6.]

82.34.090 Certified mail—Use of in sending certificates or notice of refusal to issue certificates. The department shall send a certificate or supplement when issued, by certified mail to the applicant. Notice of the department's refusal to issue a certificate or supplement shall likewise be sent to the applicant by certified mail. [1967 ex.s. c 139 § 9.]

82.34.100 Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement—Exemptions from revocation. (1) The department of ecology, after notice to the department and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

(a) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the department shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this chapter or against which the credit provided for by this chapter has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

(b) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70A.15 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(2) A certificate, or supplement thereto, issued pursuant to RCW 82.34.030 may not be revoked if:

(a) The facility is modified, but is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air

and is reasonably adequate to meet the intent and purposes of chapter 70A.15 or 90.48 RCW;

(b) The facility is replaced by a new or different facility that is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air and is reasonably adequate to meet the intent and purposes of chapter 70A.15 or 90.48 RCW;

(c) The facility is modified or removed as a result of an alteration of the production process and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70A.15 or 90.48 RCW;

(d) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70A.15 or 90.48 RCW;

(e) Part of an industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70A.15 or 90.48 RCW; or

(f) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed is altered and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70A.15 or 90.48 RCW.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the department modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified. [2020 c 20 § 1487; 1998 c 9 § 1; 1988 c 127 § 37; 1967 ex.s. c 139 § 10.]

82.34.110 Administrative and judicial review.

Administrative and judicial review of a decision of the control agency or the department shall be in accordance with the applicable provisions of chapters 34.05, 43.21B, 82.03, and 82.32 RCW, as now or hereafter amended. [1975 1st ex.s. c 158 § 2; 1967 ex.s. c 139 § 11.]

Additional notes found at www.leg.wa.gov

82.34.900 Severability—1967 ex.s. c 139. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 ex.s. c 139 § 12.]

Chapter 82.38 RCW FUEL TAX ACT

Sections

82.38.010	Statement of purpose.
82.38.020	Definitions.
82.38.030	Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.
82.38.031	Tax imposed—Intent.

82.38.032	Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements.
82.38.033	Payment of tax by a nonlicensee.
82.38.035	Tax liability.
82.38.050	Tax liability on leased motor vehicles.
82.38.055	Bonding requirements.
82.38.060	Tax computation on mileage basis (<i>as amended by 2013 c 23</i>).
82.38.060	Tax computation on mileage basis (<i>as amended by 2013 c 225</i>).
82.38.065	Dyed special fuel use—Authorization, license required—Imposition of tax.
82.38.066	Dyed special fuel—Requirements—Marking—Notice.
82.38.072	Dyed special fuel—Penalties.
82.38.075	Natural gas, compressed natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device.
82.38.080	Exemptions.
82.38.090	Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception.
82.38.100	Special fuel trip permits—Penalty—Fees.
82.38.110	Application for license—Federal certificate of registry—Investigation—Fee—Bond or security.
82.38.120	Issuance of license—Refusal.
82.38.140	Fuel records—Reports—Inspection.
82.38.150	Periodic tax reports—Forms—Filing—Time extensions during state of emergency.
82.38.160	Computation and payment of tax—Remittance—Electronic funds transfer.
82.38.170	Civil and statutory penalties and interest—Deficiency assessments.
82.38.180	Refunds and credits.
82.38.183	Refund to aeronautics account.
82.38.190	Claim of refund or credit.
82.38.195	Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations.
82.38.200	Suits for recovery of taxes illegally or erroneously collected.
82.38.205	Injunctions—Writs.
82.38.210	Tax lien—Filing.
82.38.220	Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer.
82.38.230	Delinquency—Seizure and sale of property—Notice—Distribution of excess.
82.38.235	Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment.
82.38.245	Bankruptcy proceedings—Notice.
82.38.255	Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties.
82.38.260	Administration and enforcement.
82.38.270	Violations—Penalties.
82.38.275	Investigatory power.
82.38.280	State preempts tax field.
82.38.290	Disposition of funds.
82.38.300	Judicial review and appeals.
82.38.310	Agreement with tribe for fuel taxes.
82.38.320	Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions.
82.38.360	Fuel tax evasion—Seizure and forfeiture.
82.38.365	Fuel tax evasion—Forfeiture procedure.
82.38.370	Fuel tax evasion—Forfeited property.
82.38.375	Fuel tax evasion—Return of seized property.
82.38.380	Fuel tax evasion—Search and seizure.
82.38.385	Rules.

82.38.010 Statement of purpose. The purpose of this chapter is to impose a tax upon fuels used for the propulsion of motor vehicles upon the highways of this state. [2013 c 225 § 101; 1979 c 40 § 1; 1971 ex.s. c 175 § 2.]

Effective date—2015 c 228; 2013 c 225: "Section 110, chapter 225, Laws of 2013 takes effect July 1, 2015. Sections 101 through 109, 111 through 304, and 306 through 647, chapter 225, Laws of 2013 take effect July 1, 2016." [2015 c 228 § 40; 2013 c 225 § 650.]

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

(1) "Blended fuel" means a mixture of fuel and another liquid, other than a de minimis amount of the liquid.

(2) "Blender" means a person who produces blended fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter.

(4) "Bulk transfer-terminal system" means the fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Distributor" means a person who acquires fuel outside the bulk transfer-terminal system for importation into Washington, from a terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the state of Washington.

(9) "Dyed special fuel user" means a person authorized by the internal revenue code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the fuel tax.

(10) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; omission; misrepresentation of fact; or other act of deception;

(b) An intentional: Failure to file a return or report; or other act of deception; or

(c) The unlawful use of dyed special fuel.

(11) "Exempt sale" means the sale of fuel to a person whose use of fuel is exempt from the fuel tax.

(12) "Export" means to obtain fuel in this state for sales or distribution outside the state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(13) "Exporter" means a person who purchases fuel physically located in this state at the time of purchase and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the fuel at the time of exportation is the exporter.

(14) "Fuel" means motor vehicle fuel or special fuel.

(15) "Fuel user" means a person engaged in uses of fuel that are not specifically exempted from the fuel tax imposed under this chapter.

(16) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(17) "Import" means to bring fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(18) "Importer" means a person who imports fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no

importer of record, the owner of the fuel at the time of importation is the importer.

(19) "International fuel tax agreement licensee" means a fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(20) "Licensee" means a person holding a license issued under this chapter.

(21) "Motor vehicle" means a self-propelled vehicle utilizing fuel as a means of propulsion.

(22) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold the chief use of which is as a fuel for the propulsion of motor vehicles or vessels.

(23) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(24) "Person" means any individual, partnership, association, public or private corporation, limited liability company, or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

(25) "Position holder" means a person who holds the inventory position in fuel, as reflected by the records of the terminal operator. A person holds the inventory position if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services. "Position holder" includes a terminal operator that owns fuel in their terminal.

(26) "Rack" means a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(27) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(28) "Removal" means a physical transfer of fuel other than by evaporation, loss, or destruction.

(29) "Special fuel" means diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways, except it does not include motor vehicle fuel.

(30) "Supplier" means a person who holds a federal certificate of registry issued under the internal revenue code and authorizes the person to engage in tax-free transactions of fuel in the bulk transfer-terminal system.

(31) "Terminal" means a fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service.

(32) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(33) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable fuel is transferred from one licensed supplier to another licensed supplier whereby the supplier that is the position holder agrees to deliver taxable fuel to the other supplier or the other supplier's customer at the terminal at which the delivering supplier is the position holder. [2013 c 225 § 102; 2002 c 183 § 1; 2001 c 270 § 4; 1998 c 176 § 50; 1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection. (1) There is levied and imposed upon fuel licensees a tax at the rate of twenty-three cents per gallon of fuel.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of fuel is imposed on fuel licensees. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of fuel is imposed on fuel licensees.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of fuel is imposed on fuel licensees.

(7) Beginning August 1, 2015, an additional and cumulative tax rate of seven cents per gallon of fuel is imposed on fuel licensees.

(8) Beginning July 1, 2016, an additional and cumulative tax rate of four and nine-tenths cents per gallon of fuel is imposed on fuel licensees.

(9) Taxes are imposed when:

(a) Fuel is removed in this state from a terminal if the fuel is removed at the rack unless the removal is by a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is by a fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the fuel immediately before the removal is not a licensed supplier; or

(ii) The removal is at the refinery rack unless the removal is to a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is to a licensed supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensed supplier; or

(ii) The entry is not by bulk transfer;

(d) Fuel enters this state by means outside the bulk transfer-terminal system and is delivered directly to a licensed terminal unless the owner is a licensed distributor or supplier;

(e) Fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the fuel;

(f) Blended fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended fuel subject to tax is the difference between the total number of gallons of blended fuel removed or sold and the number of

gallons of previously taxed fuel used to produce the blended fuel;

(g) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the fuel tax;

(h) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(i) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(j) Fuel is sold by a licensed fuel supplier to a fuel distributor or fuel blender and the fuel is not removed from the bulk transfer-terminal system. [2015 3rd sp.s. c 44 § 103; (2015 3rd sp.s. c 44 § 102 expired July 1, 2016); 2014 c 216 § 201; 2013 c 225 § 103; 2007 c 515 § 21; 2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

Effective date—2015 3rd sp.s. c 44 §§ 103, 105, and 110: "Sections 103, 105, and 110 of this act take effect July 1, 2016." [2015 3rd sp.s. c 44 § 427.]

Contingent expiration date—2015 3rd sp.s. c 44 §§ 101, 102, 104, and 109: "Sections 101, 102, 104, and 109 of this act expire July 1, 2016, if sections 103, 105, and 110 of this act take effect July 1, 2016." [2015 3rd sp.s. c 44 § 428.]

Effective date—2015 c 228; 2014 c 216: "Sections 101, 202, and 207 through 501, chapter 216, Laws of 2014 take effect July 1, 2015. Sections 201 and 203 through 206, chapter 216, Laws of 2014 take effect July 1, 2016." [2015 c 228 § 41; 2014 c 216 § 601.]

Findings—Tax preference performance statement—2014 c 216:

"(1) The legislature finds that current law taxes natural gas as a traditional home heating or electric generation fuel while not taking into account the benefits of natural gas use as a transportation fuel. The legislature further finds that the construction and operation of a natural gas liquefaction plant and compressed natural gas refueling stations as well as the ongoing use of compressed and liquefied natural gas will lead to positive job creation, economic development, environmental benefits, and lower fuel costs. The legislature further finds that it is sound tax policy to provide uniform tax treatment of natural gas used as a transportation fuel, regardless of whether the taxpayer providing the natural gas is a gas distribution business or not, so as to prevent any particular entity from receiving a competitive advantage solely through a structural inefficiency in the tax code.

(2)(a) This subsection is the tax performance statement for this act. The performance statement is only intended to be used for subsequent evaluation of the tax changes made in this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(c) It is the legislature's specific public policy objectives to promote job creation and positive economic development; lower carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions; and secure optimal liquefied natural gas pricing for the state of Washington and other public entities.

(d) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate the following:

(i) The number of employment positions and wages at a natural gas liquefaction facility located in Washington and operated by a gas distribution business where some or all of the liquefied natural gas is sold for use as a transportation fuel. If the average number of employment positions at the liquefaction facility once it is operationally complete equals or exceeds eighteen and average annual wages for employment positions at the facility exceed thirty-five thousand dollars, it is presumed that the public policy objective of job creation has been achieved.

(ii) The estimated total cost of construction of a liquefaction plant by a gas distribution company, including costs for machinery and equipment. If the total cost equals or exceeds two hundred fifty million dollars, it is presumed that the public policy objective of positive economic development has been achieved.

(iii) The estimated fuel savings by the Washington state ferry system and other public entities through the use of liquefied natural gas purchased from a gas distribution business.

(iv) The estimated reduction in carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions, resulting from the use of liquefied natural gas and compressed natural gas as a transportation fuel where the natural gas is sold by a gas distribution business. The emissions of liquefied and compressed natural gas must be specifically compared with an equivalent amount of diesel fuel. If the estimated annual reduction in emissions exceeds the following benchmarks, it is presumed that the public policy objective of reducing emissions has been achieved:

- (A) Three hundred million pounds of carbon dioxide;
- (B) Two hundred thousand pounds of particulates;
- (C) Four hundred thousand pounds of sulfur dioxide; and
- (D) Four hundred fifty thousand pounds of nitrogen dioxide.

(e)(i) The following data sources are intended to provide the informational basis for the evaluation under (d) of this subsection:

- (A) Employment data provided by the state employment security department;
- (B) Ferry fuel purchasing data provided by the state department of transportation;
- (C) Diesel and other energy pricing data found on the United States energy information administration's website; and
- (D) Information provided by a gas distribution business on the annual report required under RCW 82.32.534.

(ii) In addition to the data source described under (e)(i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection.

(3) A gas distribution business claiming the exemption under RCW 82.08.02565 or 82.12.02565 must file the annual report under RCW 82.32.534 or any successor document. In addition to the information contained in the report, the report must also include the amount of liquefied natural gas and compressed natural gas sold by the gas distribution business as a transportation fuel. A gas distribution business is not required to file the annual survey under *RCW 82.32.585, as would otherwise be required under RCW 82.32.808(5).

(4) The joint legislative audit and review committee must perform the review required in this section in a manner consistent with its tax preference review process under chapter 43.136 RCW. The committee must perform the review in calendar year 2025." [2014 c 216 § 101.]

*Reviser's note: RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—2003 c 361: "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

Additional notes found at www.leg.wa.gov

82.38.031 Tax imposed—Intent. It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.38.030 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 33.]

Additional notes found at www.leg.wa.gov

82.38.032 Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements. International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2013 c 225 § 104; 2007 c 515 § 22; 1998 c 176 § 52.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.033 Payment of tax by a nonlicensee. Every person, other than a licensee, who acquires fuel upon which payment of tax is required must, if the tax has not been paid, comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.38.030. The person is subject to the same duties and penalties imposed upon licensees. [2013 c 225 § 208.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.035 Tax liability. (1) A licensed supplier is liable for and must pay tax on fuel as provided in *RCW 82.38.030(7) (a) and (i). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner is liable for and must pay tax on fuel removed from a refinery as provided in *RCW 82.38.030(7)(b).

(3) A licensed distributor is liable for and must pay tax on fuel as provided in *RCW 82.38.030(7)(c).

(4) A licensed blender is liable for and must pay tax on fuel as provided in *RCW 82.38.030(7)(f).

(5) A licensed dyed special fuel user is liable for and must pay tax on fuel as provided in *RCW 82.38.030(7)(g).

(6) A terminal operator is jointly and severally liable for and must pay tax on fuel if, at the time of removal:

(a) The position holder of the fuel is a person other than the terminal operator and is not a licensee;

(b) The terminal operator is not a licensee;

(c) The position holder has an expired internal revenue notification certificate;

(d) The terminal operator has reason to believe that information on the internal revenue notification certificate is false.

(7) A terminal operator is jointly and severally liable for and must pay tax on special fuel if the special fuel is removed and is not dyed or marked in accordance with internal revenue service requirements, and the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating the special fuel is dyed or marked in accordance with internal revenue service requirements.

(8) International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay tax on fuel used to operate motor vehicles on state highways.

(9) Dyed special fuel users are liable for and must pay tax on dyed special fuel used on state highways unless the use of the fuel is exempt from the tax. [2013 c 225 § 105; 2007 c 515 § 23; 2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

*Reviser's note: RCW 82.38.030 was amended by 2015 3rd sp.s. c 44 § 102, changing subsection (7) to subsection (9).

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—2003 c 361: See note following RCW 82.38.030.

Additional notes found at www.leg.wa.gov

82.38.050 Tax liability on leased motor vehicles. (1)

A lessor leasing motor vehicles without drivers to lessees for interstate operation, may be the fuel user when the lessor supplies or pays for the fuel consumed in the motor vehicles. Any lessee may exclude motor vehicles from reports and liabilities pursuant to this chapter, but only if the excluded motor vehicles have been leased from a lessor holding a valid international fuel tax agreement license.

(2) The lessor is responsible for fuel tax licensing and reporting for the operation of motor vehicles leased for less than thirty days. [2013 c 225 § 106; 2007 c 515 § 24; 1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.055 Bonding requirements. (1) A license may

not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for:

- (a) Licensed dyed special fuel users;
- (b) International fuel tax agreement licensees; or
- (c) Licensed fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States, or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. The provisions of this section do not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the

bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license. [2013 c 225 § 201.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.060 Tax computation on mileage basis (as amended by 2013

c 23). In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis, the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his or her entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight. [2013 c 23 § 332; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

82.38.060 Tax computation on mileage basis (as amended by 2013

c 225). ~~(In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight.) If tax on fuel placed in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to adopt such basis. In the absence of records showing the number of miles actually operated per gallon of fuel consumed, fuel consumption must be calculated by the department.~~ [2013 c 225 § 107; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

Reviser's note: RCW 82.38.060 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.065 Dyed special fuel use—Authorization, license required—Imposition of tax.

A person may operate or maintain a licensed or required to be licensed motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the internal revenue code and the person is either the holder of a dyed special fuel user license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the

person is the holder of a dyed special fuel user license issued under this chapter. [2013 c 225 § 108; 2002 c 183 § 3; 1998 c 176 § 56.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.066 Dyed special fuel—Requirements—Marking—Notice. (1) Special fuel satisfies the dyeing and marking requirements of this chapter if it meets the dyeing and marking requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) Notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack;

(b) Provided by a seller of dyed special fuel to the buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump dispensing dyed special fuel and provided by the seller of dyed special fuel to the buyer at the retail pump. [2013 c 225 § 109; 1998 c 176 § 57.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.072 Dyed special fuel—Penalties. (1) Unless the use is exempt from the special fuel tax, or expressly authorized by the federal internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The penalties must be collected and administered under this chapter.

(2) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The penalties must be collected and administered under this chapter.

(3) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(4) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (1) of this section. [2013 c 225 § 204.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.075 Natural gas, compressed natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device. (1) To encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 is imposed upon the use of liquefied natural gas, compressed natural gas, or propane used in any motor vehi-

(2022 Ed.)

cle. The annual license fee must be based upon the following schedule and formula:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$110
28,001 - 36,000	\$150
36,001 and above	\$250

(2) To determine the annual license fee for a registration year, the appropriate dollar amount in the schedule is multiplied by the fuel tax rate per gallon effective on July 1st of the preceding calendar year and the product is divided by 12 cents.

(3) The department, in addition to the resulting fee, must charge an additional fee of five dollars as a handling charge for each license issued.

(4) The vehicle tonnage fee must be prorated so the annual license will correspond with the staggered vehicle licensing system.

(5) A decal or other identifying device issued upon payment of the annual fee must be displayed as prescribed by the department as authority to purchase this fuel.

(6) Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device.

(7) Commercial motor vehicles registered in a foreign jurisdiction under the provisions of the international registration plan are subject to the annual fee.

(8) Motor vehicles registered in a foreign jurisdiction, except those registered under the international registration plan under chapter 46.87 RCW, are exempt from this section.

(9) Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

(10) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter. [2014 c 216 § 202; 2013 c 225 § 110; 1983 c 212 § 1; 1981 c 129 § 1; 1979 c 48 § 1; 1977 ex.s. c 335 § 1.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.080 Exemptions. (1) The following sales of special fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the state of Washington, any county, or any municipality when the fuel is used for street and highway construction and maintenance purposes in motor vehicles owned and operated by the state, county, or municipality;

(b) Sales for use in publicly owned firefighting equipment;

(c) Sales to the United States government;

(d) Sales to a private, nonprofit transportation provider regulated under chapter 81.66 RCW when the fuel is for use

in providing transportation services for persons with special transportation needs;

(e) Sales of waste vegetable oil as defined under RCW 82.08.0205, if the oil is used to manufacture biodiesel;

(f)(i) Sales to privately owned urban passenger transportation systems and carriers as defined in chapters 81.68 and 81.70 RCW. No exemption or refund may be granted for special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(ii) For purposes of this subsection (1)(f), "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, do not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles or trackless trolleys are located; and

(g)(i) Sales to publicly owned and operated urban passenger transportation systems.

(ii) For the purposes of this subsection (1)(g), "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW.

(2) The following sales of motor vehicle fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the armed forces of the United States or to the national guard when the fuel is used exclusively in ships or for export from this state;

(b) Sales to foreign diplomatic and consular missions, if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country; and

(c) Sales of fuel used exclusively for racing that is not legally allowed on the public highways of this state. [2013 c 225 § 111; 2009 c 352 § 1; 2008 c 237 § 1; 1998 c 176 § 60; 1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.090 Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception. (1) It is unlawful for any person to engage in business in this state as any of the following unless the person is the holder of a license issued by the department authorizing the person to engage in that business:

- (a) Fuel supplier;
- (b) Fuel distributor;
- (c) Fuel blender;
- (d) Terminal operator;
- (e) Dyed special fuel user; or
- (f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity; however, a fuel supplier is not required to obtain a separate license classification for fuel distributor or fuel blender.

(3) Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [2013 c 225 § 112; 1998 c 176 § 61; 1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.100 Special fuel trip permits—Penalty—Fees.

(1) Any special fuel user operating a motor vehicle in this state for commercial purposes may apply for a special fuel trip permit. The permit:

(a) Is good for a period of three consecutive days beginning and ending on the dates shown on the face of the permit issued;

(b) Is valid only for the vehicle for which it is issued;

(c) Must identify, as the department may require, the vehicle for which it is issued; and

(d) Must be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state.

(2) Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) Blank special fuel trip permits may be obtained from field offices of the department of transportation, department of licensing, county auditors or other agents, or subagents appointed by the department for the fee provided in *RCW 46.17.400 (1)(f) and (4). The fee is in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state. A report of mileage may not be required with respect to the motor vehicle. Special fuel trip permits may not be issued if the applicant has outstanding fuel taxes, penalties, or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed.

(4) Special fuel trip permits are not subject to exchange, refund, or credit. [2010 c 161 § 907. Prior: 2007 c 515 § 25;

2007 c 419 § 17; 1999 c 270 § 2; 1998 c 176 § 62; 1983 c 78 § 1; 1979 c 40 § 6; 1973 1st ex.s. c 156 § 3; 1971 ex.s. c 175 § 11.]

*Reviser's note: RCW 46.17.400 was amended by 2011 c 171 § 62, deleting subsection (4).

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Short title—2007 c 419: See notes following RCW 46.16A.010.

Additional notes found at www.leg.wa.gov

82.38.110 Application for license—Federal certificate of registry—Investigation—Fee—Bond or security.

(1) Application for a license must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires. For purposes of this section, the term "applicant" has the same meaning as "person" as provided in RCW 82.38.020.

(2) An application for a license other than an application for a dyed special fuel user or international fuel tax agreement license must contain the following information to the extent it applies to the applicant:

(a) Proof the department may require concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and partner, officer, or director;

(d) A bank reference and whether the applicant or partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant or partner, officer, or director has been convicted of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years.

(3) An applicant must identify each state, province, or country the applicant intends to import fuel from by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(4) An applicant must identify each state, province, or country the applicant intends to export fuel to by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(5) An applicant for a fuel supplier or terminal operator license must have the appropriate federal certificate of registry issued by the internal revenue service for the activity in which the applicant is engaging.

(6) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, a licensed distributor may provide evidence to the department of sufficient assets to adequately meet fuel tax payments, penalties, interest, or other obligations arising out of this chapter.

(7) An application for a dyed special fuel user license must be made in a manner prescribed by the department.

(8) An application for an international fuel tax agreement license must be made in a manner prescribed by the department. A fee of ten dollars per set of international fuel tax

(2022 Ed.)

agreement decals issued to each applicant or licensee must be charged.

(9) For the purpose of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, Canadian province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history. [2013 c 225 § 113; 2002 c 352 § 26; 2001 c 270 § 8; 1998 c 176 § 63; 1996 c 104 § 8; 1988 c 122 § 2; 1983 c 242 § 2; 1979 c 40 § 7; 1977 c 26 § 1; 1973 1st ex.s. c 156 § 4; 1971 ex.s. c 175 § 12.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.120 Issuance of license—Refusal. (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle, special, or aircraft fuel, which has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before a refusal under this section, the department must grant the applicant a hearing and must grant the applicant at least twenty days written notice of the time and place thereof. [2013 c 225 § 114. Prior: 1998 c 176 § 64; 1998 c 115 § 4; 1996 c 104 § 9; 1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.140 Fuel records—Reports—Inspection. (1)

Every person importing, manufacturing, refining, transporting, blending, or storing fuel must keep for a period of five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all fuel purchased or received and all fuel sold, delivered, or used by them. Records must show:

- (a) The date of receipt;
 - (b) The name and address of the person from whom purchased or received;
 - (c) The number of gallons received at each place of business or place of storage in the state of Washington;
 - (d) The date of sale or delivery;
 - (e) The number of gallons sold, delivered, or used for taxable purposes;
 - (f) The number of gallons sold, delivered, or used for any purpose not subject to the fuel tax;
 - (g) The name, address, and fuel license number of the purchaser if the fuel tax is not collected on the sale or delivery;
 - (h) The physical inventories of fuel and petroleum products on hand at each place of business at the end of each month;
 - (i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline and other petroleum products which may be used in the compounding, blending, or manufacturing of fuel.
- (2)(a) All international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highways in vehicles licensed for highway operation must maintain detailed mileage records on an individual vehicle basis.
- (b) Operating records must show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.
- (c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person transporting fuel must at the request of any law enforcement

officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle. [2013 c 225 § 115; 2007 c 515 § 27; 1998 c 176 § 66. Prior: 1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.150 Periodic tax reports—Forms—Filing—Time extensions during state of emergency. (1) For the purpose of determining the amount of liability for the tax imposed under this chapter, each licensee, other than an international fuel tax agreement licensee or a dyed special fuel user, must file monthly tax reports with the department.

(2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, must file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, must file reports quarterly. International fuel tax agreement licensees must file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee must file reports annually.

(3) A licensee, other than international fuel tax agreement licensee, must file a tax report on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(4) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(5) The department in order to insure payment of the tax or to facilitate administration of this chapter, may require the filing of reports and tax remittances at intervals other than one month.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper. [2013 c 225 § 116; 2008 c 181 § 506; 2007 c 515 § 28; 1998 c 176 § 67; 1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer. (1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) A fuel distributor must remit tax on fuel purchased from a supplier, and due to the state for that reporting period, to the special fuel supplier. This provision does not apply to fuel imported by a distributor under RCW 82.38.035(3).

(3) At the election of the distributor, payment of the fuel tax owed on fuel purchased from a supplier must be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than seven business days before the twenty-sixth day of the following month. This election is subject to a condition that the distributor's remittances of all amounts of fuel tax due to the supplier must be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section.

(4) Except as provided in subsection (5) of this section, the tax return must be accompanied by a remittance payable to the state treasurer covering the tax amount due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day is the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month, the tax must be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2013 c 225 § 117; 2005 c 260 § 2; 1998 c 176 § 68; 1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.170 Civil and statutory penalties and interest—Deficiency assessments. (1) If any person fails to pay any taxes due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the person must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is added to the amount of deficiency a penalty of twenty-five percent of the deficiency, in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must

assess the person a penalty of one hundred percent of the tax in addition to the tax owed.

(7) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) Except in the case of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsections (1) and (2) of this section may petition for a reassessment within thirty days after service upon the licensee of the assessment. If such petition is not filed within such thirty day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(c) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department, a penalty of ten percent of the amount of the tax is added to the assessment.

(11) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(12) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license.

(13) Any person who, upon audit or investigation by the department, is found to have not paid fuel taxes as required by this chapter is subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who will hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [2013 c 225 § 118; 2002 c 183 § 4; 1998 c 176 § 70; 1996 c 104 § 12; 1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.180 Refunds and credits. (1) Any person who has purchased fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(a) Fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state. However, a refund may not be made for motor vehicle fuel consumed by a motor vehicle required to be registered under chapter 46.16A RCW.

(b) Fuel exported for use outside of this state. Fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(c) Tax, penalty, or interest erroneously or illegally collected or paid.

(d) Fuel which is lost or destroyed, while the licensee is the owner thereof, through fire, lightning, flood, windstorm, or explosion.

(e) Fuel of five hundred gallons or more which is lost or destroyed while the licensee is the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

(f) Fuel used in power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or by a formula determined by the department.

(2) Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Special fuel used for the operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway;

(b) Special fuel used by special mobile equipment as defined in RCW 46.04.552;

(c) Special fuel used in a motor vehicle for movement between two pieces of private property wherein the movement is incidental to the primary use of the vehicle; and

(d) Special fuel inadvertently mixed with dyed special fuel.

(3) Any person who has purchased motor vehicle fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Motor vehicle fuel used by a private, nonprofit transportation provider regulated under chapter 81.66 RCW to provide transportation services for persons with special transportation needs; and

(b) Motor vehicle fuel used by an urban passenger transportation system. For purposes of this subsection "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity of over fifteen persons,

over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to the routing by the same transportation system, do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles or trackless trolleys are located. No refunds are authorized for fuel used on any trip where any portion of the trip is more than fifteen road miles beyond the corporate limits of the city in which the trip originated.

(4) Recovery for such loss or destruction under subsections (1)(d) or (e) or (2)(d) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, it may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on fuel alleged to be lost or destroyed.

(5) No refund or claim for credit may be approved by the department unless the gallons of fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit are not be [are not] allowed for anticipated nontaxable use or events. [2013 c 225 § 119; 2007 c 515 § 29; 1998 c 176 § 71; 1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.183 Refund to aeronautics account. At least once each fiscal year, the director must request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund is considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director must also remit from the motor vehicle fund the taxes required by RCW 82.12.0256(2)(d) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with RCW 82.12.0256(2)(d) does not exceed the unclaimed refunds. [2013 c 225 § 207.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.190 Claim of refund or credit. (1) Claims under RCW 82.38.180 must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, with the exception of the credits or refunds allowed under RCW 82.38.180(1)(c), and if not filed within this period the right to refund is barred.

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(1)(c). The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period. Payment credits may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department must provide written notice of its action to the claimant.

(5)(a) Interest must be paid upon any refundable amount or credit due under RCW 82.38.180(1)(c) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department.

(ii) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest.

(6) The department must pay interest of one percent on any refund payable under RCW 82.38.180 (1) or (2), except as provided in subsection (5)(a) of this section, which is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business-day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar-day period. [2013 c 225 § 120; 1998 c 176 § 74; 1997 c 183 § 10; 1996 c 91 § 4; 1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.195 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or

(2022 Ed.)

refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed. [2013 c 225 § 202.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.200 Suits for recovery of taxes illegally or erroneously collected. (1) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.38.180 unless a claim for refund or credit has been duly filed pursuant to RCW 82.38.190.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.38.190, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any special fuel tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

(5) In any judgment, interest shall be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [1971 ex.s. c 175 § 21.]

82.38.205 Injunctions—Writs. No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [2013 c 225 § 206.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.210 Tax lien—Filing. (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there will be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delin-

quent taxes, penalties, and interest owed. [2013 c 225 § 121; 1998 c 176 § 75; 1979 c 40 § 15; 1971 ex.s. c 175 § 22.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.220 Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer. (1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render judgment, plus costs by default against the person. [2013 c 225 § 122; 1998 c 176 § 76; 1994 c 262 § 26; 1983 c 242 § 5; 1979 c 40 § 16; 1971 ex.s. c 175 § 23.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess. (1) If a person is delinquent in the payment of any obligation, and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of excise tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person, and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a

notice of delinquency and, demand for payment of the amount due. [2013 c 225 § 123; 2007 c 218 § 78; 1998 c 176 § 77; 1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

82.38.235 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. When an assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state. [2013 c 225 § 124; 2001 c 146 § 14; 1998 c 176 § 78; 1979 c 40 § 22.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.245 Bankruptcy proceedings—Notice. A licensee who files a petition for bankruptcy, or against whom a petition for bankruptcy is filed, must notify the department within ten days of the filing, including the name and location of the court in which the petition was filed. [2013 c 225 § 125; 1997 c 183 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.255 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing. [2013 c 225 § 203.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.260 Administration and enforcement. (1) The department may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand, the department does not lose any right of examination.

(3) The department may require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the department.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of fuel by any person, if the other furnishes like information.

(7) The department may enter into a fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian province for the administration, collection, and enforcement of their respective fuel taxes.

(8) For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to another agreement under chapter 82.41 RCW, chapter 82.41 RCW controls to the extent of any conflict.

(9) The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [2013 c 225 § 126; 1998 c 176 § 80; 1995 c 274 § 25; 1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.270 Violations—Penalties. (1) It is unlawful for a person to:

(a) Have dyed special fuel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed special fuel in bulk storage for highway use, unless the person maintains an uncanceled dyed special fuel user license or is otherwise exempt under this chapter;

(b) Hold dyed special fuel for use, intended use, sale, or intended sale in a manner in violation of this chapter;

(c) Evade a tax or fee imposed under this chapter;

(d) File a false statement of a material fact regarding the administration and enforcement of this chapter or otherwise commit any fraud or make a false representation on a fuel tax license application, fuel tax refund application, fuel tax return, fuel tax record, or fuel tax refund claim;

(e) Act as a fuel licensee unless the person holds an uncanceled fuel license issued by the department authorizing the person to engage in that business;

(f) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(g) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(h) Refuse to permit the department or its authorized representative to examine the person's books, papers, records,

(2022 Ed.)

storage facilities, and equipment used in conjunction with the use, distribution, or sale of fuel;

(i) To display, or cause to permit to be displayed, or to have in possession, any fuel license knowing the same to be fictitious, or to have been suspended, canceled, revoked, or altered;

(j) To lend to, or knowingly permit the use of, by one not entitled thereto, any fuel license issued to the person lending it or permitting it to be used;

(k) To display or to represent as one's own any fuel license not issued to the person displaying the same;

(l) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which the person is not specifically entitled by government regulations, for the purpose of obtaining any fuel or other inflammable petroleum products upon which the fuel tax has not been paid;

(m) To sell or dispense natural gas or propane for their own use or the use of others into tanks of vehicles powered by this fuel when the vehicle does not display a valid decal or other identifying device as provided in RCW 82.38.075.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section and violations of subsection (1)(c) through (g) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of subsection (1)(h) through (m) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1)(c) through (g) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax is personally liable to the state for the amount of the tax. [2013 c 225 § 127; 2007 c 515 § 30; 2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.275 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules or regulations issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require

the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring him or her to appear before the director, or the officer designated by him or her to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [2013 c 23 § 333; 1979 c 40 § 20.]

82.38.280 State preempts tax field. (1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing fuel, and no city, town, county, township or other subdivision or municipal corporation of the state may levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state. [2013 c 225 § 128; 2010 c 106 § 231; 2003 c 350 § 6; 1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.38.290 Disposition of funds. (1) Unless directed otherwise in this section, all taxes, fees, assessments, civil and criminal penalties, interest, and proceeds from sales of forfeited property collected under this chapter must be deposited into the motor vehicle fund.

(2) The penalty imposed in RCW 82.38.270(4)(b) must be deposited into the multimodal transportation account.

(3) One cent per gallon must be deducted from each motor vehicle fuel marine use refund claim and deposited into the coastal protection fund.

(4) Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter must be paid to the current expense fund of the county where collected and the remainder deposited into the motor vehicle fund. All fees, fines, forfeitures, and penalties collected or assessed by a district court must be remitted as provided in chapter 3.62 RCW. [2013 c 225 § 129; 1971 ex.s. c 175 § 30.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.300 Judicial review and appeals. Judicial review and appeals shall be governed by the Administrative Procedure Act, chapter 34.05 RCW. [1971 ex.s. c 175 § 31.]

82.38.310 Agreement with tribe for fuel taxes. (1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means

to address any tribal immunities or any preemption of the fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all fuel only from persons or companies operating lawfully in accordance with this chapter as a fuel distributor, supplier, or blender, or from a tribal distributor, supplier, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement are deemed personal information under RCW 42.56.230 (4)(b) and are exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2013 c 225 § 130; 2007 c 515 § 31; 1995 c 320 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions. (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee must pay fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule must be provided in a form and manner determined by the department and must contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report

to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) Only a licensed fuel supplier or fuel distributor may sell special fuel to a special authorization holder in the manner prescribed by this section.

(4) A fuel supplier or distributor who sells fuel under the special authorization provisions of this section is not liable for the fuel tax on the fuel. The fuel supplier or distributor must report such sales, in a manner prescribed by the department, at the time the fuel supplier or distributor submits the monthly tax report. [2013 c 225 § 131; 2007 c 515 § 32; 1998 c 176 § 83.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.360 Fuel tax evasion—Seizure and forfeiture.

(1) The following are subject to seizure and forfeiture:

(a) Fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Fuel blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing must give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2013 c 225 § 132; 2003 c 358 § 7.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.365 Fuel tax evasion—Forfeiture procedure.

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol must proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol must list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol must list and particularly describe in duplicate the fuel seized. The selling price of the fuel seized must be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel must be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture.

(4) The state patrol must, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department must promptly return the conveyance seized, and

money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2013 c 225 § 133; 2003 c 358 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.370 Fuel tax evasion—Forfeited property.

When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. [2013 c 225 § 134; 2003 c 358 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.375 Fuel tax evasion—Return of seized property. (1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 10.]

Additional notes found at www.leg.wa.gov

82.38.380 Fuel tax evasion—Search and seizure.

When the state patrol has good reason to believe that fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge must issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2013 c 225 § 135; 2003 c 358 § 11.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.385 Rules. The department and the state patrol must adopt rules necessary to implement RCW 82.38.360 through 82.38.380. [2013 c 225 § 136; 2003 c 358 § 12.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

Chapter 82.41 RCW

MULTISTATE MOTOR FUEL TAX AGREEMENT

Sections

82.41.010	Purpose.
82.41.020	Definitions.
82.41.030	Motor fuel tax cooperative agreement authorized—Prohibition.

82.41.040	Amount of tax collected for this state.
82.41.050	Provisions of agreement.
82.41.070	Audits.
82.41.080	Investigatory power.
82.41.090	Appeal procedures.
82.41.100	Exchange of information.
82.41.110	Construction and application.
82.41.120	Implementing rules required.

82.41.010 Purpose. It is the purpose of this chapter to simplify the confusing, unnecessarily duplicative, and burdensome motor fuel use tax licensing, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the state of Washington to participate in a multistate motor fuel tax agreement for the administration, collection, and enforcement of those states' motor fuel use taxes. [1982 c 161 § 1.]

82.41.020 Definitions. As used in this chapter unless the context clearly requires otherwise:

- (1) "Department" means the department of licensing;
- (2) "Motor fuel" means all combustible gases and liquids used for the generation of power for propulsion of motor vehicles;
- (3) "Motor carrier" means an individual, partnership, firm, association, or private or public corporation engaged in interstate commercial operation of motor vehicles, any part of which is within this state or any other state which is party to an agreement under this chapter;
- (4) "State" means a state, territory, or possession of the United States, the District of Columbia, a foreign country, or a state or province of a foreign country;
- (5) "Base state" means the state in which the motor carrier is legally domiciled, or in the case of a motor carrier who has no legal domicile, the state from or in which the motor carrier's vehicles are most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled;
- (6) "Agreement" means a motor fuel tax agreement under this chapter;
- (7) "Licensee" means a motor carrier who has been issued a fuel tax license under a motor fuel tax agreement. [1982 c 161 § 2.]

82.41.030 Motor fuel tax cooperative agreement authorized—Prohibition. The department may enter into a motor fuel tax cooperative agreement with another state or states which provides for the administration, collection, and enforcement of each state's motor fuel taxes on motor fuel used by motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to vehicle licensing, size, weight, load, or operation of motor vehicles upon the public highways of this state. [1982 c 161 § 3.]

82.41.040 Amount of tax collected for this state. The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this chapter shall be determined as provided in chapter 82.38 RCW. [1995 c 274 § 26; 1982 c 161 § 4.]

82.41.050 Provisions of agreement. An agreement entered into under this chapter may provide for:

- (1) Defining the classes of motor vehicles upon which taxes are to be collected under the agreement;
- (2) Establishing methods for base state fuel tax licensing, license revocation, and tax collection from motor carriers on behalf of the states which are parties to the agreement;
- (3) Establishing procedures for the granting of credits or refunds on the purchase of excess tax-paid fuel;
- (4) Defining conditions and criteria relative to bonding requirements, including criteria for exemption from bonding;
- (5) Establishing tax reporting periods not to exceed one calendar quarter, and tax report due dates not to exceed one calendar month after the close of the reporting period;
- (6) Penalties and interest for filing of tax reports after the due dates prescribed by the agreement;
- (7) Establishing procedures for forwarding of fuel taxes, penalties, and interest collected on behalf of another state to that state;
- (8) Recordkeeping requirements for licensees; and
- (9) Any additional provisions which will facilitate the administration of the agreement. [1982 c 161 § 5.]

82.41.070 Audits. The agreement may require the department to perform audits of licensees, or persons required to be licensed, based in this state to determine whether motor fuel taxes to be collected under the agreement have been properly reported and paid to each state party to the agreement. The agreement may authorize other states to perform audits on licensees, or persons required to be licensed, based in their states on behalf of the state of Washington and forward the audit findings to the department. Such findings may be served upon the licensee or such other person in the same manner as audits performed by the department.

The agreement shall not preclude the department from auditing the records of any person who has used motor fuels in this state. Any licensee or person required to be licensed from whom the department has requested records shall make the records available at the location designated by the department or may request the department to audit such records at that licensee's or person's place of business. If the place of business is located outside this state, the department may require the licensee or such other person to reimburse the department for authorized per diem and travel expenses. [1982 c 161 § 7.]

82.41.080 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director, or the

officer designated by the director, to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [2013 c 23 § 334; 1982 c 161 § 8.]

82.41.090 Appeal procedures. The agreement shall specify procedures by which a licensee may appeal a license revocation or audit assessment by the department. Such appeal procedures shall be in accordance with chapters 34.05 and 82.38 RCW. [1982 c 161 § 9.]

82.41.100 Exchange of information. The agreement may require each state to forward to other states any information available which relates to the acquisition, sale, use, or movement of motor fuels by any licensee or person required to be licensed. The department may further disclose to other states information which relates to the persons, offices, motor vehicles and other real and personal property of persons licensed or required to be licensed under the agreement. [1982 c 161 § 10.]

82.41.110 Construction and application. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it for the purpose of participating in a multistate motor fuel tax agreement. [1982 c 161 § 11.]

82.41.120 Implementing rules required. The department shall adopt such rules as are necessary to implement this chapter and any agreement entered into under this chapter. [1982 c 161 § 12.]

Chapter 82.42 RCW AIRCRAFT FUEL TAX

Sections

82.42.010	Definitions.
82.42.020	Aircraft fuel tax imposed—Rate.
82.42.030	Exemptions.
82.42.040	Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement (<i>as amended by 2013 c 23</i>).
82.42.040	Application—Bond—Investigation—Fee—Penalty for false statement (<i>as amended by 2013 c 225</i>).
82.42.055	Computation and payment of tax—Remittance—Electronic funds transfer.
82.42.065	Delinquency.
82.42.067	Delinquency—Seizure and sale of property.
82.42.068	Payment of tax by a nonlicensee.
82.42.075	Bonding requirements.
82.42.085	Violations—Penalties.
82.42.090	Tax proceeds—Disposition—Aeronautics account.
82.42.095	Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations.
82.42.100	Enforcement.
82.42.110	Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement.
82.42.115	Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment.
82.42.118	Civil and statutory penalties and interest—Deficiency assessments.
82.42.125	Bankruptcy proceedings—Notice.
82.42.130	Administration and enforcement.
82.42.135	Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties.
82.42.140	Periodic tax reports.
82.42.145	Fuel records.
82.42.200	Injunctions—Writs.

82.42.205	Suits for recovery of taxes illegally or erroneously collected.
82.42.210	Denial—Suspension—Revocation.
82.42.220	Claim of refund or credit.
82.42.230	Refunds.
82.42.240	Remedies cumulative.
82.42.250	Tax lien.

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

(1) "Air carrier" means any airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general population for compensation or hire, and operates at least fifteen round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

(2) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

(3) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft.

(4) "Dealer" means any person engaged in the retail sale of aircraft fuel.

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

(6) "Director" means the director of licensing.

(7) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and includes any dealer from whom the tax hereinafter imposed has not been collected.

(8) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

(9) "Person" means every natural person, firm, partnership, association, or private or public corporation. [2013 c 225 § 301; 1983 c 49 § 1; 1982 1st ex.s. c 25 § 1; 1979 c 158 § 229; 1969 ex.s. c 254 § 1; 1967 ex.s. c 10 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.020 Aircraft fuel tax imposed—Rate. There is levied upon every distributor of aircraft fuel, an excise tax at the rate of 18 cents on each gallon of aircraft fuel sold, delivered, or used in this state. There must be collected from every user of aircraft fuel either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020. The taxes imposed by this chapter must be collected and paid to the state but once in respect to any aircraft fuel. [2022 c 182 § 201; 2013 c 225 § 302; 2005 c 341 § 3; 2003 c 375 § 5;

1996 c 104 § 13; 1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.030 Exemptions. The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state does not apply to:

(1) Aircraft fuel sold for export and exported from this state;

(2) Aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce;

(3) Aircraft fuel sold to an agency of the United States government;

(4) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by an air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the federal aviation act of 1958, P.L. 85-726, as amended;

(5) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by a local service commuter;

(6) Aircraft fuel sold to emergency medical air transport entities;

(7) Aircraft fuel sold to a licensed aircraft fuel distributor;

(8) Aircraft fuel delivered into the bulk storage tank of a certified user;

(9) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

(10) Aircraft fuel used in the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers. [2013 c 225 § 303; 2005 c 341 § 4; 1989 c 193 § 4; 1982 1st ex.s. c 25 § 4; 1967 ex.s. c 10 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement (as amended by 2013 c 23). The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he or she may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of *chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under *RCW 82.36.060; he or she shall provide such forms and may require such reports or statements as in his or her determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his or her representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2013 c 23 § 335; 2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

***Reviser's note:** Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

82.42.040 Application—Bond—Investigation—Fee—Penalty for false statement (as amended by 2013 c 225). ((The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under RCW 82.36.060; he shall provide such forms and may require such reports or statements as in his determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation,

or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. (1) Application for a license must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires.

(2) For purposes of this section, the term "applicant" has the same meaning as provided for "person" in RCW 82.42.010.

(3) An application for a license must contain the following information to the extent it applies to the applicant:

(a) Proof, as the department may require, concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and any partner, officer, or director of the applicant;

(d) A bank reference and whether the applicant or any partner, officer, or director of the applicant has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant has been adjudged guilty of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years;

(f) Each state, province, or country that the applicant intends to import fuel from by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country; and

(g) Each state, province, or country that the applicant intends to export fuel to by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country.

(4) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, an applicant may provide evidence to the department of sufficient assets to adequately meet tax payments, penalties, interest, or other obligations arising out of this chapter.

(5) For the purposes of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history.

(6) An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2013 c 225 § 304; 2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

Reviser's note: RCW 82.42.040 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.055 Computation and payment of tax—Remittance—Electronic funds transfer. (1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) An aircraft fuel distributor is liable for and must pay the tax imposed under RCW 82.42.020 to the department on or before the twenty-fifth day of the month immediately following the reporting period. The tax report required in RCW 82.42.140 must accompany the remittance.

(3) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the

payment due date falls on a Saturday, Sunday, or legal holiday, payment is due on the state business day immediately preceding the due date.

(4) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2013 c 225 § 405.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.065 Delinquency. (1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render a judgment, plus costs by default against the person. [2013 c 225 § 407.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.067 Delinquency—Seizure and sale of property. (1) If a person is delinquent in the payment of any obligation and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, succes-

sors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a notice of delinquency and demand for payment of the amount due. [2013 c 225 § 408.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.068 Payment of tax by a nonlicensee. Every person, other than a licensee, who acquires fuel upon which payment of tax is required, if the tax has not been paid, must comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.42.020. The person is subject to the same duties and penalties imposed upon licensees. [2013 c 225 § 412.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.075 Bonding requirements. (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for licensees properly bonded under the provisions of chapter 82.38 RCW or licensed aircraft fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly aircraft fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly aircraft fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. This subsection does not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license. [2013 c 225 § 403.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.085 Violations—Penalties. (1) It is unlawful for a person to:

- (a) Evade a tax or fee imposed under this chapter;
- (b) Knowingly assist another person to evade a tax or fee imposed by this chapter;
- (c) File a false statement of a material fact or otherwise commit any fraud or make a false representation on an aircraft fuel tax license application, aircraft fuel tax refund

application, aircraft fuel tax return, aircraft fuel tax record, or aircraft fuel tax refund claim;

(d) Act as an aircraft fuel distributor unless the person holds a license issued by the department authorizing the person to engage in that business;

(e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering aircraft fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(f) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of aircraft fuel;

(g) To display, or cause to permit to be displayed, or to have in possession, an aircraft fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked, or altered;

(h) To lend to, or knowingly permit the use of, by one not entitled thereto, any aircraft fuel license issued to the person lending it or permitting it to be used;

(i) To display or to represent as one's own any aircraft fuel license not issued to the person displaying the same; and

(j) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which he or she is not specifically entitled by government regulations, for the purpose of obtaining any aircraft fuel upon which the state tax has not been paid.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of (1)(c) through (j) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1)(a) through (b) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax is personally liable to the state for the amount of the tax. [2013 c 225 § 420.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.090 Tax proceeds—Disposition—Aeronautics account. All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be (2022 Ed.)

transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund. [2017 3rd sp.s. c 25 § 42; (2013 c 225 § 305 repealed by 2015 c 228 § 39); 1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.095 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed. [2013 c 225 § 406.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.100 Enforcement. The director is charged with the enforcement of the provisions of this chapter and rules and regulations promulgated hereunder. The director may, in his or her discretion, call on the state patrol or any peace officer in the state, who shall then aid in the enforcement of this chapter or any rules or regulations promulgated hereunder. [2013 c 23 § 336; 1967 ex.s. c 10 § 10.]

82.42.110 Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement. Every person other than a distributor who acquires any aircraft fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such aircraft fuel into this state and sells, delivers, or in any manner uses it in this state, if the tax has not been paid, is subject to the provisions of this chapter provided for aircraft fuel distributors and must pay a tax at the rate computed under RCW 82.42.020 for each gallon thereof so sold, delivered, or used in the manner provided for distributors. The proceeds of the tax imposed by this section must be distributed in the manner provided for the distribution of the aircraft fuel tax in RCW 82.42.090. For failure to comply with the terms of this chapter, such person is subject to the same penalties imposed upon distributors. The director must pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing herein must be construed as classifying such persons as distributors. [2013 c 225 § 306; 1982 1st ex.s. c 25 § 9; 1971 ex.s. c 156 § 5.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.115 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. When an

assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state. [2013 c 225 § 402.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.118 Civil and statutory penalties and interest—Deficiency assessments. (1) If any licensee fails to pay any taxes due the state of Washington within the time prescribed in this chapter, the licensee must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, a penalty of twenty-five percent of the deficiency must be added to the amount of deficiency, which is in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person along with a penalty of one hundred percent of the tax.

(7) Any fuel tax, penalties, and interest payable under this chapter bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsection (2) or (3) of this section may petition for a reassessment within thirty days after service upon the licensee of the assessment. If such petition is not filed within such thirty-day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty-day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(11) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department a penalty of ten percent of the amount of the tax must be added to the assessment.

(12) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(13) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license. [2013 c 225 § 404.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.125 Bankruptcy proceedings—Notice. A licensee who files a bankruptcy petition, or against whom a petition for bankruptcy is filed, must notify the department of the filing within ten days of the filing. The notice must include the name and location of the court in which the petition was filed. [2013 c 225 § 307; 1997 c 183 § 11.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.130 Administration and enforcement. (1) The department may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative is empowered to examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using aircraft fuel and to investigate the disposition any person makes of aircraft fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand the department does not lose any right of examination.

(3) The director may, from time to time, require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the director.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction

tion upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of aircraft fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of aircraft fuel by any person if the other furnishes like information.

(7) The department may enter into an aircraft fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian Province for the administration, collection, and enforcement of their respective fuel taxes.

(8) The foregoing remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [2013 c 225 § 401.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.135 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing. [2013 c 225 § 409.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.140 Periodic tax reports. (1) For the purpose of determining the amount of liability for the tax imposed under this chapter, each aircraft fuel distributor must file monthly tax reports with the department.

(2) Tax reports must be filed on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(3) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(4) The department in order to insure payment of the tax or to facilitate administration of this chapter may require the filing of reports and tax remittances at intervals other than one month.

(5) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper. [2013 c 225 § 413.]

Effective date—2013 c 225: See note following RCW 82.38.010.

(2022 Ed.)

82.42.145 Fuel records. (1) Every person importing, manufacturing, refining, transporting, blending, or storing aircraft fuel must keep for a period of five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all aircraft fuel purchased or received and all aircraft fuel sold, delivered, or used by them.

(2) Records must show:

(a) The date of receipt;

(b) The name and address of the person from whom purchased or received;

(c) The number of gallons received at each place of business or place of storage in the state of Washington;

(d) The date of sale or delivery;

(e) The number of gallons sold, delivered, or used for taxable purposes;

(f) The number of gallons sold, delivered, or used for any purpose not subject to tax;

(g) The name, address, and aircraft fuel license number of the purchaser if the fuel tax is not collected on the sale or delivery;

(h) The physical inventories of aircraft fuel and petroleum products on hand at each place of business at the end of each month;

(i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline, and other petroleum products which may be used in the compounding, blending, or manufacturing of aircraft fuel.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering aircraft fuel to submit periodic reports to the department regarding the disposition of the aircraft fuel. The reports must be on forms prescribed by the department and must contain information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person transporting fuel must at the request of any law enforcement officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle. [2013 c 225 § 414.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.200 Injunctions—Writs. No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [2013 c 225 § 410.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.205 Suits for recovery of taxes illegally or erroneously collected. (1) No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.42.020 unless a claim for refund or credit has been duly filed pursuant to RCW 82.42.220.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.42.220, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment must first be credited on any aircraft fuel tax due and payable from the plaintiff. The balance of the judgment must be refunded to the plaintiff.

(5) In any judgment, interest must be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [2013 c 225 § 415.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.210 Denial—Suspension—Revocation. (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which, has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before such refusal, suspension, or revocation the department must grant the applicant a hearing and must grant the applicant at least twenty days' written notice of the time and place thereof. [2013 c 225 § 411.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.220 Claim of refund or credit. (1) Claims for refund or credit for aircraft fuel taxes paid under this chapter must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of aircraft fuel taxes must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowed and if not filed within this period the right to refund is barred; or

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowed for aircraft fuel tax licensees.

(4) The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period.

(5) Payment credits may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(6) Within thirty days after disallowing any refund claim in whole or in part, the department must provide written notice of its action to the claimant.

(7)(a) Interest must be paid upon any refundable amount or credit due at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department; and

(ii) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, interest is not allowed.

(8) The department must pay interest of one percent on any refund payable that is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar day period. [2013 c 225 § 416.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.230 Refunds. Any person who has purchased aircraft fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(1) Aircraft fuel used in aircraft that both operate from a private, nonstate-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals;

(2) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

(3) Aircraft fuel used in the operation of aircraft when the operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers. [2013 c 225 § 417.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.240 Remedies cumulative. The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election to pursue any remedy to the exclusion of another. [2013 c 225 § 418.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.250 Tax lien. (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there must be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed. [2013 c 225 § 419.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 82.44 RCW

MOTOR VEHICLE EXCISE TAX

Sections

- 82.44.010 Definitions.
- 82.44.015 Ride-sharing passenger motor vehicles excluded—Exemption requirements—Notice—Liability for tax.
- 82.44.035 Valuation of vehicles.

(2022 Ed.)

- 82.44.060 Tax requirements—Payment of tax based on registration year—Transfer of ownership.
- 82.44.065 Appeal of valuation.
- 82.44.090 Penalty for issuing a dealer's license, plates, or a registration without collecting tax.
- 82.44.100 Tax receipt.
- 82.44.120 Claims for refunds.
- 82.44.125 Vehicles subject to tax—Exemptions.
- 82.44.135 Local government must contract with department of licensing.
- 82.44.140 Director of licensing may act.
- 82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts.
- 82.44.195 Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262.
- 82.44.200 Electric vehicle account.
- 82.44.900 Severability—Construction—1961 c 15.

Boat trailer fee: RCW 46.17.305.

Constitutional limitations on certain taxes, highway funds: State Constitution Art. 2 § 40.

Highway user tax structure: Chapter 46.85 RCW.

Nonresident members of armed forces, exemption from motor vehicle excise tax: RCW 46.16A.340(2).

Reciprocal or proportional registration of vehicles: Chapter 46.85 RCW.

"Registration year," defined: RCW 46.16A.010.

82.44.010 Definitions. For the purposes of this chapter, unless the context otherwise requires:

(1) "Department" means the department of licensing.

(2) "Motor vehicle" means all motor vehicles, trailers and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the conveyance, or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (a) vehicles carrying exempt licenses, (b) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets, or highways, (c) motor vehicles or their trailers used entirely upon private property, (d) mobile homes and travel trailers as defined in RCW 82.50.010, or (e) motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington provided personnel were also nonresident at the time of their entry into military service.

(3) "Truck-type power or trailing unit" means any vehicle that is subject to the fees under RCW 46.17.355, except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c). [2010 c 161 § 1166; 1990 c 42 § 301; 1979 c 107 § 10; 1971 ex.s. c 299 § 54; 1967 c 121 § 4; 1963 c 199 § 1; 1961 c 15 § 82.44.010. Prior: 1957 c 269 § 18; 1955 c 264 § 1; 1945 c 152 § 1; 1943 c 144 § 1; Rem. Supp. 1945 § 6312-115.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.44.015 Ride-sharing passenger motor vehicles excluded—Exemption requirements—Notice—Liability for tax. (1) Passenger motor vehicles used primarily for ride sharing and ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, are not subject to the motor vehicle excise tax authorized under this chapter if

the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase.

(2) To qualify for the motor vehicle excise tax exemption for ride-sharing vehicles, passenger motor vehicles must:

(a) Have a seating capacity of three or more passengers, including the driver;

(b) Be used for ride sharing;

(c) Be operated either within:

(i) The state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70A.15 RCW;

(ii) Other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan; or

(iii) Other counties, where the vehicle is registered with or operated by a public transportation agency; and

(d) Meet at least one of the following conditions:

(i) The vehicle must be operated by a public transportation agency for the benefit of the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70A.15.4010 as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

(3) The registered owner of a passenger motor vehicle described in subsection (2) of this section:

(a) Shall notify the department upon the termination of the primary use of the vehicle in ride sharing or ride sharing for persons with special transportation needs; and

(b) Is liable for the motor vehicle excise tax imposed under this chapter, prorated on the remaining months for which the vehicle is registered. [2021 c 135 § 9; 2020 c 20 § 1488; 2014 c 97 § 502; 2010 c 161 § 909; 1996 c 244 § 7; 1993 c 488 § 3; 1982 c 142 § 1; 1980 c 166 § 3.]

Effective date—2021 c 135: See note following RCW 46.18.285.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Finding—Annual recertification rule—Report—1993 c 488: See notes following RCW 82.08.0287.

Ride-sharing vehicles—Special plates: RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.44.035 Valuation of vehicles. (1) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a truck or trailer shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	67
4	55
5	45
6	37
7	30
8	25
9	20
10	16
11	13
12	11
13	9
14	7
15	3
16 or older	0

(2) The reissuance of a certificate of title and registration certificate for a truck or trailer because of the installation of body or special equipment shall be treated as a sale, and the value of the truck or trailer at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a vehicle other than a truck or trailer shall be eighty-five percent of the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection (3) based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model. The value determined in this subsection (3)(a) shall be divided by the applicable percentage listed in (b) of this subsection (3) to establish a value equivalent to a manufacturer's base suggested retail price and this value shall be multiplied by eighty-five percent.

(b) The year the vehicle is offered for sale as a new vehicle shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	72
4	63
5	55
6	47
7	41
8	36
9	32
10	27
11	26
12	24
13	23
14	21
15	16
16 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a vehicle and equipment that are designed to facilitate the use or operation of the vehicle by a person with a disability. [2010 c 161 § 910; 2006 c 318 § 1.]

Reviser's note: This section was previously contingently repealed by Initiative Measure No. 976 (chapter 1, Laws of 2020). The Washington state supreme court ruled in *Garfield Cty. Transp. Auth. v. State*, No. 98320-8, 2020 Wash. LEXIS 592 (Oct. 15, 2020) that Initiative Measure No. 976 is in violation of Article II, section 19 of the state Constitution and is therefore void in its entirety.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

82.44.060 Tax requirements—Payment of tax based on registration year—Transfer of ownership. (1) Any locally imposed excise tax:

- (a) Is due at the time of registration of a vehicle;
- (b) Must be paid in full before any registration certificate or license tab may be issued;
- (c) Is in addition to any other vehicle license fees required by law;
- (d) Must be collected by the department, county auditor or other agent, or subagent appointed by the director of licensing before issuing the registration certificate;
- (e) Must be collected for each registration year; and
- (f) Must be levied for one full registration year beginning on the date of the calendar year designated by the department and ending on the same date of the next succeeding calendar year. For vehicles registered under chapter 46.87 RCW, proportional registration, and for vehicle dealer plates issued under chapter 46.70 RCW, the registration year is the period provided in those chapters. However, the tax shall in no case be less than two dollars except for proportionally registered vehicles.

(2) A vehicle is deemed registered for the first time in this state when the vehicle was not previously registered by this state for the registration year immediately preceding the registration year in which the application for registration is

(2022 Ed.)

made or when the vehicle has been registered in another jurisdiction subsequent to any prior registration in this state.

(3) An additional tax may not be imposed under this chapter on any vehicle when the certificate of title is being transferred if the tax has already been paid for the registration year or fraction of a registration year in which transfer of ownership occurs. [2010 c 161 § 911; 2006 c 318 § 3; 1990 c 42 § 304; 1981 c 222 § 12; 1979 c 158 § 233; 1975-'76 2nd ex.s. c 54 § 2; 1975 1st ex.s. c 118 § 14; 1963 c 199 § 4; 1961 c 15 § 82.44.060. Prior: 1957 c 269 § 15; 1955 c 139 § 25; 1943 c 144 § 6; Rem. Supp. 1943 § 6312-120; prior: 1937 c 228 § 5.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.44.065 Appeal of valuation. If the department determines a value for a vehicle equivalent to a manufacturer's base suggested retail price or the value of a truck or trailer under RCW 82.44.035, any person who pays a locally imposed tax for that vehicle may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.44.120. [2010 c 161 § 912; (2020 c 1 § 9 (Initiative Measure No. 976, approved November 5, 2019)); 2006 c 318 § 5; 1990 c 42 § 305.]

Reviser's note: This section was previously amended by Initiative Measure No. 976 (chapter 1, Laws of 2020). The Washington state supreme court ruled in *Garfield Cty. Transp. Auth. v. State*, No. 98320-8, 2020 Wash. LEXIS 592 (Oct. 15, 2020) that Initiative Measure No. 976 is in violation of Article II, section 19 of the state Constitution and is therefore void in its entirety. This section is published without the amendment contained in Initiative Measure No. 976.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

82.44.090 Penalty for issuing a dealer's license, plates, or a registration without collecting tax. It is unlawful for the county auditor or any other person to issue a dealer's license or dealer's license plates or a registration or identification plates with respect to any motor vehicle without collecting, with the required vehicle license fee, the amount of any locally imposed motor vehicle excise tax due. Any violation of this section shall constitute a gross misdemeanor. [2010 c 161 § 913; 2006 c 318 § 6; 1961 c 15 § 82.44.090. Prior: 1943 c 144 § 8; Rem. Supp. 1943 § 6312-122; prior: 1937 c 228 § 7.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

82.44.100 Tax receipt. The department, county auditor or other agent, or subagent appointed by the director of licensing shall give to each person paying a locally imposed motor vehicle excise tax a receipt identifying the vehicle for which the tax is paid. The receipt may be incorporated in the receipt given for the vehicle license fee or dealer's license fee

paid. [2010 c 161 § 914; 2006 c 318 § 7; 1961 c 15 § 82.44.100. Prior: 1943 c 144 § 9; Rem. Supp. 1943 § 6312-123; prior: 1937 c 228 § 8.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

82.44.120 Claims for refunds. (1) Refunds of locally imposed motor vehicle excise taxes must be handled in the same manner and under the same terms and conditions as provided in RCW 46.68.010.

(2) A claim for a refund may be made by a person who:

(a) Is not seeking a full refund; and
(b) Believes the amount of the locally imposed motor vehicle excise tax paid was incorrect or too much.

(3) When a claim for a refund is made as provided in subsection (2) of this section, the department shall:

(a) Determine the amount of the locally imposed motor vehicle excise tax that had been greater than the amount actually due, if any; and

(b) Certify to the state treasurer the amount of the partial refund due.

(4) Before a local government subject to this chapter may impose a motor vehicle excise tax, the local government shall contract with the department for reimbursement for any refunds paid to a person by the treasurer. [2010 c 161 § 915; 2006 c 318 § 8; 2003 c 53 § 403; 1993 c 307 § 3; 1990 c 42 § 307; 1989 c 68 § 2; 1983 c 26 § 3; 1979 c 120 § 2; 1975 1st ex.s. c 278 § 95; 1974 ex.s. c 54 § 4; 1967 c 121 § 2; 1963 c 199 § 5; 1961 c 15 § 82.44.120. Prior: 1949 c 196 § 18; 1945 c 152 § 3; 1943 c 144 § 11; Rem. Supp. 1949 § 6312-125.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.44.125 Vehicles subject to tax—Exemptions. (1) The motor vehicle excise tax authorized under this chapter applies to the following vehicles:

(a) Commercial trailers, as defined in RCW 46.04.136;
(b) Farm trucks registered under RCW 46.16A.425;
(c) Fixed load vehicles, as defined in RCW 46.04.186;
(d) Motor homes, as defined in RCW 46.04.305;
(e) Motor trucks, as defined in RCW 46.04.310, with a scale weight greater than six thousand pounds;
(f) Motor vehicles, as defined in RCW 46.04.320; and
(g) Trailers, as defined in RCW 46.04.620.

(2) The motor vehicle excise tax authorized under this chapter does not apply to the following vehicles:

(a) Campers, as defined in RCW 46.04.085;
(b) Dock and warehouse tractors and their cars or trailers;
(c) Equipment not designed primarily for use on public highways;
(d) Exempt registered vehicles;
(e) Lumber carriers of the type known as spiders;
(f) Mobile homes, as defined in RCW 46.04.302;

(g) Passenger motor vehicles, as described in RCW 82.44.015;

(h) Travel trailers, as defined in RCW 46.04.623;

(i) Vehicles not used on the public highways; and

(j) Vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington if the nonresident military member was a nonresident of this state when enlisted into military service. [2010 c 161 § 908.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

82.44.135 Local government must contract with department of licensing. (1) Before a local government subject to this chapter may impose a motor vehicle excise tax, the local government must contract with the department for the collection of the tax. The department may charge a reasonable amount, not to exceed one percent of tax collections, or two and one-half percent during the 2019-2021 biennium, for the administration and collection of the tax.

(2) For fiscal year 2021, the department shall charge a minimum of seven million eight hundred two thousand dollars, which is the reasonable amount aimed at achieving full cost recovery for the administration and collection of a motor vehicle excise tax. The amount of the full reimbursement for the administration and collection of the motor vehicle excise tax must be deducted before distributing any revenues to a regional transit authority. Any reimbursement to ensure full cost recovery beyond the amount specified in this subsection may be negotiated between the department and the regional transit authority if full cost recovery has not been achieved, or if based on emergent issues. [2020 c 219 § 706; 2006 c 318 § 9.]

Effective date—2020 c 219: See note following RCW 46.68.310.

82.44.140 Director of licensing may act. Any duties required by this chapter to be performed by the county auditor may be performed by any other person designated by the director of licensing and authorized by him or her to receive motor vehicle license fees and issue receipt therefor. [2013 c 23 § 337; 1979 c 158 § 237; 1967 c 121 § 3; 1961 c 15 § 82.44.140. Prior: 1943 c 144 § 13; Rem. Supp. 1943 § 6312-127.]

82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts. The transportation infrastructure account is hereby created in the state treasury. Public and private entities may deposit moneys in the transportation infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the transportation infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the transportation infrastructure account shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the transportation infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state trea-

surer is authorized to create separate subaccounts within the transportation infrastructure account. [2017 3rd sp.s. c 25 § 49; 1996 c 262 § 2.]

Additional notes found at www.leg.wa.gov

82.44.195 Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262. The legislature finds that new financing mechanisms are necessary to provide greater flexibility and additional funds for needed transportation infrastructure projects in the state. The creation of a financing mechanism, like the one contained in section 350 of the national highway system designation act of 1995, P.L. 104-59, relating to a state infrastructure bank program, will enable the state and local jurisdictions to use federal, state, local, or private funds to construct surface transportation projects for various modes of transportation. It is the intent of the legislature that accounts be created in the state treasury and dedicated funding sources be established to generate revenue to support transportation projects financed with the proceeds of bonds or other financial instruments issued against this dedicated revenue and other revenues which may be available to these accounts. P.L. 104-59 allows the deposit of certain federal highway and transit funds into these accounts to leverage other forms of investment in transportation infrastructure by expanding the eligible uses of the federal funds. Other public and private entities may also deposit funds into these accounts to leverage transportation investments. The purpose of chapter 262, Laws of 1996 is to provide, from these accounts, authorization for loans, grants, or other means of assistance, in amounts equal to all or part of the cost, to public or private entities building surface transportation facilities in this state. It is the further intent of the legislature that projects representing critical mobility or economic development needs and involving various transportation modes and jurisdictions receive top priority in the use of these funds. Funds from the accounts created in chapter 262, Laws of 1996 may be used to support the issuance of public or private debt, to provide credit enhancement for such debt, for direct loans to public or private entities, or for other purposes necessary to facilitate investment in surface transportation facilities in this state. [1996 c 262 § 1.]

Additional notes found at www.leg.wa.gov

82.44.200 Electric vehicle account. The electric vehicle account is created in the transportation infrastructure account. Proceeds from the principal and interest payments made on loans from the account must be deposited into the account. Expenditures from the account may be used only for the purposes specified in RCW 47.04.350, 82.08.9999, and 82.12.9999, and the support of other transportation electrification and alternative fuel related purposes, including RCW 47.01.520. Moneys in the account may be spent only after appropriation. During the 2021-2023 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the electric vehicle account to the move ahead WA flexible account. [2022 c 187 § 501; 2021 c 300 § 5; 2019 c 287 § 15; 2015 3rd sp.s. c 44 § 404.]

Effective date—2022 c 187: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government (2022 Ed.)

and its existing public institutions, and takes effect immediately [March 25, 2022]." [2022 c 187 § 503.]

Intent—2021 c 300: See note following RCW 47.01.520.

Effective date—2019 c 287: See note following RCW 82.29A.125.

Findings—Intent—2019 c 287: See note following RCW 28B.30.903.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

82.44.900 Severability—Construction—1961 c 15. If any provision of this chapter relating either to the apportionment or allocation of the revenue derived from the excise tax thereby imposed, or to any appropriation made by this chapter, be adjudged unconstitutional, such adjudication shall not be held to render unconstitutional or ineffectual the remaining portions of said chapter or any part thereof: PROVIDED, HOWEVER, That except as otherwise hereinabove provided by this section, if any section or part of a section of this chapter be adjudged unconstitutional, this entire chapter shall thereupon be and become inoperative and of no force or effect whatsoever. [1961 c 15 § 82.44.900. Prior: 1943 c 144 § 17; Rem. Supp. 1943 § 6312-131.]

Chapter 82.45 RCW EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.010	"Sale" defined.
82.45.020	"Seller" defined.
82.45.030	"Selling price," "total consideration paid or contracted to be paid," defined.
82.45.032	Additional definitions.
82.45.033	"Controlling interest" defined.
82.45.035	Determining selling price of leases with option to purchase—Mining property—Payment, security when selling price not separately stated.
82.45.060	Tax on sale of property.
82.45.065	Tax preferences—Expiration dates.
82.45.070	Tax is lien on property—Enforcement.
82.45.080	Tax is seller's obligation—Choice of remedies.
82.45.090	Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest.
82.45.100	Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.
82.45.105	Single-family residential property, tax credit when subsequent transfer of within nine months for like property.
82.45.150	Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit.
82.45.180	Disposition of proceeds.
82.45.190	Exemptions—State route No. 16 corridor transportation systems and facilities.
82.45.195	Exemptions—Standing timber sales.
82.45.197	Exemptions—Inheritance—Documents required.
82.45.210	State assistance for county electronic processing and reporting of taxes—Grant program.
82.45.220	Failure to report transfer of controlling interest.
82.45.230	Accounts into which tax is deposited.
82.45.235	Tax treatment—Transactions structured to reduce or avoid tax.
82.45.900	Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

Purpose—1980 c 154: "It is the intent of this 1980 act to simplify the bookkeeping procedures for the state treasurer's office and for the school districts but not to impact the amount of revenues covered by this 1980 act to the various counties and other taxing districts." [1980 c 154 § 16.]

Additional notes found at www.leg.wa.gov

82.45.010 "Sale" defined. (Effective until January 1, 2023.) (1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title

to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any thirty-six month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a thirty-six month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because

of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a thirty-six month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030.

(s)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

(ii) For purposes of this subsection (3)(s), "qualified low-income housing development" means real property and improvements in respect to which the seller or, in the case of a transfer of a controlling interest, the owner or beneficial owner, was allocated federal low-income housing tax credits authorized under 26 U.S.C. Sec. 42 or successor statute, by the Washington state housing finance commission or successor state-authorized tax credit allocating agency.

(iii) This subsection (3)(s) does not apply to transfers of a qualified low-income housing development or controlling interest in a qualified low-income housing development occurring on or after July 1, 2035.

(iv) The Washington state housing finance commission, in consultation with the department, must gather data on: (A) The fiscal savings, if any, accruing to transferees as a result of the exemption provided in this subsection (3)(s); (B) the extent to which transferors of qualified low-income housing developments receive consideration, including any assumption of debt, as part of a transfer subject to the exemption provided in this subsection (3)(s); and (C) the continued use of the property for low-income housing. The Washington state housing finance commission must provide this information to the joint legislative audit and review committee. The committee must conduct a review of the tax preference created under this subsection (3)(s) in calendar year 2033, as required under chapter 43.136 RCW.

(t)(i) A qualified transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity subject to the following conditions:

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to

reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

(B) The title to the residential property is conveyed without the receipt of consideration by the legal representative of a person with developmental disabilities to a qualified entity;

(C) The residential property must have no more than four living units located on it; and

(D) The residential property transferred must remain in continued use for fifty years by the qualified entity as supported living for persons with developmental disabilities by the qualified entity or successor entity. If the qualified entity sells or otherwise conveys ownership of the residential property the proceeds of the sale or conveyance must be used to acquire similar residential property and such similar residential property must be considered the successor for continued use. The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements. If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax based on the value of the property at the time of the transfer into use as residential property for persons with developmental disabilities becomes immediately due and payable by the qualified entity. The tax due is not subject to penalties, fees, or interest under this title.

(ii) For the purposes of this subsection (3)(t) the definitions in RCW 71A.10.020 apply.

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(B) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

(u)(i) The sale by an affordable homeownership facilitator of self-help housing to a low-income household. The definitions in *section 2 of this act apply to this subsection.

(ii) The definitions in this subsection (3)(u) apply to this subsection (3)(u) unless the context clearly requires otherwise.

(A) "Affordable homeownership facilitator" means a nonprofit community or neighborhood-based organization that is exempt from income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue code of 1986, as amended, as of October 1, 2019, and that is the developer of self-help housing.

(B) "Low-income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted

for household size, for the county in which the dwelling is located.

(C) "Self-help housing" means dwelling residences provided for ownership by low-income individuals and families whose ownership requirement includes labor participation. "Self-help housing" does not include residential rental housing provided on a commercial basis to the general public. [2019 c 424 § 3; 2019 c 390 § 10; 2019 c 385 § 2. Prior: 2018 c 223 § 3; 2018 c 221 § 1; 2014 c 58 § 24; 2010 1st sp.s. c 23 § 207; prior: 2008 c 116 § 3; 2008 c 6 § 701; 2000 2nd sp.s. c 4 § 26; 1999 c 209 § 2; 1993 sp.s. c 25 § 502; 1981 c 93 § 1; 1970 ex.s. c 65 § 1; 1969 ex.s. c 223 § 28A.45.010; prior: 1955 c 132 § 1; 1953 c 94 § 1; 1951 2nd ex.s. c 19 § 1; 1951 1st ex.s. c 11 § 7. Formerly RCW 28A.45.010, 28.45.010.]

Reviser's note: *(1) The reference to section 2 of this act is erroneous; it appears that subsection (3)(u)(ii) was intended.

(2) The tax preference enacted in section 3, chapter 223, Laws of 2018 expires January 1, 2029, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

(3) This section was amended by 2019 c 385 § 2, 2019 c 390 § 10, and by 2019 c 424 § 3, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

Expiration date—2019 c 390 § 10: "Section 10 of this act expires January 1, 2030." [2019 c 390 § 21.]

Tax preference performance statement—2019 c 390 § 10: "This section is the tax preference performance statement for the tax preference contained in section 10, chapter 390, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behaviors by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to preserve the affordable housing opportunities provided by existing manufactured/mobile home communities. It is the legislature's intent to encourage owners to sell existing communities to tenants and eligible organizations by providing a real estate excise tax exemption.

(3) To measure the effectiveness of this tax preference in achieving the specific public policy objective described in subsection (2) of this section, the joint legislative audit and review committee must, at minimum, review the number of units of housing that are preserved as a result of qualified sales of manufactured/mobile home communities and the total amount of exemptions claimed, as reported to the department of revenue.

(4) The joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under this section." [2019 c 390 § 9.]

Finding—Intent—2019 c 390: See note following RCW 59.21.005.

Tax preference performance statement and expiration—2019 c 390: See note following RCW 84.36.560.

Expiration date—2019 c 385 § 2: "Section 2 of this act expires January 1, 2030." [2019 c 385 § 4.]

Tax preference performance statement—2019 c 385: "(1) This section is the tax preference performance statement for this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any part or be used to determine eligibility for a preferential tax treatment.

(2) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to provide real estate excise tax relief to developers of self-help housing to encourage continued development of self-help housing.

(4) The joint legislative audit and review committee is directed to review:

(a) The total number of taxpayers that claimed the tax preference; and

(b) The total amount of real estate excise tax revenue that was exempt under this act, annually.

(5) In order to obtain this section, the joint legislative audit and review committee may refer to department of revenue data, as well as any other available data source." [2019 c 385 § 1.]

Effective date—2019 c 385: "This act takes effect October 1, 2019." [2019 c 385 § 3.]

Tax preference performance statement—2018 c 223 § 3: "(1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter 223, Laws of 2018. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to reduce the tax burden on individuals and businesses imposed by the existing real estate excise tax rates.

(4) If a review finds that there is an increase of residential property transfers by parents of a person with developmental disabilities to a qualified entity as a result of the relief from this tax preference, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2018 c 223 § 2.]

Findings—2018 c 223: "The legislature finds that there is need to expand housing opportunities for persons with developmental disabilities. The legislature finds it is often preferable for persons with developmental disabilities to remain residing in their home, when it is safe and appropriate, to foster ongoing stability. The legislature recognizes that securing a child's future housing and services provides the parents of persons with developmental disabilities peace of mind. The legislature further finds that providing a new mechanism for the transfer of residential property into housing for persons with developmental disabilities expands the state's housing capacity and helps meet demand. The legislature further finds that utilizing existing residential property will reduce the demands on the housing trust fund. The legislature finds that there is an opportunity and need, for advocates and the supporters of the developmental disabilities community to work together, to develop model transfer agreements that will provide peace of mind and assist parents of children with developmental disabilities [to] more readily access this program." [2018 c 223 § 1.]

Application—2018 c 221: "This act applies with respect to transfers occurring before, on, or after July 1, 2018. However, this act may not be construed by the department of revenue, state board of tax appeals, or any court as authorizing the refund of any tax liability imposed or authorized under chapter 82.45 or 82.46 RCW and properly paid before July 1, 2018, with respect to a transfer of qualified low-income housing as defined in RCW 82.45.010(3)(s)." [2018 c 221 § 2.]

Effective date—2018 c 221: "This act takes effect July 1, 2018." [2018 c 221 § 3.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Intent—1999 c 209: "In chapter 25, Laws of 1993 sp. sess., the legislature found that transfer of ownership of entities can be equivalent to the sale of real property held by the entity. The legislature further found that all transfers of possession or use of real property should be subject to the same excise tax burdens.

The legislature intended to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1999 c 209 § 1.]

Findings—Intent—1993 sp.s. c 25: "(1) The legislature finds that transfers of ownership of entities may be essentially equivalent to the sale of real property held by the entity. The legislature further finds that all transfers of possession or use of real property should be subject to the same excise tax burdens.

(2) The legislature intends to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1993 sp.s. c 25 § 501.]

Additional notes found at www.leg.wa.gov

82.45.010 "Sale" defined. (Effective January 1, 2023, until January 1, 2030.) (1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any thirty-six month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a thirty-six month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domes-

tic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a thirty-six month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030.

(s)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

(ii) For purposes of this subsection (3)(s), "qualified low-income housing development" means real property and improvements in respect to which the seller or, in the case of a transfer of a controlling interest, the owner or beneficial owner, was allocated federal low-income housing tax credits authorized under 26 U.S.C. Sec. 42 or successor statute, by the Washington state housing finance commission or successor state-authorized tax credit allocating agency.

(iii) This subsection (3)(s) does not apply to transfers of a qualified low-income housing development or controlling interest in a qualified low-income housing development occurring on or after July 1, 2035.

(iv) The Washington state housing finance commission, in consultation with the department, must gather data on: (A) The fiscal savings, if any, accruing to transferees as a result

of the exemption provided in this subsection (3)(s); (B) the extent to which transferors of qualified low-income housing developments receive consideration, including any assumption of debt, as part of a transfer subject to the exemption provided in this subsection (3)(s); and (C) the continued use of the property for low-income housing. The Washington state housing finance commission must provide this information to the joint legislative audit and review committee. The committee must conduct a review of the tax preference created under this subsection (3)(s) in calendar year 2033, as required under chapter 43.136 RCW.

(t)(i) A qualified transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity subject to the following conditions:

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

(B) The title to the residential property is conveyed without the receipt of consideration by the legal representative of a person with developmental disabilities to a qualified entity;

(C) The residential property must have no more than four living units located on it; and

(D) The residential property transferred must remain in continued use for fifty years by the qualified entity as supported living for persons with developmental disabilities by the qualified entity or successor entity. If the qualified entity sells or otherwise conveys ownership of the residential property the proceeds of the sale or conveyance must be used to acquire similar residential property and such similar residential property must be considered the successor for continued use. The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements. If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax based on the value of the property at the time of the transfer into use as residential property for persons with developmental disabilities becomes immediately due and payable by the qualified entity. The tax due is not subject to penalties, fees, or interest under this title.

(ii) For the purposes of this subsection (3)(t) the definitions in RCW 71A.10.020 apply.

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(B) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

(u)(i) The sale by an affordable homeownership facilitator of self-help housing to a low-income household.

(ii) The definitions in this subsection (3)(u) apply to this subsection (3)(u) unless the context clearly requires otherwise.

(A) "Affordable homeownership facilitator" means a nonprofit community or neighborhood-based organization that is exempt from income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue code of 1986, as amended, as of October 1, 2019, and that is the developer of self-help housing.

(B) "Low-income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted for household size, for the county in which the dwelling is located.

(C) "Self-help housing" means dwelling residences provided for ownership by low-income individuals and families whose ownership requirement includes labor participation. "Self-help housing" does not include residential rental housing provided on a commercial basis to the general public.

(v)(i) A sale or transfer of real property to a qualifying grantee that uses the property for housing for low-income persons and receives or otherwise qualifies the property for an exemption from real and personal property taxes under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection (3)(v), "qualifying grantee" means a nonprofit entity as defined in RCW 84.36.560, a nonprofit entity or qualified cooperative association as defined in RCW 84.36.049, a housing authority created under RCW 35.82.030 or 35.82.300, a public corporation established under RCW 35.21.660 or 35.21.730, or a county or municipal corporation. A qualifying grantee that is a county or municipal corporation must record a covenant at the time of transfer that prohibits using the property for any purpose other than for low-income housing for a period of at least 10 years. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing. A qualifying grantee must comply with the requirements described in (v)(i)(A), (B), or (C) of this subsection and must also certify, by affidavit at the time of sale or transfer, that it intends to comply with those requirements.

(A) If the qualifying grantee intends to operate existing housing on the property, within one year of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(B) If the qualifying grantee intends to develop new housing on the site, within five years of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(C) If the qualifying grantee intends to substantially rehabilitate the premises as defined in RCW 59.18.200, within three years:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(ii) If the qualifying grantee fails to satisfy the requirements described in (v)(i)(A), (B), or (C) of this subsection, within the timelines described in (v)(i)(A), (B), or (C) of this subsection, the qualifying grantee must pay the tax that would have otherwise been due at the time of initial transfer, plus interest calculated from the date of initial transfer pursuant to RCW 82.32.050.

(iii) If a qualifying grantee transfers the property to a different qualifying grantee within the original timelines described in (v)(i)(A), (B), or (C) of this subsection, neither the original qualifying grantee nor the new qualifying grantee is required to pay the tax, so long as the new qualifying grantee satisfies the requirements as described in (v)(i)(A), (B), or (C) of this subsection within the exemption period of the initial transfer. If the new qualifying grantee fails to satisfy the requirements described in (v)(i)(A), (B), or (C) of this subsection, only the new qualifying grantee is liable for the payment of taxes required by (v)(ii) of this subsection. There is no limit on the number of transfers between qualifying grantees within the original timelines.

(iv) Each affidavit must be filed with the department upon completion of the sale or transfer of property, including transfers from a qualifying grantee to a different qualifying grantee. The qualifying grantee must provide proof to the department as required by the department once the requirements as described in (v)(i)(A), (B), or (C) of this subsection have been satisfied.

(v) For the purposes of this subsection (3)(v), "low-income" has the same meaning as in (u) of this subsection. [2022 c 199 § 3. Prior: 2019 c 424 § 3; 2019 c 390 § 10; 2019 c 385 § 2; prior: 2018 c 223 § 3; 2018 c 221 § 1; 2014 c 58 § 24; 2010 1st sp.s. c 23 § 207; prior: 2008 c 116 § 3; 2008 c 6 § 701; 2000 2nd sp.s. c 4 § 26; 1999 c 209 § 2; 1993 sp.s. c 25 § 502; 1981 c 93 § 1; 1970 ex.s. c 65 § 1; 1969 ex.s. c 223 § 28A.45.010; prior: 1955 c 132 § 1; 1953 c 94 § 1; 1951 2nd ex.s. c 19 § 1; 1951 1st ex.s. c 11 § 7. Formerly RCW 28A.45.010, 28.45.010.]

Reviser's note: The tax preference enacted in section 3, chapter 223, Laws of 2018 expires January 1, 2029, pursuant to the automatic expiration date established in RCW 82.32.805(1)(a).

Effective date—2022 c 199 § 3: "Section 3 of this act takes effect January 1, 2023." [2022 c 199 § 6.]

Expiration date—2022 c 199 § 3: "Section 3 of this act expires January 1, 2030." [2022 c 199 § 7.]

Finding—Intent—2022 c 199: "(1) The legislature finds that Washington state has one of the strongest economies in the country. However, despite the strong economy, our state has entered an affordable housing crisis where low-income and middle-income households have the fewest number of housing options. Furthermore, it is estimated that Washington state's housing gap is among the most severe in the nation, with only 29 affordable and available rental homes for every 100 extremely low-income households.

(2) The legislature concludes that in the spirit of one Washington, the health of all Washingtonians will benefit from a larger stock in affordable housing. Therefore, it is the intent of the legislature to incentivize real property transfers to nonprofit housing providers, public housing authorities, or local governments to increase the availability of affordable housing for low-income Washingtonians." [2022 c 199 § 1.]

Tax preference performance statement—2022 c 199: "(1) This section is the tax preference performance statement for the tax preferences in

sections 3 and 4, chapter 199, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage sales or transfers of real property to nonprofit entities, housing authorities, or public corporations that intend to use the transferred property for housing for low-income persons.

(4) If a review finds that the number of sales or transfers of real property to qualified entities has not increased, then the legislature intends to repeal the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including the transfer or sale of properties reported by county records." [2022 c 199 § 2.]

Tax preference automatic expiration date exemption—2022 c 199: "The expiration date provisions of RCW 82.32.805(1)(a) do not apply to the tax preferences in sections 3 and 4, chapter 199, Laws of 2022." [2022 c 199 § 5.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

Expiration date—2019 c 390 § 10: "Section 10 of this act expires January 1, 2030." [2019 c 390 § 21.]

Tax preference performance statement—2019 c 390 § 10: "This section is the tax preference performance statement for the tax preference contained in section 10, chapter 390, Laws of 2019. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behaviors by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to preserve the affordable housing opportunities provided by existing manufactured/mobile home communities. It is the legislature's intent to encourage owners to sell existing communities to tenants and eligible organizations by providing a real estate excise tax exemption.

(3) To measure the effectiveness of this tax preference in achieving the specific public policy objective described in subsection (2) of this section, the joint legislative audit and review committee must, at minimum, review the number of units of housing that are preserved as a result of qualified sales of manufactured/mobile home communities and the total amount of exemptions claimed, as reported to the department of revenue.

(4) The joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under this section." [2019 c 390 § 9.]

Finding—Intent—2019 c 390: See note following RCW 59.21.005.

Tax preference performance statement and expiration—2019 c 390: See note following RCW 84.36.560.

Expiration date—2019 c 385 § 2: "Section 2 of this act expires January 1, 2030." [2019 c 385 § 4.]

Tax preference performance statement—2019 c 385: "(1) This section is the tax preference performance statement for this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any part or be used to determine eligibility for a preferential tax treatment.

(2) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to provide real estate excise tax relief to developers of self-help housing to encourage continued development of self-help housing.

(4) The joint legislative audit and review committee is directed to review:

(a) The total number of taxpayers that claimed the tax preference; and

(b) The total amount of real estate excise tax revenue that was exempt under this act, annually.

[Title 82 RCW—page 414]

(5) In order to obtain this section, the joint legislative audit and review committee may refer to department of revenue data, as well as any other available data source." [2019 c 385 § 1.]

Effective date—2019 c 385: "This act takes effect October 1, 2019." [2019 c 385 § 3.]

Tax preference performance statement—2018 c 223 § 3: "(1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter 223, Laws of 2018. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to reduce the tax burden on individuals and businesses imposed by the existing real estate excise tax rates.

(4) If a review finds that there is an increase of residential property transfers by parents of a person with developmental disabilities to a qualified entity as a result of the relief from this tax preference, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2018 c 223 § 2.]

Findings—2018 c 223: "The legislature finds that there is need to expand housing opportunities for persons with developmental disabilities. The legislature finds it is often preferable for persons with developmental disabilities to remain residing in their home, when it is safe and appropriate, to foster ongoing stability. The legislature recognizes that securing a child's future housing and services provides the parents of persons with developmental disabilities peace of mind. The legislature further finds that providing a new mechanism for the transfer of residential property into housing for persons with developmental disabilities expands the state's housing capacity and helps meet demand. The legislature further finds that utilizing existing residential property will reduce the demands on the housing trust fund. The legislature finds that there is an opportunity and need, for advocates and the supporters of the developmental disabilities community to work together, to develop model transfer agreements that will provide peace of mind and assist parents of children with developmental disabilities [to] more readily access this program." [2018 c 223 § 1.]

Application—2018 c 221: "This act applies with respect to transfers occurring before, on, or after July 1, 2018. However, this act may not be construed by the department of revenue, state board of tax appeals, or any court as authorizing the refund of any tax liability imposed or authorized under chapter 82.45 or 82.46 RCW and properly paid before July 1, 2018, with respect to a transfer of qualified low-income housing as defined in RCW 82.45.010(3)(s)." [2018 c 221 § 2.]

Effective date—2018 c 221: "This act takes effect July 1, 2018." [2018 c 221 § 3.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Intent—1999 c 209: "In chapter 25, Laws of 1993 sp. sess., the legislature found that transfer of ownership of entities can be equivalent to the sale of real property held by the entity. The legislature further found that all transfers of possession or use of real property should be subject to the same excise tax burdens.

The legislature intended to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1999 c 209 § 1.]

Findings—Intent—1993 sp.s. c 25: "(1) The legislature finds that transfers of ownership of entities may be essentially equivalent to the sale of real property held by the entity. The legislature further finds that all transfers

of possession or use of real property should be subject to the same excise tax burdens.

(2) The legislature intends to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1993 sp.s. c 25 § 501.]

Additional notes found at www.leg.wa.gov

82.45.010 "Sale" defined. (Effective January 1, 2030.)

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any thirty-six month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a thirty-six month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only

beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a thirty-six month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

(s)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

(ii) For purposes of this subsection (3)(s), "qualified low-income housing development" means real property and improvements in respect to which the seller or, in the case of a transfer of a controlling interest, the owner or beneficial owner, was allocated federal low-income housing tax credits authorized under 26 U.S.C. Sec. 42 or successor statute, by the Washington state housing finance commission or successor state-authorized tax credit allocating agency.

(iii) This subsection (3)(s) does not apply to transfers of a qualified low-income housing development or controlling interest in a qualified low-income housing development occurring on or after July 1, 2035.

(iv) The Washington state housing finance commission, in consultation with the department, must gather data on: (A) The fiscal savings, if any, accruing to transferees as a result of the exemption provided in this subsection (3)(s); (B) the extent to which transferors of qualified low-income housing

developments receive consideration, including any assumption of debt, as part of a transfer subject to the exemption provided in this subsection (3)(s); and (C) the continued use of the property for low-income housing. The Washington state housing finance commission must provide this information to the joint legislative audit and review committee. The committee must conduct a review of the tax preference created under this subsection (3)(s) in calendar year 2033, as required under chapter 43.136 RCW.

(t)(i) A qualified transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity subject to the following conditions:

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

(B) The title to the residential property is conveyed without the receipt of consideration by the legal representative of a person with developmental disabilities to a qualified entity;

(C) The residential property must have no more than four living units located on it; and

(D) The residential property transferred must remain in continued use for fifty years by the qualified entity as supported living for persons with developmental disabilities by the qualified entity or successor entity. If the qualified entity sells or otherwise conveys ownership of the residential property the proceeds of the sale or conveyance must be used to acquire similar residential property and such similar residential property must be considered the successor for continued use. The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements. If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax based on the value of the property at the time of the transfer into use as residential property for persons with developmental disabilities becomes immediately due and payable by the qualified entity. The tax due is not subject to penalties, fees, or interest under this title.

(ii) For the purposes of this subsection (3)(t) the definitions in RCW 71A.10.020 apply.

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(B) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

(u)(i) A sale or transfer of real property to a qualifying grantee that uses the property for housing for low-income

persons and receives or otherwise qualifies the property for an exemption from real and personal property taxes under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection (3)(u), "qualifying grantee" means a nonprofit entity as defined in RCW 84.36.560, a nonprofit entity or qualified cooperative association as defined in RCW 84.36.049, a housing authority created under RCW 35.82.030 or 35.82.300, a public corporation established under RCW 35.21.660 or 35.21.730, or a county or municipal corporation. A qualifying grantee that is a county or municipal corporation must record a covenant at the time of transfer that prohibits using the property for any purpose other than for low-income housing for a period of at least 10 years. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing. A qualifying grantee must comply with the requirements described in (u)(i)(A), (B), or (C) of this subsection and must also certify, by affidavit at the time of sale or transfer, that it intends to comply with those requirements.

(A) If the qualifying grantee intends to operate existing housing on the property, within one year of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(B) If the qualifying grantee intends to develop new housing on the site, within five years of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(C) If the qualifying grantee intends to substantially rehabilitate the premises as defined in RCW 59.18.200, within three years:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(ii) If the qualifying grantee fails to satisfy the requirements described in (u)(i)(A), (B), or (C) of this subsection, within the timelines described in (u)(i)(A), (B), or (C) of this subsection, the qualifying grantee must pay the tax that would have otherwise been due at the time of initial transfer, plus interest calculated from the date of initial transfer pursuant to RCW 82.32.050.

(iii) If a qualifying grantee transfers the property to a different qualifying grantee within the original timelines described in (u)(i)(A), (B), or (C) of this subsection, neither the original qualifying grantee nor the new qualifying grantee is required to pay the tax, so long as the new qualifying grantee satisfies the requirements as described in (u)(i)(A), (B), or (C) of this subsection within the exemption period of the initial transfer. If the new qualifying grantee fails to satisfy the requirements described in (u)(i)(A), (B), or (C) of this subsection, only the new qualifying grantee is liable for the payment of taxes required by (u)(ii) of this subsection. There

(2022 Ed.)

is no limit on the number of transfers between qualifying grantees within the original timelines.

(iv) Each affidavit must be filed with the department upon completion of the sale or transfer of property, including transfers from a qualifying grantee to a different qualifying grantee. The qualifying grantee must provide proof to the department as required by the department once the requirements as described in (u)(i)(A), (B), or (C) of this subsection have been satisfied.

(v) For the purposes of this subsection (3)(u), "low-income" means household income as defined by the department, provided that the definition may not exceed 80 percent of median household income, adjusted for household size, for the county in which the dwelling is located. [2022 c 199 § 4; 2019 c 424 § 3. Prior: 2018 c 223 § 3; 2018 c 221 § 1; 2014 c 58 § 24; 2010 1st sp.s. c 23 § 207; prior: 2008 c 116 § 3; 2008 c 6 § 701; 2000 2nd sp.s. c 4 § 26; 1999 c 209 § 2; 1993 sp.s. c 25 § 502; 1981 c 93 § 1; 1970 ex.s. c 65 § 1; 1969 ex.s. c 223 § 28A.45.010; prior: 1955 c 132 § 1; 1953 c 94 § 1; 1951 2nd ex.s. c 19 § 1; 1951 1st ex.s. c 11 § 7. Formerly RCW 28A.45.010, 28.45.010.]

Effective date—2022 c 199 § 4: "Section 4 of this act takes effect January 1, 2030." [2022 c 199 § 8.]

Finding—Intent—2022 c 199: "(1) The legislature finds that Washington state has one of the strongest economies in the country. However, despite the strong economy, our state has entered an affordable housing crisis where low-income and middle-income households have the fewest number of housing options. Furthermore, it is estimated that Washington state's housing gap is among the most severe in the nation, with only 29 affordable and available rental homes for every 100 extremely low-income households.

(2) The legislature concludes that in the spirit of one Washington, the health of all Washingtonians will benefit from a larger stock in affordable housing. Therefore, it is the intent of the legislature to incentivize real property transfers to nonprofit housing providers, public housing authorities, or local governments to increase the availability of affordable housing for low-income Washingtonians." [2022 c 199 § 1.]

Tax preference performance statement—2022 c 199: "(1) This section is the tax preference performance statement for the tax preferences in sections 3 and 4, chapter 199, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage sales or transfers of real property to nonprofit entities, housing authorities, or public corporations that intend to use the transferred property for housing for low-income persons.

(4) If a review finds that the number of sales or transfers of real property to qualified entities has not increased, then the legislature intends to repeal the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including the transfer or sale of properties reported by county records." [2022 c 199 § 2.]

Tax preference automatic expiration date exemption—2022 c 199: "The expiration date provisions of RCW 82.32.805(1)(a) do not apply to the tax preferences in sections 3 and 4, chapter 199, Laws of 2022." [2022 c 199 § 5.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

Tax preference performance statement—2018 c 223 § 3: "(1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter 223, Laws of 2018. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to reduce the tax burden on individuals and businesses imposed by the existing real estate excise tax rates.

(4) If a review finds that there is an increase of residential property transfers by parents of a person with developmental disabilities to a qualified entity as a result of the relief from this tax preference, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2018 c 223 § 2.]

Findings—2018 c 223: "The legislature finds that there is need to expand housing opportunities for persons with developmental disabilities. The legislature finds it is often preferable for persons with developmental disabilities to remain residing in their home, when it is safe and appropriate, to foster ongoing stability. The legislature recognizes that securing a child's future housing and services provides the parents of persons with developmental disabilities peace of mind. The legislature further finds that providing a new mechanism for the transfer of residential property into housing for persons with developmental disabilities expands the state's housing capacity and helps meet demand. The legislature further finds that utilizing existing residential property will reduce the demands on the housing trust fund. The legislature finds that there is an opportunity and need, for advocates and the supporters of the developmental disabilities community to work together, to develop model transfer agreements that will provide peace of mind and assist parents of children with developmental disabilities [to] more readily access this program." [2018 c 223 § 1.]

Application—2018 c 221: "This act applies with respect to transfers occurring before, on, or after July 1, 2018. However, this act may not be construed by the department of revenue, state board of tax appeals, or any court as authorizing the refund of any tax liability imposed or authorized under chapter 82.45 or 82.46 RCW and properly paid before July 1, 2018, with respect to a transfer of qualified low-income housing as defined in RCW 82.45.010(3)(s)." [2018 c 221 § 2.]

Effective date—2018 c 221: "This act takes effect July 1, 2018." [2018 c 221 § 3.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Intent—1999 c 209: "In chapter 25, Laws of 1993 sp. sess., the legislature found that transfer of ownership of entities can be equivalent to the sale of real property held by the entity. The legislature further found that all transfers of possession or use of real property should be subject to the same excise tax burdens.

The legislature intended to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1999 c 209 § 1.]

Findings—Intent—1993 sp.s. c 25: "(1) The legislature finds that transfers of ownership of entities may be essentially equivalent to the sale of real property held by the entity. The legislature further finds that all transfers of possession or use of real property should be subject to the same excise tax burdens.

(2) The legislature intends to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1993 sp.s. c 25 § 501.]

Additional notes found at www.leg.wa.gov

82.45.020 "Seller" defined. As used in this chapter the term "seller," unless otherwise indicated by the context, shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington. [1980 c 154 § 1; 1969 ex.s. c 223 § 28A.45.020. Prior: 1951 1st ex.s. c 11 § 6. Formerly RCW 28A.45.020, 28.45.020.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.030 "Selling price," "total consideration paid or contracted to be paid," defined. (1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(2) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

When a transfer or conveyance is made by deed in lieu of foreclosure to satisfy a deed of trust, total consideration shall not include the amount of any relocation assistance provided to the transferor.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. [2011 c 58 § 15; 1993 sp.s. c 25 § 503; 1969 ex.s. c 223 § 28A.45.030. Prior: 1951 2nd ex.s. c 19 § 2; 1951 1st ex.s. c 11 § 8. Formerly RCW 28A.45.030, 28.45.030.]

Findings—Intent—Short title—2011 c 58: See notes following RCW 61.24.005.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

82.45.032 Additional definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Real estate" or "real property" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

(2) "Used mobile home" means a mobile home which has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or which has been previously used and has been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(3) "Mobile home" means a mobile home as defined by RCW 46.04.302, as now or hereafter amended.

(4) "Park model trailer" means a park model trailer as defined in RCW 46.04.622.

(5) "Used floating home" means a floating home in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

(6) "Used park model trailer" means a park model trailer that has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or that has been previously used and has been subjected to tax under chapter 82.12 RCW, and that has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances.

(7) "Floating home" means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located. [2001 c 282 § 2; 1993 sp.s. c 25 § 504; 1986 c 211 § 1; 1984 c 192 § 1; 1979 ex.s. c 266 § 1. Formerly RCW 28A.45.032.]

Intent—Effective date—2001 c 282: See notes following RCW 82.08.032.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

82.45.033 "Controlling interest" defined. (1) As used in this chapter, the term "controlling interest" has the following meaning:

(a) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such corporation, partnership, association, trust, or other entity.

(2022 Ed.)

(2) The department may, at the department's option, enforce the obligation of the seller under this chapter as provided in this subsection (2):

(a) In the transfer or acquisition of a controlling interest as defined in subsection (1)(a) of this section, either against the corporation in which a controlling interest is transferred or acquired, against the person or persons who acquired the controlling interest in the corporation or, when the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and

(b) In the transfer or acquisition of a controlling interest as defined in subsection (1)(b) of this section, either against the entity in which a controlling interest is transferred or acquired or against the person or persons who transferred or acquired the controlling interest in the entity. [2019 c 424 § 4; 2010 1st sp.s. c 23 § 208; 1993 sp.s. c 25 § 505.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

82.45.035 Determining selling price of leases with option to purchase—Mining property—Payment, security when selling price not separately stated. The state department of revenue shall provide by rule for the determination of the selling price in the case of leases with option to purchase, and shall further provide that the tax shall not be payable, where inequity will otherwise result, until and unless the option is exercised and accepted. A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract, but the rule shall further provide that the tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the county treasurer (1) at the time of termination, or (2) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer, or (3) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occurs first.

The term "mining property" means property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessor to conduct exploration or mining work thereon and for no other use. The term "metallic minerals" does not include clays, coal, sand and gravel, peat, gypsite, or stone, including limestone.

The state department of revenue shall further provide by rule for cases where the selling price is not separately stated or is not ascertainable at the time of sale, for the payment of the tax at a time when the selling price is ascertained, in which case suitable security may be required for payment of the tax, and may further provide for the determination of the selling price by an appraisal by the county assessor, based on

the full and true market value, which appraisal shall be prima facie evidence of the selling price of the real property. [1969 ex.s. c 223 § 28A.45.035. Prior: 1967 ex.s. c 149 § 1; 1959 c 208 § 1; 1951 2nd ex.s. c 19 § 3. Formerly RCW 28A.45.035, 28.45.035.]

82.45.060 Tax on sale of property. (1) There is imposed an excise tax upon each sale of real property.

(a) Through December 31, 2019, the rate of the tax imposed under this section is 1.28 percent of the selling price.

(b) Beginning January 1, 2020, except as provided in (c) of this subsection, the rate of the tax imposed under this section is as follows:

(i) 1.1 percent of the portion of the selling price that is less than or equal to five hundred thousand dollars;

(ii) 1.28 percent of the portion of the selling price that is greater than five hundred thousand dollars and equal to or less than one million five hundred thousand dollars;

(iii) 2.75 percent of the portion of the selling price that is greater than one million five hundred thousand dollars and equal to or less than three million dollars;

(iv) Three percent of the portion of the selling price that is greater than three million dollars.

(c) The sale of real property that is classified as timberland or agricultural land is subject to the tax imposed under this section at a rate of 1.28 percent of the selling price.

(2) Beginning July 1, 2022, and every fourth year thereafter:

(a) The department must adjust the selling price threshold in subsection (1)(b)(i) of this section to reflect the lesser of the growth of the consumer price index for shelter or five percent. If the growth is equal to or less than zero percent, the current selling price threshold continues to apply.

(b) The department must adjust the selling price thresholds in subsection (1)(b)(ii) through (iv) of this section by the dollar amount of any increase in the selling price threshold in subsection (1)(b)(i) of this section.

(c) The department must publish updated selling price thresholds by September 1, 2022, and September 1st of every fourth year thereafter. Updated selling price thresholds will apply beginning January 1, 2023, and January 1st every fourth year thereafter. Adjusted selling price thresholds must be rounded to the nearest one thousand dollars. No changes may be made to adjusted selling price thresholds once such adjustments take effect.

(d) The most recent selling price threshold becomes the base for subsequent adjustments.

(e) The department must report adjustments to the selling price thresholds to the fiscal committees of the legislature, beginning December 1, 2022, and December 1st every fourth year thereafter.

(3)(a) The department must publish guidance to assist sellers in properly classifying real property on the real estate excise tax affidavit for purposes of determining the proper amount of tax due under this section. Real property with multiple uses must be classified according to the property's predominant use. The department's guidance must include factors for use in determining the predominant use of real property.

(b) County treasurers are not responsible for verifying that the seller has properly classified real property reported

on a real estate excise tax affidavit. The department is solely responsible for such verification as part of its audit responsibilities under RCW 82.45.150.

(4)(a) Beginning July 1, 2013, and ending December 31, 2019, an amount equal to two percent of the proceeds of this tax must be deposited in the public works assistance account created in RCW 43.155.050, an amount equal to four and one-tenth percent must be deposited in the education legacy trust account created in RCW 83.100.230, an amount equal to one and six-tenths percent must be deposited in the city-county assistance account created in RCW 43.08.290, and the remainder must be deposited in the general fund.

(b) Beginning January 1, 2020, amounts collected from the tax imposed under this section must be deposited as provided in RCW 82.45.230.

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

(a) "Agricultural land" means farm and agricultural land and farm and agricultural conservation land, as those terms are defined in RCW 84.34.020, including any structures on such land.

(b) "Consumer price index for shelter" means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st by the bureau of labor statistics of the United States department of labor.

(c) "Growth of the consumer price index for shelter" means the percentage increase in the consumer price index for shelter as measured from data published by the bureau of labor statistics of the United States department of labor by July 31st for the most recent three-year period for the selling price threshold adjustment in 2022, and the most recent four-year period for subsequent selling price threshold adjustments.

(d) "Timberland" means land classified under chapter 84.34 RCW or designated under chapter 84.33 RCW, including any structures and standing timber on such land, and standing timber sold apart from the land upon which it sits. [2019 c 424 § 1; 2017 3rd sp.s. c 10 § 13; 2013 2nd sp.s. c 9 § 6. Prior: 2011 1st sp.s. c 50 § 975; 2011 1st sp.s. c 48 § 7035; 2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060; prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

Automatic expiration date and tax preference performance statement exemption—2019 c 424: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2019 c 424 § 8.]

Effective date—2019 c 424: "This act takes effect January 1, 2020." [2019 c 424 § 9.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.065 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1718.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.45.070 Tax is lien on property—Enforcement.

The tax provided for in this chapter and any interest or penalties thereon is a specific lien upon each parcel of real property located in this state that is either sold or that is owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [2010 1st sp.s. c 23 § 209; 1969 ex.s. c 223 § 28A.45.070. Prior: 1951 1st ex.s. c 11 § 9. Formerly RCW 28A.45.070, 28.45.070.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.45.080 Tax is seller's obligation—Choice of remedies. (1) The tax levied under this chapter is the obligation of the seller and the department may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages. The department's use of one course of enforcement is not an election not to pursue the other.

(2) For purposes of this section and notwithstanding any other provisions of law, the seller is the parent corporation of a wholly owned subsidiary, when such subsidiary is the transferor to a third-party transferee and the subsidiary is dissolved before paying the tax imposed under this chapter. [2010 1st sp.s. c 23 § 210; 1980 c 154 § 3; 1969 ex.s. c 223 § 28A.45.080. Prior: 1951 1st ex.s. c 11 § 10. Formerly RCW 28A.45.080, 28.45.080.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest. (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter must be paid to and collected by the treasurer of the county within which is located the real property that was sold. In collecting the tax the county treasurer must act as agent for the state. The county treasurer must cause a verification of payment evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter is evidence of the satisfaction of the lien imposed in this section and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the verification of payment affixed thereto; in case the tax is not due on the transfer, the instrument may not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. At the sale of a used mobile home, used manufactured home, used park

model, or used floating home that has not been title eliminated, property taxes must be current in order to complete the processing of the real estate excise tax affidavit or other documents transferring title. Verification that the property taxes are current must be noted on the mobile home real estate excise tax affidavit or on a form approved by the county treasurer. For the purposes of this subsection, "mobile home," "manufactured home," and "park model" have the same meaning as provided in RCW 59.20.030.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale must be reported to the department of revenue within five days from the sale date on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns must be signed or electronically signed by both the transferor and the transferee and must be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW. [2017 c 142 § 3; 2009 c 350 § 8; 2003 c 53 § 404; 1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties. (1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter will bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, is computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, is computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department must provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there will be assessed a total penalty of twenty per-

cent of the amount of the tax. The payment of the penalty described in this subsection is collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee is personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department must assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same becomes due and must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (8) must be deposited in the housing trust fund as described in chapter 43.185 RCW. [2010 1st sp.s. c 23 § 211; 2007 c 111 § 112; 1997 c 157 § 4; 1996 c 149 § 5; 1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

82.45.105 Single-family residential property, tax credit when subsequent transfer of within nine months for like property. Where single-family residential property is being transferred as the entire or part consideration for the purchase of other single-family residential property and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the amount of the tax due upon a subsequent transfer of the property by the broker or party if said transfer is made within nine months of the transfer to the broker or party: PROVIDED, That if the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party the difference shall be paid, but if the tax initially paid is greater than the amount of the tax which would be due on the subsequent transfer no refund shall be allowed. [1969 ex.s. c

223 § 28A.45.105. Prior: 1967 ex.s. c 149 § 61. Formerly RCW 28A.45.105, 28.45.105.]

82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit. All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and (10), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue must by rule provide for the effective administration of this chapter. The rules must prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right-of-way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative and except that a transfer on death deed need be verified only on behalf of the transferor. The department of revenue must annually conduct audits of transactions and affidavits filed under this chapter. [2014 c 97 § 307; 2014 c 58 § 26; 1996 c 149 § 6; 1994 c 137 § 1; 1993 sp.s. c 25 § 509; 1981 c 167 § 1; 1980 c 154 § 5.]

Reviser's note: This section was amended by 2014 c 58 § 26 and by 2014 c 97 § 307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Findings—1993 sp.s. c 25: See note following RCW 82.45.010.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Audits, assessments, and refunds: See note following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.180 Disposition of proceeds. (1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over

to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 12:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.

(iii) "Proceeds" means moneys collected and receipted by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

(3)(a) Through June 30, 2010, the county treasurer shall collect an additional five dollar fee on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the general fund. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(b) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used

exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by the earlier of: July 1, 2015, or at such time that the county treasurer is utilizing an electronic processing and reporting system for real estate excise tax affidavits compatible with the department and compatible with the processes used in the offices of the county assessor and county auditor, revert to the special real estate and property tax administration assistance account in accordance with subsection (5)(c) of this section.

(4) Beginning July 1, 2010, through December 31, 2013, the county treasurer shall continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. During this period, the county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the annual property revaluation grant account created in *RCW 84.41.170.

(5)(a) The real estate and property tax administration assistance account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Beginning January 1, 2014, the county treasurer must continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall deposit one-half of this fee in the special real estate and property tax administration assistance account in accordance with (c) of this subsection and remit the balance to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer must place money from this fee in the real estate and property tax administration assistance account. By the twentieth day of the subsequent month, the state treasurer must distribute the funds to each county treasurer according to the following formula: One-half of the funds available must be equally distributed among the thirty-nine counties; and the balance must be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds must be placed in a special real estate and property tax administration assistance account held by the county treasurer to be used for:

(i) Maintenance and operation of an annual revaluation system for property tax valuation; and

(ii) Maintenance and operation of an electronic processing and reporting system for real estate excise tax affidavits. [2013 c 251 § 11; 2010 1st sp.s. c 26 § 9; 2009 c 308 § 5; 2006 c 312 § 1. Prior: 2005 c 486 § 2; 2005 c 480 § 2; 1998 c 106 § 11; 1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

*Reviser's note: RCW 84.41.170 expired July 1, 2014.

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Purpose—2005 c 486: "Over the past decade, traditional school construction funding sources, such as timber revenues, have been declining, while the demand for school facility construction and improvements have been increasing. Washington's youth deserve safe, healthy, and supportive learning environments to help meet their educational needs. To increase state assistance for local school construction projects, the legislature expects to rely more on state bonding authority. The purpose of this act is to expand the constitutional definition of general state revenues by removing the dedication of a portion of the real estate excise tax for common schools. Nothing in this act is intended to affect the state's current efforts to support common schools in the state's omnibus appropriations act." [2005 c 486 § 1.]

Intent—Findings—Effective date—2005 c 480: See notes following RCW 82.45.210.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.190 Exemptions—State route No. 16 corridor transportation systems and facilities. Sales of the state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW are exempt from tax under this chapter. [1998 c 179 § 7.]

Finding—1998 c 179: See note following RCW 35.21.718.

82.45.195 Exemptions—Standing timber sales. A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260(12)(d). [2014 c 97 § 308; 2010 1st sp.s. c 23 § 518; 2007 c 48 § 7.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.45.197 Exemptions—Inheritance—Documents required. (1) In order to receive an exemption under RCW 82.45.010(3)(a) from the tax in this chapter on real property transferred as a result of a devise by will or inheritance, the following documentation must be provided to the county treasurer:

(a) If the property is being transferred under the terms of a community property agreement, a copy of the recorded agreement and a certified copy of the death certificate;

(b) If the property is being transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of that portion of the trust instrument showing the authority of the grantor;

(c) If the property is being transferred under the terms of a probated will, a certified copy of the letters testamentary or in the case of intestate administration, a certified copy of the letters of administration showing that the grantor is the court-appointed executor, executrix, or administrator;

(d) In the case of joint tenants with right of survivorship and remainder interests, a certified copy of the death certificate;

(e) If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer, and confirming that the grantor is required to do so under the terms of the order;

(f) If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir to the property;

(g) If the real property is transferred to one or more heirs by operation of law, or transferred under a will that has not been probated, but absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit affirming that the affiant or affiants are the sole and rightful heirs to the property;

(h) When real property is transferred as described in (g) of this subsection (1) and the decedent-transferor had also inherited the property from his or her spouse or domestic partner but never transferred title to the property into the decedent-transferor's name, the transferee or transferees must provide: (i) A certified copy of the death certificates for the decedent-transferor and the spouse or domestic partner from whom the decedent-transferor inherited the real property; and (ii) a lack of probate affidavit affirming that the affiant or affiants are the rightful heirs to the property; or

(i) If the property is being transferred pursuant to a transfer on death deed, a certified copy of the death certificate.

(2) The documentation provided to the county treasurer under this section must also be recorded with the county auditor.

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

(a) "Heir" has the same meaning as provided in RCW 11.02.005;

(b) "Lack of probate affidavit" means a signed and notarized document declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:

(i) The names of the affiant or affiants;

(ii) The relationship of the affiant or affiants to the decedent;

(iii) The names of all other heirs of the decedent living at the time of the decedent's death;

(iv) A description of the real property;

(v) Whether the decedent left a will that includes a devise of real property; and

(vi) Any other information the department may require. [2016 c 174 § 2; 2014 c 58 § 25; 2008 c 269 § 1.]

Findings—Intent—2016 c 174: "The legislature finds that state and local real estate excise taxes apply to the sale of real property unless one of several statutory exceptions apply. The legislature further finds that one such exception involves real property transferred as a result of a devise by will or inheritance. The legislature further finds that RCW 82.45.197 requires specific types of documentation to be provided to qualify for this inheritance exemption. The legislature further finds that in some cases, property passes from a decedent to a devisee or an heir with no written documentation or court record that satisfies the requirements of RCW 82.45.197. The legislature further finds that real estate excise tax does not apply to transfers of real property by operation of law, but that the process for documenting such transfers should be clarified. It is the legislature's intent to clarify that state and local real estate excise taxes do not apply when a devisee or an heir files a lack of probate affidavit where no additional documentation exists to substantiate that the devisee or heir is legally entitled to the property as a result of a will or inheritance." [2016 c 174 § 1.]

Tax preference performance statement and expiration—2016 c 174: "RCW 82.32.805 and 82.32.808 do not apply to this act." [2016 c 174 § 3.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

82.45.210 State assistance for county electronic processing and reporting of taxes—Grant program. (1) To the extent that funds are appropriated, the department shall administer a grant program for counties to assist in the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits that is compatible with the automated real estate excise tax system developed by the department, and to assist in complying with the requirements of RCW 82.45.180(1).

(2) Subject to the limits in subsection (3) of this section, the amount of the grant shall be equal to the amount paid by a county to:

(a) Purchase computer hardware or software, or to repair or upgrade existing computer hardware or software, used for the electronic processing and reporting of real estate excise tax affidavits and that is compatible with the automated real estate excise tax system developed by the department; and

(b) Make changes to existing software that are necessary to comply with the requirements of RCW 82.45.180(1).

(3)(a) No county is eligible for grants under this section totaling more than one hundred thousand dollars.

(b) Grant funds shall not be awarded for expenditures made by a county with funds distributed to the county by the state treasurer under RCW 82.45.180(3)(b).

(4) No more than three million nine hundred thousand dollars in grants may be awarded under this section. [2012 c 198 § 7; 2006 c 312 § 2; 2005 c 480 § 4.]

Effective date—2012 c 198: See note following RCW 70A.15.5110.

Intent—Findings—2005 c 480: "(1) It is the legislature's intent to provide funding for the development and implementation of an automated system for the electronic processing of the real estate excise tax. The legislature finds that due to the numerous users of the real estate excise tax information, and the many entities involved in its workflow, county systems must be compatible with the automated system developed by the state department of revenue.

(2) The legislature finds that under current law an electronic real estate excise tax affidavit that is signed with a digital signature under chapter 19.34 RCW is a legally valid document and, pursuant to RCW 5.46.010, electronic facsimiles, scanned signatures, and digital and other electronic conversions of written signatures satisfy the signature component of the affidavit requirement under this act." [2005 c 480 § 1.]

Additional notes found at www.leg.wa.gov

82.45.220 Failure to report transfer of controlling interest. (1) An organization that fails to report to the secretary of state a transfer of an interest in the organization as required under RCW 43.07.390 and the transfer results in a sale as defined in RCW 82.45.010(2) is subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(7).

(2) Subsection (1) of this section also applies to the failure to report to the secretary of state the granting of an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2). [2019 c 424 § 7; 2010 1st sp.s. c 23 § 212; 2005 c 326 § 3.]

(2022 Ed.)

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Additional notes found at www.leg.wa.gov

82.45.230 Accounts into which tax is deposited. (1) Beginning January 1, 2020, and ending June 30, 2023, the amounts received for the tax imposed on each sale of real property under RCW 82.45.060 must be deposited as follows:

(a) 1.7 percent must be deposited into the public works assistance account created in RCW 43.155.050;

(b) 1.4 percent must be deposited into the city-county assistance account created in RCW 43.08.290;

(c) 79.4 percent must be deposited into the general fund; and

(d) The remainder must be deposited into the educational legacy trust account created in RCW 83.100.230.

(2) Beginning July 1, 2023, and thereafter, the amounts received for the tax imposed on each sale of real property under RCW 82.45.060 must be deposited as follows:

(a) 5.2 percent must be deposited into the public works assistance account created in RCW 43.155.050;

(b) 1.4 percent must be deposited into the city-county assistance account created in RCW 43.08.290;

(c) 79.4 percent must be deposited into the general fund; and

(d) The remainder must be deposited into the education legacy trust account created in RCW 83.100.230. [2019 c 424 § 2.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

82.45.235 Tax treatment—Transactions structured to reduce or avoid tax. The legislature recognizes that in adopting a graduated tax rate structure providing for increased tax rates for sales of highly valued property, while also exempting certain types of property from the increased tax rates, some taxpayers will attempt to avoid or reduce the tax imposed in this chapter by structuring transactions in a way that serves no meaningful purpose other than to reduce tax due under this chapter.

(1)(a) When necessary to deny the tax benefit that would otherwise accrue from engaging in one or more related transactions designed to avoid tax under this chapter, the department is authorized to disregard the form of the transaction or series of transactions and determine the proper tax treatment under this chapter based on the substance of the transaction or transactions. In exercising this authority, the department may consider the factors described in RCW 82.32.655(2) (a), (b), (c), and (f).

(b) The authority provided in this subsection includes, but is not limited to, treating multiple sales as a single sale as necessary to prevent the parties from reducing the tax liability under this chapter when it appears that the parties have engaged in a concerted plan intended from the outset to achieve a reduced effective tax rate than had the parties collapsed the separate sales into a single sale at the outset.

[Title 82 RCW—page 425]

(2) The department is encouraged to provide guidance to the public concerning the department's implementation of this section, whether by rule or otherwise. [2019 c 424 § 5.]

Automatic expiration date and tax preference performance statement exemption—Effective date—2019 c 424: See notes following RCW 82.45.060.

82.45.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW. See RCW 82.46.900.

Chapter 82.46 RCW

COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

Sections

82.46.010	Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates.
82.46.015	Capital projects—Use of tax funds.
82.46.021	Referendum procedure to repeal or alter tax.
82.46.030	Distribution of proceeds.
82.46.035	Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.
82.46.037	Capital projects—Use of additional tax funds.
82.46.040	Tax is lien on property—Enforcement.
82.46.050	Tax is seller's obligation—Choice of remedies.
82.46.060	Payment of tax—Evidence of payment—Recording.
82.46.070	Additional excise tax—Acquisition and maintenance of conservation areas.
82.46.075	Additional excise tax—Affordable housing.
82.46.080	Notice to county treasurer.
82.46.900	Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates. (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2)(a) The legislative authority of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Except as provided in subsection (8) of this section, the revenues from this tax must be used by any city or county with a population of 5,000 or less and any city or county that does not plan under RCW 36.70A.040 for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

(b) Except as provided in subsection (8) of this section, after April 30, 1992, revenues generated from the tax imposed under this subsection (2) in counties over 5,000 population and cities over 5,000 population that are required or choose to plan under RCW 36.70A.040 must be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (i) pledged by such counties and cities to debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were

pledged is retired, or (ii) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(4) Taxes imposed under this section must be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(5) Taxes imposed under this section must comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

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

(a) "City" means any city or town.

(b) "Capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative facilities; judicial facilities; river flood control projects; waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such purposes; until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes; and technology infrastructure that is integral to the capital project.

(7) From July 22, 2011, until December 31, 2016, a city or county may use the greater of \$100,000 or 35 percent of available funds under this section, but not to exceed \$1,000,000 per year, for the operations and maintenance of existing capital projects as defined in subsection (6) of this section.

(8) After May 13, 2021, through December 31, 2023, a city or county may use the greater of \$100,000 or 35 percent of available funds under this section for the operation of, maintenance of, and service support for, existing capital projects, including the provision of services to residents of affordable housing or shelter units. [2021 c 296 § 10; 2015 2nd sp.s. c 10 § 1; 2014 c 44 § 1; 2011 c 354 § 1; 1994 c 272 § 1; 1992 c 221 § 1; 1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Expenditures prior to June 11, 1992: "All expenditures of revenues collected under RCW 82.46.010 made prior to June 11, 1992, are deemed to be in compliance with RCW 82.46.010." [1992 c 221 § 4.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.015 Capital projects—Use of tax funds. (1)

After May 13, 2021, through December 31, 2023, a city or county may use the greater of \$100,000 or 35 percent of available funds from revenues collected under RCW 82.46.010 for the maintenance of, operation of, and service support for, existing capital projects, as defined in RCW 82.46.010, and including the provision of services to residents of affordable housing or shelter units.

(2) After December 31, 2023, a city or county that meets the requirements of subsection (3) of this section may use the greater of \$100,000 or 25 percent of available funds, but not to exceed \$1,000,000 per year, from revenues collected under RCW 82.46.010 for the maintenance of capital projects, as defined in RCW 82.46.010.

(3) A city or county may use revenues pursuant to subsection (2) of this section if:

(a) The city or county prepares a written report demonstrating that it has or will have adequate funding from all sources of public funding to pay for all capital projects, as defined in RCW 82.46.010, identified in its capital facilities plan for the succeeding two-year period. Cities or counties not required to prepare a capital facilities plan may satisfy this provision by using a document that, at a minimum, identifies capital project needs and available public funding sources for the succeeding two-year period; and

(b)(i) The city or county has not enacted, after June 9, 2016: Any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety; or

(ii) Any local requirement adopted by the city or county under (b)(i) of this subsection is: Specifically authorized by RCW 35.80.030, 35A.11.020, chapter 7.48 RCW, or chapter 19.27 RCW; specifically authorized by other state or federal law; or a seller or landlord disclosure requirement pursuant to RCW 64.06.080.

(4) The report prepared under subsection (3)(a) of this section must: (a) Include information necessary to determine compliance with the requirements of subsection (3)(a) of this section; (b) identify how revenues collected under RCW 82.46.010 were used by the city or county during the prior two-year period; (c) identify how funds authorized under subsection (2) of this section will be used during the succeeding two-year period; and (d) identify what percentage of funding for capital projects within the city or county is attributable to revenues under RCW 82.46.010 compared to all other sources of capital project funding. The city or county must prepare and adopt the report as part of its regular, public budget process.

(5) The authority to use funds as authorized in this section is in addition to the authority to use funds pursuant to RCW 82.46.010(7), which remains in effect through December 31, 2016.

(6) For purposes of this section, "maintenance" means the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. "Maintenance" does not include labor or material

(2022 Ed.)

costs for routine operations of a capital project. [2021 c 296 § 11; 2016 c 138 § 3; 2015 2nd sp.s. c 10 § 2.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

82.46.021 Referendum procedure to repeal or alter tax.

Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.46.010(3) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29A.04.321 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided for in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or increasing the rate under RCW 82.46.010(3) to a referendum vote.

Any county or city tax authorized under RCW 82.46.010(3) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [2015 c 53 § 98; 2000 c 103 § 16; 1983 c 99 § 3.]

82.46.030 Distribution of proceeds. (1) The county treasurer shall place one percent of the proceeds of the taxes imposed under this chapter in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010(2) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010(2) shall be distributed to the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law. [2000 c 103 § 17; 1992 c 221 § 2; 1990 1st ex.s. c 17 § 37; 1982 1st ex.s. c 49 § 13.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (1) Except for revenues used after May 13, 2021, through December 31, 2023, as provided in subsection (3) of this section, the legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section must be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan, except that the greater of \$100,000 or 35 percent of revenues may additionally be used for the operation of, maintenance of, and service support for, existing capital projects after May 13, 2021, through December 31, 2023. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section must be deposited in a separate account after December 31, 2023.

(5) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for:

(a) Planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems;

(b) Planning, construction, reconstruction, repair, rehabilitation, or improvement of parks; and

(c) Until January 1, 2026, planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of facilities for those experiencing homelessness and affordable housing projects.

(6) A county or city may use the greater of \$100,000 or 25 percent of available funds, but not to exceed \$1,000,000, for capital projects as defined in subsection (5)(c) of this section. The limits in this subsection do not apply to any county or city that used revenue under this section for the acquisition, construction, improvement, or rehabilitation of facilities to provide housing for the homeless prior to June 30, 2019.

(7) A county or city using funds for uses in subsection (5)(c) of this section must document in its plan under RCW 36.70A.070(3) that it has funds during the next two years for capital projects in subsection (5)(a) of this section.

(8) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section is temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance. [2021 c 296 § 12; 2019 c 73 § 2; 2011 c 354 § 3; (2011 c 354 § 2 expired June 30, 2012); (2009 c 211 § 1 expired June 30, 2012). Prior: 1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

Additional notes found at www.leg.wa.gov

82.46.037 Capital projects—Use of additional tax funds. (1) A city or county that meets the requirements of subsection (2) of this section may use the greater of \$100,000 or 25 percent of available funds, but not to exceed \$1,000,000 per year, except for the period from May 13, 2021, through December 31, 2023, when the greater of \$100,000 or 35 percent may be used from revenues collected under RCW 82.46.035 for:

(a) The maintenance of capital projects, as defined in RCW 82.46.035(5);

(b) The planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, improvement, or maintenance of capital projects as defined in RCW 82.46.010(6)(b) that are not also included within the definition of capital projects in RCW 82.46.035(5); and

(c) The operation of, and service support for, existing capital projects as included in the definition of capital project in RCW 82.46.035(5) and 82.46.010(6)(b), from May 13, 2021, through December 31, 2023.

(2) A city or county may use revenues pursuant to subsection (1) of this section after May 13, 2021, through December 31, 2023. Thereafter, a city or county may use revenues pursuant to subsection (1) of this section if:

(a) The city or county prepares a written report demonstrating that it has or will have adequate funding from all sources of public funding to pay for all capital projects, as defined in RCW 82.46.035(5), identified in its capital facilities plan for the succeeding two-year period; and

(b)(i) The city or county has not enacted, after June 9, 2016, any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety;

(ii) Any local requirement adopted by the city or county under (b)(i) of this subsection is: Specifically authorized by RCW 35.80.030, 35A.11.020, chapter 7.48 RCW, or chapter

19.27 RCW; specifically authorized by other state or federal law; or a seller or landlord disclosure requirement pursuant to RCW 64.06.080; or

(iii) For a city or county using funds under subsection (1)(b) of this section, the requirements of this subsection apply, except that the date for such enactment under (b)(i) of this subsection is ninety days after October 19, 2017.

(3) The report prepared under subsection (2)(a) of this section must: (a) Include information necessary to determine compliance with the requirements of subsection (2)(a) of this section; (b) identify how revenues collected under RCW 82.46.035 were used by the city or county during the prior two-year period; (c) identify how funds authorized under subsection (1) of this section will be used during the succeeding two-year period; and (d) identify what percentage of funding for capital projects within the city or county is attributable to revenues under RCW 82.46.035 compared to all other sources of capital project funding. The city or county must prepare and adopt the report as part of its regular, public budget process.

(4) For purposes of this section, "maintenance" means the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. "Maintenance" does not include labor or material costs for routine operations of a capital project. [2021 c 296 § 13; 2019 c 73 § 3; 2017 3rd sp.s. c 16 § 6; 2016 c 138 § 4; 2015 2nd sp.s. c 10 § 3.]

Finding—Intent—Effective date—2021 c 296: See notes following RCW 82.14.310.

82.46.040 Tax is lien on property—Enforcement.

Any tax imposed under this chapter or RCW 82.46.070 and any interest or penalties thereon is a specific lien upon each piece of real property sold from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1990 1st ex.s. c 17 § 39; 1990 1st ex.s. c 5 § 4; 1982 1st ex.s. c 49 § 14.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 4 and by 1990 c 17 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.050 Tax is seller's obligation—Choice of remedies. The taxes levied under this chapter are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other. [1990 1st ex.s. c 17 § 40; 1982 1st ex.s. c 49 § 15.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.060 Payment of tax—Evidence of payment—Recording. Any taxes imposed under this chapter or RCW 82.46.070 shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. The treasurer shall act as agent for any city within

(2022 Ed.)

the county imposing the tax. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter or RCW 82.46.070 shall be evidence of the satisfaction of the lien imposed in RCW 82.46.040 and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of this fact is made on the instrument by the treasurer. [1990 1st ex.s. c 17 § 41; 1990 1st ex.s. c 5 § 5; 1982 1st ex.s. c 49 § 16.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 5 and by 1990 1st ex.s. c 17 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas.

(1) Subject to subsection (2) of this section, the legislative authority of any county may impose an additional excise tax on each sale of real property in the county at a rate not to exceed one percent of the selling price. The proceeds of the tax shall be used exclusively for the acquisition and maintenance of conservation areas.

The taxes imposed under this subsection shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except:

- (a) The tax shall be the obligation of the purchaser; and
- (b) The tax does not apply to the acquisition of conservation areas by the county.

The county may enforce the obligation through an action of debt against the purchaser or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages.

The tax shall take effect thirty days after the election at which the taxes are authorized.

(2) No tax may be imposed under subsection (1) of this section unless approved by a majority of the voters of the county voting thereon for a specified period and maximum rate after:

- (a) The adoption of a resolution by the county legislative authority of the county proposing this action; or
- (b) The filing of a petition proposing this action with the county auditor, which petition is signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted at the last preceding general election.

The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to

this general election that has been called for such purpose by the county legislative authority.

(3) A plan for the expenditure of the excise tax proceeds shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and a public hearing shall be held to obtain public input. The proceeds of this excise tax must be expended in conformance with this plan.

(4) As used in this section, "conservation area" has the meaning given under RCW 36.32.570. [1990 1st ex.s. c 5 § 3.]

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

82.46.075 Additional excise tax—Affordable housing. (1) Subject to subsections (4) and (5) of this section, the legislative authority of any county may impose an additional excise tax on the purchase and sale of real property in the county at the rate of one-half of one percent of the selling price. The proceeds of the tax shall be used exclusively for the development of affordable housing including acquisition, building, rehabilitation, and maintenance and operation of housing for very low, low, and moderate-income persons and those with special needs.

(2) Revenues generated from the tax imposed under this section shall be placed in an affordable housing account administered by the county. Disbursements from the account shall be made following a competitive grant and loan process. The county legislative authority shall determine a mechanism for receiving grant and loan applications, and criteria by which the applications shall be approved and funded. Eligible recipients of grants and loans from the account shall be private nonprofit, affordable housing providers, the housing authority for the county, or other housing programs conducted or funded by a public agency, or by a public agency in partnership with a private nonprofit entity.

(3) The taxes imposed under this section shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except that the tax shall be the obligation of both the purchaser and the seller, as determined by the county legislative authority, with at least one-half of the obligation being that of the purchaser. The county may enforce the obligation through an action of debt against the purchaser or seller or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages. The imposition of the tax is effective thirty days after the election at which the tax is authorized.

(4)(a) No tax may be imposed under this section unless approved by a majority of the voters of the county voting, for a specified period and for a specified maximum rate. This vote must follow either:

(i) The adoption of a resolution by the county legislative authority proposing this action; or

(ii) The filing of a petition proposing this action with the county auditor, signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted in the preceding general election.

(b) The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election called for this purpose by the county legislative authority.

(5) No tax may be imposed under this section unless the county imposes a tax under RCW 82.46.070 at the maximum rate and the tax was imposed by January 1, 2003.

(6) A plan for the expenditure of the proceeds of the tax imposed by this section shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and at least one public hearing shall be held to obtain public comment. The proceeds of the tax shall be expended in conformance with this plan. [2002 c 343 § 1.]

82.46.080 Notice to county treasurer. A county, city, or town that imposes an excise tax under this chapter must provide the county treasurer with a copy of the ordinance or other action initially authorizing the tax or altering the rate of the tax that is imposed at least sixty days before change becomes effective. [1998 c 106 § 10.]

82.46.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW. Any ordinance imposing a tax under chapter 82.46 RCW which is in effect on July 1, 1993, shall apply to all sales taxable under chapter 82.45 RCW on July 1, 1993, at the rate specified in the ordinance, until such time as the ordinance is otherwise amended or repealed. [1993 sp.s. c 25 § 508.]

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Additional notes found at www.leg.wa.gov

Chapter 82.47 RCW BORDER AREA MOTOR VEHICLE FUEL AND SPECIAL FUEL TAX

Sections

82.47.010	Definitions.
82.47.020	Tax authority.
82.47.030	Proceeds.

82.47.010 Definitions. For purposes of this chapter, unless the context clearly requires otherwise, "fuel," "motor vehicle fuel," "special fuel," and "motor vehicle" have the meaning given in RCW 82.38.020. [2014 c 216 § 206; 1998 c 176 § 85; 1991 c 173 § 2.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Additional notes found at www.leg.wa.gov

82.47.020 Tax authority. (1) The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an

excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than 12 months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state the tax rate that is proposed. The rate of such tax may not exceed two cents per gallon for ballot propositions submitted in calendar year 2022. For ballot propositions submitted after calendar year 2022, this two cents per gallon maximum tax rate may be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published by the bureau of economic analysis of the federal department of commerce, for the period of time between calendar year 2022 and when the tax is placed on the ballot for voter approval.

(2) The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

(3) For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within 10 miles of an international border crossing and any transportation benefit district established under RCW 36.73.020 which has within its boundaries an international border crossing. [2022 c 182 § 405; 1991 c 173 § 1.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Additional notes found at www.leg.wa.gov

82.47.030 Proceeds. The entire proceeds of the tax imposed under this chapter, less refunds authorized by the resolution imposing such tax and less amounts deducted by the border area jurisdiction for administration and collection expenses, shall be used solely for the purposes of border area jurisdiction street maintenance and construction. [1991 c 173 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 82.48 RCW AIRCRAFT EXCISE TAX

Sections

82.48.010	Definitions.
82.48.020	Excise tax imposed on aircraft—Out-of-state registration to avoid tax, liability—Penalties.
82.48.030	Amount of tax.
82.48.035	Tax preferences—Expiration dates.
82.48.060	Is in addition to other taxes.
82.48.070	Tax receipt.
82.48.080	Payment and distribution of taxes.
82.48.090	Refund of excessive tax payment and interest.
82.48.100	Exempt aircraft.
82.48.110	Aircraft not to be subject to ad valorem tax—Exceptions.

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

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air.

(2) "Commuter air carrier" means an air carrier holding authority under Title 14, Part 298 of the Code of Federal Regulations that carries passengers on at least five round trips per

(2022 Ed.)

week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(3) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more.

(4) "Person" includes a firm, partnership, limited liability company, or corporation.

(5) "Secretary" means the secretary of transportation.

(6) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds. [2013 c 56 § 2; 1995 c 318 § 4; 1987 c 220 § 5; 1983 2nd ex.s. c 3 § 21; 1979 c 158 § 239; 1967 ex.s. c 9 § 1; 1961 c 15 § 82.48.010. Prior: 1949 c 49 § 1; Rem. Supp. 1949 § 11219-33.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2013 c 56: See note following RCW 84.36.133.

Additional notes found at www.leg.wa.gov

82.48.020 Excise tax imposed on aircraft—Out-of-state registration to avoid tax, liability—Penalties. (1) An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel shall constitute the necessary evidence of aircraft use or intended use. The tax shall be collected annually or under a staggered collection schedule as required by the secretary by rule. No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the Washington aircraft excise tax are liable for such unpaid excise tax. A violation of this subsection is a gross misdemeanor.

The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) Except as provided under subsections (1) and (2) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW. [2000 c 229 § 4; 1999 c 277 § 7; 1993 c 238 § 5; 1992 c 154 § 1; 1987 c 220 § 6; 1983 c 7 § 27; 1979 c 158 § 240; 1967 ex.s. c 149 § 27; 1967 ex.s. c 9 § 2; 1961 c 15 § 82.48.020. Prior: 1949 c 49 § 2; Rem. Supp. 1949 § 11219-34.]

Additional notes found at www.leg.wa.gov

82.48.030 Amount of tax. (1)(a) Except as otherwise provided in (b) of this subsection, the amount of the tax imposed by this chapter for each calendar year is as follows:

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

(b) The amount of tax imposed by this chapter for each calendar year with respect to aircraft owned and operated by a commuter air carrier that is not an airplane company as defined in RCW 84.12.200 is as follows:

Gross maximum take-off weight of the aircraft	Registration fee
Less than 4,001 lbs.	\$500
4,001-6,000 lbs.	\$1,000
6,001-8,000 lbs.	\$2,000
8,001-9,000 lbs.	\$3,000
9,001-12,500 lbs.	\$4,000

(2)(a) The amount of tax imposed under subsection (1) of this section for each calendar year must be divided into twelve parts corresponding to the months of the calendar year and the excise tax upon an aircraft registered for the first time in this state after the last day of any month may only be levied for the remaining months of the calendar year including the month in which the aircraft is being registered. However, the minimum amount payable is three dollars.

(b) An aircraft is deemed registered for the first time in this state when such aircraft was not previously registered by this state for the year immediately preceding the year in which application for registration is made. [2013 c 56 § 3; 1983 2nd ex.s. c 3 § 22; 1967 ex.s. c 9 § 3; 1963 c 199 § 6; 1961 c 15 § 82.48.030. Prior: 1949 c 49 § 3; Rem. Supp. 1949 § 11219-35.]

Effective date—2013 c 56: See note following RCW 84.36.133.

Additional notes found at www.leg.wa.gov

82.48.035 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1719.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.48.060 Is in addition to other taxes. Except as provided in RCW 82.48.110, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.48.060. Prior: 1949 c 49 § 6; Rem. Supp. 1949 § 11219-38.]

82.48.070 Tax receipt. The secretary shall give a receipt to each person paying the excise tax. [1987 c 220 § 7;

[Title 82 RCW—page 432]

1967 ex.s. c 9 § 4; 1961 c 15 § 82.48.070. Prior: 1949 c 49 § 7; Rem. Supp. 1949 § 11219-39.]

Additional notes found at www.leg.wa.gov

82.48.080 Payment and distribution of taxes. The secretary must regularly pay to the state treasurer the excise taxes collected under this chapter, which must be credited by the state treasurer to the aeronautics account for state grants to airports and the administrative expenses associated with grant execution and the collection of excise taxes under this chapter. [2015 3rd sp.s. c 6 § 901; 1995 c 170 § 2; 1987 c 220 § 8; 1974 ex.s. c 54 § 8; 1967 ex.s. c 9 § 5; 1961 c 15 § 82.48.080. Prior: 1949 c 49 § 8; Rem. Supp. 1949 § 11219-40.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Additional notes found at www.leg.wa.gov

82.48.090 Refund of excessive tax payment and interest. In case a claim is made by any person that the person has paid an erroneously excessive amount of excise tax under this chapter, the person may apply to the department of transportation for a refund of the claimed excessive amount together with interest at the rate specified in RCW 82.32.060. The department of transportation shall review such application, and if it determines that an excess amount of tax has actually been paid by the taxpayer, such excess amount and interest at the rate specified in RCW 82.32.060 shall be refunded to the taxpayer by means of a voucher approved by the department of transportation and by the issuance of a state warrant drawn upon and payable from such funds as the legislature may provide for that purpose. No refund shall be allowed, however, unless application for the refund is filed with the department of transportation within ninety days after the claimed excessive excise tax was paid and the amount of the overpayment exceeds five dollars. [1992 c 154 § 2; 1989 c 378 § 25; 1987 c 220 § 9; 1985 c 414 § 5; 1975 1st ex.s. c 278 § 96; 1961 c 15 § 82.48.090. Prior: 1949 c 49 § 9; Rem. Supp. 1949 § 11219-41.]

Additional notes found at www.leg.wa.gov

82.48.100 Exempt aircraft. (Effective until July 1, 2031.) This chapter does not apply to:

(1) Aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which are not engaged in carrying persons or property for commercial purposes;

(2) Aircraft registered under the laws of a foreign country;

(3) Aircraft that are owned by a nonresident and registered in another state, if the aircraft remains in this state or is based in this state, or both, for a period less than ninety days;

(4)(a) Aircraft engaged principally in commercial flying that constitutes interstate or foreign commerce, except as provided in (b) of this subsection.

(b) The exemption provided by (a) of this subsection does not apply to aircraft engaged principally in commercial flying that constitutes interstate or foreign commerce when

such aircraft will be in this state exclusively for the purpose of continual storage of not less than one full calendar year;

(5) Aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) Aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW; and

(7) Aircraft owned by a nonresident of this state if the aircraft is kept at an airport in this state and that airport is jointly owned or operated by a municipal corporation or other governmental entity of this state and a municipal corporation or other governmental entity of another state, and the owner or operator of the aircraft provides the department with proof that the owner or operator has paid all taxes, license fees, and registration fees required by the state in which the owner or operator resides. [2020 c 304 § 5; (2020 c 304 § 4 expired July 1, 2021). Prior: (2013 2nd sp.s. c 13 § 1105 expired July 1, 2021); (2010 1st sp.s. c 12 § 2 expired January 1, 2020); 1999 c 302 § 3; 1965 ex.s. c 173 § 28; 1961 c 15 § 82.48.100; prior: 1955 c 150 § 12; 1949 c 49 § 10; Rem. Supp. 1949 § 11219-42.]

Effective date—Expiration date—2020 c 304 §§ 3 and 5: See notes following RCW 47.68.250.

Expiration date—2020 c 304 § 4: "Section 4 of this act expires July 1, 2021." [2020 c 304 § 8.]

Expiration date—2020 c 304; 2013 2nd sp.s. c 13 §§ 1102 and 1105: See note following RCW 47.68.250.

Intent—Findings—Tax preference review—2020 c 304 §§ 1-5; 2013 2nd sp.s. c 13 §§ 1101-1105: See note following RCW 47.68.250.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.215.

Additional notes found at www.leg.wa.gov

82.48.100 Exempt aircraft. (Effective July 1, 2031.)

This chapter shall not apply to:

Aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which are not engaged in carrying persons or property for commercial purposes;

Aircraft registered under the laws of a foreign country;

Aircraft which are owned by a nonresident and registered in another state: PROVIDED, That if any such aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

Aircraft engaged principally in commercial flying which constitutes interstate or foreign commerce; and aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

Aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

Aircraft owned by a nonresident of this state if the aircraft is kept at an airport in this state and that airport is jointly owned or operated by a municipal corporation or other governmental entity of this state and a municipal corporation or other governmental entity of another state, and the owner or

(2022 Ed.)

operator of the aircraft provides the department with proof that the owner or operator has paid all taxes, license fees, and registration fees required by the state in which the owner or operator resides. [1999 c 302 § 3; 1965 ex.s. c 173 § 28; 1961 c 15 § 82.48.100. Prior: 1955 c 150 § 12; 1949 c 49 § 10; Rem. Supp. 1949 § 11219-42.]

Additional notes found at www.leg.wa.gov

82.48.110 Aircraft not to be subject to ad valorem tax—Exceptions. The first tax to be collected under this chapter shall be for the calendar year 1968. No aircraft with respect to which the excise tax imposed by this chapter is payable shall be listed and assessed for ad valorem taxation so long as this chapter remains in effect, and any such assessment heretofore made except under authority of section 13, chapter 49, Laws of 1949 and section 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled: PROVIDED, That any aircraft, whether or not subject to the provisions of this chapter, with respect to which the excise tax imposed by this chapter will not be paid or has not been paid for any year shall be listed and assessed for ad valorem taxation in that year, and the ad valorem tax liability resulting from such listing and assessment shall be collected in the same manner as though this chapter had not been passed: PROVIDED FURTHER, That this chapter shall not be construed to affect any ad valorem tax based upon assessed valuations made in 1948 and/or any preceding year for taxes payable in 1949 or any preceding year, which ad valorem tax liability tax for any such years shall remain payable and collectible in the same manner as though this chapter had not been passed. [1967 ex.s. c 9 § 6; 1961 c 15 § 82.48.110. Prior: 1949 c 49 § 13; Rem. Supp. 1949 § 11219-43.]

Chapter 82.49 RCW

WATERCRAFT EXCISE TAX

Sections

82.49.010	Excise tax imposed—Failure to register—Out-of-state registration to avoid tax, liability—Penalties.
82.49.020	Exemptions.
82.49.030	Payment of tax—Deposit in general fund and derelict vessel removal account.
82.49.040	Depreciation schedule for use in determining fair market value.
82.49.050	Appraisal of vessel by department of revenue.
82.49.060	Disputes as to appraised value or status as taxable—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.
82.49.065	Refunds—When, to whom—Amounts.
82.49.080	Vessels not registered as required under chapter 88.02 RCW—Penalty.
82.49.900	Construction—Severability—Effective dates—1983 c 7.

Boat trailer fee: RCW 46.17.305.

Exemption of ships and vessels from ad valorem taxes: RCW 84.36.079, 84.36.080, and 84.36.090.

82.49.010 Excise tax imposed—Failure to register—Out-of-state registration to avoid tax, liability—Penalties.

(1) An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. Violation of this subsection is a misdemeanor.

(2) A person who is required under chapter 88.02 RCW to register a vessel in this state and who fails to register the vessel in this state or registers the vessel in another state or foreign country and avoids the Washington watercraft excise tax is guilty of a gross misdemeanor and is liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalty imposed in RCW 82.49.080 and penalties and interest provided in chapter 82.32 RCW.

(3) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.560. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year. [2014 c 195 § 503; 2010 c 161 § 1044; 2000 c 229 § 5; 1999 c 277 § 8; 1993 c 238 § 6; 1992 c 154 § 3; 1983 2nd ex.s. c 3 § 42; 1983 c 7 § 9.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

82.49.020 Exemptions. The following are exempt from the tax imposed under this chapter:

(1) Vessels exempt from the registration requirements of chapter 88.02 RCW;

(2) Vessels used exclusively for commercial fishing purposes;

(3) Vessels under sixteen feet in overall length;

(4) Vessels owned and operated by the United States, a state of the United States, or any municipality or political subdivision thereof;

(5) Vessels owned by a nonprofit organization or association engaged in character building of boys and girls under eighteen years of age and solely used for such purposes, as determined by the department for the purposes of RCW 84.36.030; and

(6) Vessels owned and held for sale by a dealer, but not rented on a regular commercial basis. [1984 c 250 § 1; 1983 2nd ex.s. c 3 § 43.]

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 82.49.020(2): RCW 84.36.080.

Additional notes found at www.leg.wa.gov

82.49.030 Payment of tax—Deposit in general fund and derelict vessel removal account. (1) The excise tax imposed under this chapter is due and payable to the department of licensing, county auditor or other agent, or subagent appointed by the director of the department of licensing at the time of registration of a vessel. The department of licensing shall not issue or renew a registration for a vessel until the tax is paid in full.

(2) Twenty-five percent of the excise tax collected each fiscal year under this chapter must be deposited in the derelict vessel removal account created in RCW 79.100.100. The

remaining excise tax collected under this chapter must be deposited in the general fund. [2022 c 124 § 2; 2010 c 161 § 1045; 2000 c 103 § 18; 1991 sp.s. c 16 § 925; 1989 c 393 § 10; 1983 c 7 § 10.]

Findings—Intent—2022 c 124: "(1) The legislature finds that the department of natural resources' derelict vessel removal program is seen as a national model for vessel removal, yet funding for the program is not sufficient to remove all sunken and abandoned vessels from state waters.

(2) The legislature finds that since 2002, the department's derelict vessel removal program has removed almost 1,000 vessels and eliminated environmental and habitat threats to some 10.6 cumulative miles of Washington's waters.

(3) The legislature further finds that the number of derelict vessels continues to increase due to insufficient funding to address the increased need as more vessels are added to the list each year, resulting in some vessels lingering for years. Currently, there are around 270 identified vessels of concern, or 7,500 linear feet of vessels. These derelict vessels have critical impacts on water quality, salmon, and southern resident killer whales.

(4) It is the intent of the legislature to provide reliable funding for the derelict vessel removal program to:

(a) Remove all currently known derelict vessels by 2031;

(b) Support enforcement programs to reduce overall vessel abandonment and ensure compliance with vessel registration and insurance requirements;

(c) Increase investments in proactive approaches like the derelict vessel turn-in program;

(d) Utilize the results of a pilot vessel recycling program to work toward a more ongoing, permanent vessel recycling program;

(e) Through the vessel turn-in program and collaborative partnerships, increase capacity to address abandoned and derelict vessels that pose a threat to the public but are not on state-owned aquatic lands; and

(f) Provide additional support to authorized public entities, particularly in more rural areas that lack on-water resources, so they are able to initiate more removals within their jurisdiction." [2022 c 124 § 1.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

82.49.040 Depreciation schedule for use in determining fair market value. The department of revenue shall prepare at least once each year a depreciation schedule for use in the determination of fair market value for the purposes of this chapter. The schedule shall be based upon information available to the department of revenue pertaining to the current fair market value of vessels. The fair market value of a vessel for the purposes of this chapter shall be based on the most recent purchase price depreciated according to the year of the most recent purchase of the vessel. The most recent purchase price is the consideration, whether money, credit, rights, or other property expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the vessel. [1983 c 7 § 11.]

82.49.050 Appraisal of vessel by department of revenue. (1) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department of revenue shall appraise the vessel before registration.

(2) If after registration the department of revenue determines that the purchase price stated by the owner is not a reasonable representation of the true fair market value of a vessel at the time of purchase, the department of revenue shall appraise the vessel.

(3) If a vessel is homemade, the owner shall make a notarized declaration of fair market value. The fair market value of the vessel for the purposes of this chapter shall be the

declared value, unless after registration the department of revenue determines that the declared value is not a reasonable representation of the true fair market value of the vessel in which case the department of revenue shall appraise the vessel.

(4) If the department of revenue appraises a vessel, the fair market value of the vessel for the purposes of this chapter shall be the appraised value. If the vessel has been registered before appraisal, the department of revenue shall refund any overpayment of tax to the owner or notify the owner of any additional tax due. The owner shall pay any additional tax due within thirty days after notification by the department. [1983 c 7 § 12.]

82.49.060 Disputes as to appraised value or status as taxable—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.

(1) Any vessel owner disputing an appraised value under RCW 82.49.050 or disputing whether the vessel is taxable, may petition for a conference with the department as provided under RCW 82.32.160, or for reduction of the tax due as provided under RCW 82.32.170.

(2) Any vessel owner having received a notice of denial of a petition or a notice of determination made for the owner's vessel under RCW 82.32.160 or 82.32.170 may appeal to the board of tax appeals as provided under RCW 82.03.190. In deciding a case appealed under this section, the board of tax appeals may require an independent appraisal of the vessel. The cost of the independent appraisal shall be apportioned between the department and the vessel owner as provided by the board. [1993 c 33 § 1; 1983 c 7 § 13.]

Additional notes found at www.leg.wa.gov

82.49.065 Refunds—When, to whom—Amounts. (1) Refunds of the excise tax imposed under this chapter must be handled in the same manner and under the same terms and conditions as provided in RCW 88.02.350.

(2) The excise tax imposed under this chapter may be refunded to the person who paid the excise tax at the same time the registration fee under chapter 88.02 RCW was paid. The amount of the excise tax that may be refunded includes:

(a) The entire amount of the excise tax, if the entire amount of the registration fee is also refunded; or

(b) Any amount that was greater than the amount due.

(3) Excise tax refunds include interest at the rate specified in RCW 82.32.060. [2010 c 161 § 1046; 2003 c 53 § 405; 1992 c 154 § 4; 1989 c 68 § 3.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

82.49.080 Vessels not registered as required under chapter 88.02 RCW—Penalty. (1) An owner of a vessel that is not registered as required by chapter 88.02 RCW and for which watercraft excise tax is due under this chapter is liable for a penalty in the following amount:

(a) One hundred dollars for the owner's first violation;

(2022 Ed.)

(b) Two hundred dollars for the owner's second violation involving the same or any other vessel; or

(c) Four hundred dollars for the owner's third and successive violations involving the same or any other vessel.

(2) The department of revenue may collect this penalty under the procedures established in chapter 82.32 RCW. The penalty imposed under this section is in addition to any other civil or criminal penalty imposed by law. [2014 c 195 § 502.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

82.49.900 Construction—Severability—Effective dates—1983 c 7. See notes following RCW 82.08.020.

Chapter 82.50 RCW

TRAVEL TRAILERS AND CAMPERS EXCISE TAX

Sections

82.50.010	Definitions.
82.50.060	Tax additional.
82.50.075	Extensions during state of emergency.
82.50.090	Unlawful issuance of tax receipt—Penalty.
82.50.170	Refund, collection of erroneous amounts—Penalty for false statement.
82.50.250	Term "house trailer" construed.

TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.425	Valuation of travel trailers and campers.
82.50.435	Appeal of valuation.
82.50.440	Tax receipt—Records.
82.50.460	Notice of amount of tax payable—Contents.
82.50.520	Exemptions.
82.50.530	Ad valorem taxes prohibited as to mobile homes, travel trailers or campers—Loss of identity, subject to property tax.
82.50.540	Taxed and licensed travel trailers or campers entitled to use of streets and highways.

CONSTRUCTION OF 1971 ACT

82.50.901	Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35-76.
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Boat trailer fee: RCW 46.17.305.

"Registration year," defined—"Last day of the month," defined: RCW 46.16A.020.

82.50.010 Definitions. (1) "Mobile home" means a mobile home as defined by RCW 46.04.302.

(2) "Park trailer" means a park trailer as defined by RCW 46.04.622.

(3) "Travel trailer" means a travel trailer as defined by RCW 46.04.623.

(4) "Modular home" means a modular home as defined by RCW 46.04.303.

(5) "Camper" means a camper as defined by RCW 46.04.085.

(6) "Motor home" means a motor home as defined by RCW 46.04.305.

(7) "Director" means the director of licensing of the state. [1989 c 337 § 20; 1979 c 107 § 11; 1977 ex.s. c 22 § 6; 1971 ex.s. c 299 § 35; 1967 ex.s. c 149 § 44; 1961 c 15 § 82.50.010. Prior: 1957 c 269 § 1; 1955 c 139 § 1.]

Reviser's note: Restored to the RCW November 1, 2000, under the Washington supreme court decision in *Amalgamated Transit v. State*, 142 Wash.2d 183, 11 P.3d 762 (2000), which declared Initiative Measure No. 695 (chapter 1, Laws of 2000) unconstitutional in its entirety.

Additional notes found at www.leg.wa.gov

82.50.060 Tax additional. Except as provided herein, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.50.060. Prior: 1955 c 139 § 6.]

Reviser's note: See note following RCW 82.50.010.

82.50.075 Extensions during state of emergency. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this chapter as the director deems proper. [2008 c 181 § 508.]

Additional notes found at www.leg.wa.gov

82.50.090 Unlawful issuance of tax receipt—Penalty. It shall be unlawful for the county auditor or any person to issue a receipt hereunder to any person without collecting the amount of the excise tax due thereon under the provisions of this chapter and any violation of this section shall constitute a gross misdemeanor. [1961 c 15 § 82.50.090. Prior: 1957 c 269 § 11; 1955 c 139 § 9.]

Reviser's note: See note following RCW 82.50.010.

82.50.170 Refund, collection of erroneous amounts—Penalty for false statement. (1) In case a claim is made by any person that the person has erroneously paid the tax or a part thereof or any charge hereunder, the person may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department of licensing. The department of licensing shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount together with interest at the rate specified in RCW 82.32.060, and the treasurer shall make such approved refund together with interest at the rate specified in RCW 82.32.060 herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

(2) If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(3) Any person making any false statement in the claim herein mentioned, under which the person obtains any amount of refund to which the person is not entitled under the provisions of this section, is guilty of a gross misdemeanor. [2003 c 53 § 406; 1992 c 154 § 6. Prior: 1989 c 378 § 26; 1989 c 68 § 4; 1981 c 260 § 16; prior: 1975 1st ex.s. c 278 § 97; 1975 1st ex.s. c 9 § 1; 1974 ex.s. c 54 § 9; 1961 c 15 § 82.50.170; prior: 1955 c 139 § 17.]

Reviser's note: See note following RCW 82.50.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

82.50.250 Term "house trailer" construed. Whenever this chapter refers to chapter 46.12, 46.16A, or 82.44 RCW, with references to "house trailers", the term "house trailer" as used in those chapters shall be construed to include and embrace "mobile home and travel trailer" as used in chapter 149, Laws of 1967 ex. sess. [2011 c 171 § 124; 1967 ex.s. c 149 § 59.]

Reviser's note: See note following RCW 82.50.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.425 Valuation of travel trailers and campers. For the purpose of determining the tax under this chapter, the value of a travel trailer or camper is the manufacturer's base suggested retail price of the travel trailer or camper when first offered for sale as new, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this section based on the year of service.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(1) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the travel trailer or camper. The department may use an appraisal by the county assessor. In valuing a travel trailer or camper for which the current value or selling price is not indicative of the value of similar travel trailers or campers of the same year and model, the department shall establish a value that more closely represents the average value of similar travel trailers or campers of the same year and model. If the travel trailer or camper is home-built, the value shall not be less than the cost of construction.

(2) The value determined in subsection (1) of this section shall be divided by the applicable percentage listed in this section to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the travel trailer or camper for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	84
4	79
5	73
6	65
7	60

YEAR OF SERVICE	PERCENTAGE
8	55
9	50
10	45
11	41
12	37
13	33
14	28
15	24
16 or older	20

[1990 c 42 § 323.]

Reviser's note: See note following RCW 82.50.010.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

82.50.435 Appeal of valuation. If the department determines a value for a travel trailer or camper under RCW 82.50.425 equivalent to a manufacturer's base suggested retail price, any person who pays the tax for that travel trailer or camper may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.50.170. [1990 c 42 § 324.]

Reviser's note: See note following RCW 82.50.010.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

82.50.440 Tax receipt—Records. The county auditor or the department of licensing upon payment of the tax hereunder shall issue a receipt which shall include such information as may be required by the director, including the name of the taxpayer and a description of the travel trailer or camper, which receipt shall be printed by the department of licensing in such form as it deems proper and furnished by the department to the various county auditors of the state. The county auditor shall keep a record of the excise taxes paid hereunder during the calendar year. [1979 c 158 § 242; 1975 1st ex.s. c 9 § 2; 1971 ex.s. c 299 § 59.]

Reviser's note: See note following RCW 82.50.010.

82.50.460 Notice of amount of tax payable—Contents. Prior to the end of any registration year of a vehicle, the director shall cause to be mailed to the owners of travel trailers or campers, of record, notice of the amount of tax payable during the succeeding registration year. The notice shall contain a legal description of the travel trailer or camper, prominent notice of due dates, and such other information as may be required by the director. [1979 c 123 § 3; 1975 1st ex.s. c 118 § 17; 1971 ex.s. c 299 § 61.]

Reviser's note: See note following RCW 82.50.010.

Additional notes found at www.leg.wa.gov

82.50.520 Exemptions. The following travel trailers or campers are specifically exempted from the operation of this chapter:

(1) Any unoccupied travel trailer or camper when it is part of an inventory of travel trailers or campers held for sale

(2022 Ed.)

by a manufacturer or dealer in the course of his or her business.

(2) A travel trailer or camper owned by any government or political subdivision thereof.

(3) A travel trailer or camper owned by a nonresident and currently licensed in another state, unless such travel trailer or camper is required by law to be licensed in this state.

For the purposes of this subsection only, a camper owned by a nonresident shall be considered licensed in another state if the vehicle to which such camper is attached is currently licensed in another state.

(4) Travel trailers eligible to be used under a dealer's license plate, and taxed under *RCW 82.44.030 while so eligible. [2013 c 23 § 338; 1983 c 26 § 4; 1979 c 123 § 4; 1971 ex.s. c 299 § 67.]

Reviser's note: (1) See note following RCW 82.50.010.

*(2) RCW 82.44.030 was repealed by 2000 1st sp.s. c 1 § 2.

82.50.530 Ad valorem taxes prohibited as to mobile homes, travel trailers or campers—Loss of identity, subject to property tax. No mobile home, travel trailer, or camper which is a part of the inventory of mobile homes, travel trailers, or campers held for sale by a dealer in the course of his or her business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. However, if a park trailer as defined in RCW 46.04.622 has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with the provisions of Title 84 RCW, including the provisions with respect to omitted property, except that a park trailer located on land not owned by the owner of the park trailer shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040. [1999 c 92 § 1; 1993 c 32 § 1; 1981 c 304 § 32; 1971 ex.s. c 299 § 68.]

Reviser's note: See note following RCW 82.50.010.

Real property defined: RCW 84.04.090.

Additional notes found at www.leg.wa.gov

82.50.540 Taxed and licensed travel trailers or campers entitled to use of streets and highways. Travel trailers or campers taxed and licensed under the provisions of this chapter shall be entitled to the use of the public streets and highways subject to the provisions of the motor vehicle laws of this state except as herein otherwise provided. [1971 ex.s. c 299 § 69.]

Reviser's note: See note following RCW 82.50.010.

CONSTRUCTION OF 1971 ACT

82.50.901 Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35-76. (1) Sections 35 through 52 and section 54 of this 1971 amendatory act shall take effect on July 1, 1971, except that the provisions of chapter 82.50 RCW imposing a tax on campers shall not take effect until January 1, 1972.

(2) Sections 36 through 50 of this 1971 amendatory act shall be operative and in effect only until and including December 31, 1972, at which time, they, in their entirety, shall expire without any further action of the legislature. The expiration of such sections shall not be construed as affecting any existing right acquired under the expired statutes, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder.

(3) Sections 55 through 76 of this 1971 amendatory act shall take effect on January 1, 1973 without any further action of the legislature. [1971 ex.s. c 299 § 53.]

Reviser's note: See note following RCW 82.50.010.

Chapter 82.51 RCW HEAVY EQUIPMENT RENTAL TAX

Sections

82.51.010	Heavy equipment rental tax imposed—Rate—Reporting and remittance—Collection—Penalty—Definitions.
82.51.020	Deposits in motor vehicle fund and multimodal transportation account.
82.51.030	Application—Exemptions.
82.51.040	Administration.
82.51.900	Automatic expiration date and tax preference performance statement exemption—2020 c 301.

82.51.010 Heavy equipment rental tax imposed—Rate—Reporting and remittance—Collection—Penalty—Definitions. (1) Beginning January 1, 2022, there is levied and collected a heavy equipment rental tax equal to one and one-quarter percent of the rental price on each rental in this state of heavy equipment rental property to a consumer by a heavy equipment rental property dealer.

(2)(a) Each heavy equipment rental property dealer shall add the heavy equipment rental tax to the rental invoice of any rental subject to the heavy equipment rental tax under this section. All heavy equipment rental taxes shall be reported and remitted to the department in a manner and frequency consistent with the reporting and remittance of state sales taxes, and on such forms as the department shall prescribe and approve.

(b) The tax required by this section, to be collected by the heavy equipment rental property dealer, is deemed to be held in trust by the heavy equipment rental property dealer until paid to the department. Any heavy equipment rental property dealer who appropriates or converts the tax collected to the dealer's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

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

(a) "Consumer" means the same as provided in RCW 82.04.190.

(b) "Heavy equipment rental property" and "heavy equipment rental property dealer" mean the same as provided in RCW 84.36.597.

(c) "Rental price" means the same as "sales price" as defined in RCW 82.08.010. [2020 c 301 § 2.]

Application—2020 c 301 § 2: "Section 2 of this act applies only with respect to rental contracts or agreements entered into on or after January 1, 2022." [2020 c 301 § 9.]

[Title 82 RCW—page 438]

82.51.020 Deposits in motor vehicle fund and multimodal transportation account. (1) Fifty percent of the receipts from the tax imposed in RCW 82.51.010 must be deposited in the motor vehicle fund created in RCW 46.68.070; and

(2) Fifty percent of the receipts from the tax imposed in RCW 82.51.010 must be deposited in the multimodal transportation account created in RCW 47.66.070. [2020 c 301 § 3.]

82.51.030 Application—Exemptions. (1) The heavy equipment rental tax does not apply to any transaction that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States, or to the rental of heavy equipment rental property to the state or any of its political subdivisions, or to any municipal corporation.

(2) The heavy equipment rental tax applies to all rentals of heavy equipment rental property made from a rental location in this state where the customer picks up the heavy equipment rental property or from where the heavy equipment rental property is delivered to the consumer in this state. The heavy equipment rental tax does not apply to rentals of heavy equipment rental property made from a rental location in this state and delivered to the consumer outside this state or made from a rental location outside of this state and delivered to the consumer in this state.

(3) There are no other exemptions from this tax. [2020 c 301 § 4.]

82.51.040 Administration. Chapter 82.32 RCW applies to the administration of the heavy equipment rental tax in this chapter. [2020 c 301 § 5.]

82.51.900 Automatic expiration date and tax preference performance statement exemption—2020 c 301. The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act. [2020 c 301 § 10.]

Chapter 82.52 RCW EXTENSION OF EXCISES TO FEDERAL AREAS

Sections

82.52.010	State accepts provisions of federal (Buck) act.
82.52.020	State's tax laws made applicable to federal areas—Exception.

Federal areas and jurisdiction: Title 37 RCW.

Taxation of federal agencies and instrumentalities: State Constitution Art. 7 §§ 1, 3.

82.52.010 State accepts provisions of federal (Buck) act. The state hereby accepts jurisdiction over all federal areas located within its exterior boundaries to the extent that the power and authority to levy and collect taxes therein is granted by that certain act of the 76th congress of the United States, approved by the president on October 9, 1940, and entitled: "An Act to permit the states to extend their sales, use, and income taxes to persons residing or carrying on business, or to transactions occurring, in federal areas, and for other purposes." [1961 c 15 § 82.52.010. Prior: 1941 c 175 § 1; Rem. Supp. 1941 § 11337-10.]

(2022 Ed.)

82.52.020 State's tax laws made applicable to federal areas—Exception. From and after January 1, 1941, all laws of this state relating to revenue and taxation which, except for this chapter and the act of congress described herein, would not be operative within federal areas, are hereby extended to, and shall be construed as being operative in and upon all lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States located within the exterior boundaries of the state, to the same extent and with the same effect as though such area was not a federal area: PROVIDED, That nothing in this section shall be construed as extending the provisions of this title to the gross income received from, or to sales made for use in performing within a federal military or naval reservation, any contract entered into with the United States of America, or any department or agency thereof or any subcontract made pursuant thereto for which a bid covering such contract or subcontract was submitted prior to October 9, 1940. [1961 c 15 § 82.52.020. Prior: 1941 c 175 § 2; Rem. Supp. 1941 § 11337-11.]

Chapter 82.56 RCW

MULTISTATE TAX COMPACT

Sections

82.56.010	Compact.
82.56.020	Director of revenue to represent state.
82.56.030	Director may be represented by alternate.
82.56.040	Political subdivisions—Appointment of persons to represent—Consultations with.
82.56.050	Interstate audits article of compact declared to be in force in this state.

82.56.010 Compact. The following multistate tax compact, and each and every part thereof, is hereby approved, ratified, adopted, entered into and enacted into law by the state of Washington.

MULTISTATE TAX COMPACT

Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

(2022 Ed.)

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division of Income.

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5.(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) If and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6.(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8.(a) Patent and copyright royalties are allocable to this state: (1) If and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1.(a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with

the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activ-

ities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2.(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4.(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states.

Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this article: PROVIDED, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: PROVIDED, That such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of

the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X. Entry into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: PROVIDED, That the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1967 c 125 § 1.]

82.56.020 Director of revenue to represent state. The director of revenue shall represent this state on the multistate tax commission. [1979 c 107 § 12; 1967 c 125 § 2.]

82.56.030 Director may be represented by alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him or her. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads. [2013 c 23 § 339; 1967 c 125 § 3.]

82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with. The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact. The member of the commission representing this state, and any alternate designated by him or her, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact. [2013 c 23 § 340; 1967 c 125 § 4.]

82.56.050 Interstate audits article of compact declared to be in force in this state. Article VIII of the multistate tax compact relating to interaudits shall be in force in and with respect to this state. [1967 c 125 § 5.]

(2022 Ed.)

Chapter 82.58 RCW SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

Sections

82.58.010	Definitions.
82.58.020	Multistate discussions.
82.58.030	Streamlined sales and use tax agreement.
82.58.040	State adoption of agreement—Existing laws unaffected.
82.58.050	Requirements for agreement.
82.58.060	General purpose of agreement.
82.58.070	Agreement for benefit of member states only—No legal action.
82.58.080	Certified service provider—Certified automated system.
82.58.090	Legislation to conform state law.
82.58.900	Short title.

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

(1) "Agreement" means the streamlined sales and use tax agreement as adopted.

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

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) "Sales tax" means the tax levied under chapter 82.08 RCW.

(6) "Seller" means any person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under chapter 82.12 RCW. [2002 c 267 § 2.]

82.58.020 Multistate discussions. For the purposes of reviewing or amending the agreement embodying the simplification requirements in RCW 82.58.050, the state shall enter into multistate discussions. For purposes of these discussions, the state shall be represented by the department. [2010 1st sp.s. c 7 § 17; 2002 c 267 § 4.]

Additional notes found at www.leg.wa.gov

82.58.030 Streamlined sales and use tax agreement. The department shall enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions reasonably required to implement this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other mem-

ber states, of goods and services in furtherance of the cooperative agreement. The department, or the department's designee, may represent this state before the other states that are signatories to the agreement. [2002 c 267 § 5.]

82.58.040 State adoption of agreement—Existing laws unaffected. No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state. [2002 c 267 § 6.]

82.58.050 Requirements for agreement. The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the requirements in this section.

(1) The agreement must set restrictions to limit over time the number of state rates.

(2) The agreement must establish uniform standards for:

- (a) The sourcing of transactions to taxing jurisdictions;
- (b) The administration of exempt sales; and
- (c) Sales and use tax returns and remittances.

(3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:

(a) Restricting variances between the state and local tax bases;

(b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity.

(7) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(8) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement. [2004 c 153 § 401; 2002 c 267 § 7.]

Additional notes found at www.leg.wa.gov

82.58.060 General purpose of agreement. The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state. [2002 c 267 § 8.]

82.58.070 Agreement for benefit of member states only—No legal action. (1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1) of this section, no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement. [2002 c 267 § 9.]

82.58.080 Certified service provider—Certified automated system. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is func-

tioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard. [2002 c 267 § 10.]

Reviser's note: Pursuant to section 13, chapter 267, Laws of 2002, this section took effect July 1, 2008, the date that Washington became a member of the streamlined sales and use tax agreement.

82.58.090 Legislation to conform state law. Upon becoming a member of the streamlined sales and use tax agreement, the department shall prepare legislation conforming state law as necessary and shall provide such legislation to the fiscal committees of the legislature. [2002 c 267 § 11.]

Reviser's note: Pursuant to section 13, chapter 267, Laws of 2002, this section took effect July 1, 2008, the date that Washington became a member of the streamlined sales and use tax agreement.

82.58.900 Short title. This chapter shall be known and cited as the "simplified sales and use tax administration act." [2002 c 267 § 1.]

Chapter 82.60 RCW

TAX DEFERRALS FOR INVESTMENT PROJECTS IN RURAL COUNTIES

Sections

82.60.010	Legislative findings and declaration.
82.60.020	Definitions.
82.60.025	Deferral eligibility requirements.
82.60.049	Additional eligible projects.
82.60.060	Repayment schedule.
82.60.063	Repayment of deferred taxes—Relief.
82.60.065	Tax deferral on construction labor and investment projects—Repayment forgiven.
82.60.070	Annual tax performance report by recipients—Assessment of taxes, interest.
82.60.080	Employment and wage determinations.
82.60.090	Applicability of general administrative provisions.
82.60.100	Applications, reports, and information subject to disclosure.
82.60.120	Qualifying county list—2010 1st sp.s. c 16.

82.60.010 Legislative findings and declaration. The legislature finds that there are several areas in the state that are characterized by very high levels of unemployment and poverty. The legislature further finds that economic stagnation is the primary cause of this high unemployment rate and poverty; that new state policies are necessary in order to promote economic stimulation and new employment opportunities in these distressed areas; and that policies providing incentives for economic growth in these distressed areas are essential. For these reasons, the legislature reestablishes a tax deferral program to be effective solely in distressed counties. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and reducing poverty in the distressed counties of the state. [2010 1st sp.s. c 16 § 1; 1985 c 232 § 1.]

(2022 Ed.)

Additional notes found at www.leg.wa.gov

82.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Eligible area" means:

(a) Through June 30, 2010, a rural county as defined in RCW 82.14.370; and

(b) Beginning July 1, 2010, a qualifying county.

(4)(a) "Eligible investment project" means an investment project that is located, as of the date the application required by *RCW 82.60.030 is received by the department, in an eligible area as defined in subsection (3) of this section.

(b) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects that have already received deferrals under this chapter.

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

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

(7) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) Before July 1, 2010: (i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; (ii) the activities performed by research and development laboratories and commercial testing laboratories; and (iii) the conditioning of vegetable seeds; and

(b) Beginning July 1, 2010: (i) The activities performed by research and development laboratories and commercial testing laboratories; and (ii) the conditioning of vegetable seeds.

(8) "Person" has the meaning given in RCW 82.04.030.

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

(10) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

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

(12) "Qualifying county" means a county that has an unemployment rate, as determined by the employment security department, which is at least twenty percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be, as provided in RCW 82.60.120.

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

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [2010 1st sp.s. c 16 § 2; 2010 c 114 § 138; 2006 c 142 § 1; 2004 c 25 § 3; 1999 sp.s. c 9 § 2; 1999 c 164 § 301; 1996 c 290 § 4; 1995 1st sp.s. c 3 § 5. Prior: 1994 sp.s. c 7 § 704; 1994 sp.s. c 1 § 1; 1993 sp.s. c 25 § 403; 1988 c 42 § 16; 1986 c 116 § 12; 1985 c 232 § 2.]

*Reviser's note: RCW 82.60.030 expired July 1, 2020.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Intent—Severability—Effective date—1999 sp.s. c 9: See notes following RCW 82.04.120.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.60.025 Deferral eligibility requirements. The lessor or owner of a qualified building is not eligible for a deferral unless:

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

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.60.070; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2020 c 139 § 41; 2010 1st sp.s. c 16 § 4.]

Additional notes found at www.leg.wa.gov

82.60.049 Additional eligible projects. (1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(2) In addition to the provisions of *RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment for which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone or the county in which the zone is located. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2010 1st sp.s. c 16 § 7; 2004 c 25 § 5; 2000 c 106 § 8; 1999 c 164 § 304.]

*Reviser's note: RCW 82.60.040 expired July 1, 2020.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

82.60.060 Repayment schedule. (1) The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the investment project has been operationally completed. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

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

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2010 1st sp.s. c 16 § 8; 2000 c 106 § 5; 1985 c 232 § 5.]

Additional notes found at www.leg.wa.gov

82.60.063 Repayment of deferred taxes—Relief. (1)

Subject to the conditions in this section, a person is not liable for the amount of deferred taxes outstanding for an investment project when the person temporarily ceases to use its qualified buildings and qualified machinery and equipment for manufacturing or research and development activities in a county with a population of less than twenty thousand persons for a period not to exceed twenty-four months from the date that the department sent its assessment for the amount of outstanding deferred taxes to the taxpayer.

(2) The relief from repayment of deferred taxes under this section does not apply unless the number of qualified employment positions maintained at the investment project after manufacturing or research and development activities are temporarily ceased is at least ten percent of the number of qualified employment positions employed at the investment project at the time the deferral was approved by the department. If a person has been approved for more than one deferral under this chapter, relief from repayment of deferred taxes under this section does not apply unless the number of qualified employment positions maintained at the investment project after manufacturing or research and development activities are temporarily ceased is at least ten percent of the highest number of qualified employment positions at the investment project at the time any of the deferrals were approved by the department. If, at any time during the twenty-four month period after the department has sent the taxpayer an assessment for outstanding deferred taxes resulting from the person temporarily ceasing to use its qualified buildings and qualified machinery and equipment for manufacturing or research and development activities, the number of qualified employment positions falls below the ten percent threshold in this subsection, the amount of deferred taxes outstanding for the project is immediately due.

(3) The lessor of an investment project for which a deferral has been granted under this chapter who has passed the economic benefits of the deferral to the lessee is not eligible

(2022 Ed.)

for relief from the payment of deferred taxes under this section.

(4) A person seeking relief from the payment of deferred taxes under this section must apply to the department in a form and manner prescribed by the department. The application required under this subsection must be received by the department within thirty days of the date that the department sent its assessment for outstanding deferred taxes resulting from the person temporarily ceasing to use its qualified buildings and qualified machinery and equipment for manufacturing or research and development activities. The department must approve applications that meet the requirements in this section for relief from the payment of deferred taxes.

(5) A person is entitled to relief under this section only once.

(6) A person whose application for relief from the payment of deferred taxes has been approved under this section must continue to file an annual tax performance report as required under RCW 82.60.070(1) or any successor statute. In addition, the person must file, in a form and manner prescribed by the department, a report on the status of the business and the outlook for commencing manufacturing or research and development activities. [2020 c 139 § 42; 2010 1st sp.s. c 16 § 10.]

Additional notes found at www.leg.wa.gov

82.60.065 Tax deferral on construction labor and investment projects—Repayment forgiven. Except as provided in RCW 82.60.070:

(1) Taxes deferred under this chapter on the sale or use of labor that is directly used in the construction of an investment project for which a deferral has been granted under this chapter after June 11, 1986, and prior to July 1, 1994, need not be repaid.

(2) Taxes deferred under this chapter on an investment project for which a deferral has been granted under this chapter after June 30, 1994, need not be repaid.

(3) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995. [1995 1st sp.s. c 3 § 8; 1994 sp.s. c 1 § 6; 1986 c 116 § 14.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.60.070 Annual tax performance report by recipients—Assessment of taxes, interest. (1)(a) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(b) The department must use the information reported on the annual tax performance report required by this section to study the tax deferral program authorized under this chapter. The department must report to the legislature by December 1, 2018. The report must measure the effect of the program on

job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as the department selects.

(2) Except as provided in RCW 82.60.063, if, on the basis of a tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project, according to the repayment schedule in RCW 82.60.060, is immediately due. For purposes of this subsection (2), the repayment schedule in RCW 82.60.060 is tolled during the period of time that a taxpayer is receiving relief from repayment of deferred taxes under RCW 82.60.063.

(3) A recipient who must repay deferred taxes under subsection (2) of this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes.

(4) Notwithstanding any other provision of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 36; 2010 1st sp.s. c 16 § 9; 2010 c 114 § 139; 2004 c 25 § 7; 1999 c 164 § 303; 1995 1st sp.s. c 3 § 9; 1994 sp.s. c 1 § 5; 1985 c 232 § 6.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.60.080 Employment and wage determinations.

The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages as requested by the department under this chapter. [2000 c 106 § 6; 1985 c 232 § 7.]

Additional notes found at www.leg.wa.gov

82.60.090 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [1985 c 232 § 8.]

82.60.100 Applications, reports, and information subject to disclosure. Applications, reports, and any other information received by the department under this chapter, except applications not approved by the department, are not confidential and are subject to disclosure. [2010 c 106 § 106; 1987 c 49 § 1.]

Additional notes found at www.leg.wa.gov

82.60.120 Qualifying county list—2010 1st sp.s. c 16.

The department, with the assistance of the employment security department, must establish a list of qualifying counties effective July 1, 2010. The list of qualifying counties is effective for a twenty-four month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be. [2010 1st sp.s. c 16 § 3.]

Chapter 82.62 RCW

TAX CREDITS FOR ELIGIBLE BUSINESS PROJECTS IN RURAL COUNTIES

Sections

82.62.010	Definitions.
82.62.020	Application for tax credits—Contents.
82.62.030	Allowance of tax credits—Limitations—Expiration.
82.62.045	Tax credits for eligible business projects in designated community empowerment zones.
82.62.050	Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients.
82.62.060	Employment and wage determinations.
82.62.070	Applicability of general administrative provisions.
82.62.080	Applications, reports, and other information subject to disclosure.
82.62.901	Effective date—1986 c 116 §§ 15-20.

82.62.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Eligible area" means a "rural county" as defined in RCW 82.14.370.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010 or that portion of a business project creating qualified full-time employment positions outside an eligible area.

(5) "First qualified employment position" means the first qualified employment position filled for which a credit under this chapter is sought.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) Before July 1, 2010: (i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and (ii) the activities performed by research and

development laboratories and commercial testing laboratories; and

(b) Beginning July 1, 2010, the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8)(a)(i) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during four consecutive full calendar quarters.

(ii) For seasonal employers, "qualified employment position" also includes the equivalent of a full-time employee in work hours for four consecutive full calendar quarters.

(b) For purposes of this subsection, "full time" means a normal workweek of at least thirty-five hours.

(c) Once a permanent, full-time employee has been employed, a position does not cease to be a qualified employment position solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the four-quarter period; and

(ii) During a vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

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

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(11) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. For the purposes of this subsection and subsection (12) of this section, "seasonal basis" means a continuous employment period of less than twelve consecutive months.

(12) "Seasonal employer" means a person who regularly hires more than fifty percent of its employees to work on a seasonal basis. [2010 1st sp.s. c 16 § 11; 2010 c 106 § 232; 2007 c 485 § 1; 2001 c 320 § 12; 1999 sp.s. c 9 § 3; 1999 c 164 § 305; 1996 c 290 § 5; 1994 sp.s. c 7 § 705; 1993 sp.s. c 25 § 410; 1988 c 42 § 17; 1986 c 116 § 15.]

Intent—Severability—Effective date—1999 sp.s. c 9: See notes following RCW 82.04.120.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.62.020 Application for tax credits—Contents.

Application for tax credits under this chapter must be made within ninety consecutive days after the first qualified employment position is filled. The application shall be made to the department in a form and manner prescribed by the

department. The application shall contain information regarding the location of the business project, the applicant's average employment, if any, at the facility for the four consecutive full calendar quarters immediately preceding the earlier of the calendar quarter during which the application required by this section is submitted to the department or the first qualified employment position is filled, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall prescribe a method for calculating a seasonal employer's average employment levels. The department shall rule on the application within sixty days. [2007 c 485 § 2; 1986 c 116 § 16.]

Additional notes found at www.leg.wa.gov

82.62.030 Allowance of tax credits—Limitations—

Expiration. (1)(a) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. The credit shall equal: (i) Four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually that is directly created in an eligible business project and (ii) two thousand dollars for each qualified employment position with wages and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business project.

(b) For purposes of calculating the amount of credit under (a) of this subsection with respect to qualified employment positions as defined in RCW 82.62.010(8)(a)(ii):

(i) In determining the number of qualified employment positions, a fractional amount is rounded down to the nearest whole number; and

(ii) Wages and benefits for each qualified employment position shall be equal to the quotient derived by dividing: (A) The sum of the wages and benefits earned for the four consecutive full calendar quarter period for which a credit under this chapter is earned by all of the person's new seasonal employees hired during that period; by (B) the number of qualified employment positions plus any fractional amount subject to rounding as provided under (b)(i) of this subsection. For purposes of this chapter, a credit is earned for the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled.

(2) The department shall keep a running total of all credits allowed under this chapter during each fiscal year. The department shall not allow any credits which would cause the total to exceed seven million five hundred thousand dollars in any fiscal year. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded.

(3) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(4)(a) The credit may be used against any tax due under chapter 82.04 RCW, and, except as otherwise provided under this subsection (4), may be carried over until used.

(b) Credits earned expire the first day of January of the year that is six years from the later of the year that:

(i) The department is notified by the recipient, or a representative of the recipient, that the recipient has ceased engaging in business within this state as those terms are defined in chapter 82.04 RCW;

(ii) The department closes the recipient's tax reporting account; or

(iii) The recipient last claimed the credit on a return filed with the department.

(5) No refunds may be granted for unused credits under this section. [2022 c 56 § 12; 2007 c 485 § 3; 2001 c 320 § 13; 1999 c 164 § 306; 1997 c 366 § 5; 1996 c 1 § 3; 1986 c 116 § 17.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Intent—Goals—Severability—Captions and part headings not law—1997 c 366: See notes following RCW 82.14.370.

Additional notes found at www.leg.wa.gov

82.62.045 Tax credits for eligible business projects in designated community empowerment zones. (1) For the purposes of this section "eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

(2) An eligible business project located within an eligible area as defined in this section qualifies for a credit under this chapter for those employees who at the time of hire are residents of the community empowerment zone in which the project is located, if the fifteen percent threshold is met. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section. [2007 c 485 § 4; 1999 c 164 § 307.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

82.62.050 Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients. (1) Each recipient shall submit a report to the department by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit under this chapter is earned. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which a credit has been used to be immediately assessed and payable. The recipient must keep records, such as payroll records showing the date of hire and employment security reports, to verify eligibility under this section.

(2) If, on the basis of a report under this section or other information, the department finds that a business project is not eligible for tax credit under this chapter for reasons other

than failure to create the required number of qualified employment positions, the amount of taxes for which a credit has been used for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that a business project has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the credited taxes for which a credit has been used for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of the tax credit, and shall accrue until the taxes for which a credit has been used are repaid. [2007 c 485 § 5; 2001 c 320 § 14; 1986 c 116 § 18.]

Additional notes found at www.leg.wa.gov

82.62.060 Employment and wage determinations. The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages requested by the department under this chapter. [2000 c 106 § 7; 1986 c 116 § 19.]

Additional notes found at www.leg.wa.gov

82.62.070 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [1986 c 116 § 20.]

82.62.080 Applications, reports, and other information subject to disclosure. Applications, reports, and any other information received by the department under this chapter, except applications not approved by the department, are not confidential and are subject to disclosure. [2010 c 106 § 107; 1987 c 49 § 3.]

Additional notes found at www.leg.wa.gov

82.62.901 Effective date—1986 c 116 §§ 15-20. Sections 15 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986. [1986 c 116 § 24.]

Chapter 82.63 RCW

TAX DEFERRALS FOR HIGH-TECHNOLOGY BUSINESSES

Sections

82.63.005	Findings—Intent to create a contract.
82.63.010	Definitions.
82.63.020	Application—Annual tax performance report—Reports.
82.63.045	Repayment not required—Repayment schedule for unqualified investment project—Exceptions.
82.63.060	Administration.
82.63.065	Administration—Department may adopt rules.
82.63.070	Public disclosure.
82.63.090	Multiple qualified buildings.
82.63.900	Effective date—1994 sp.s. c 5.

82.63.005 Findings—Intent to create a contract. The legislature finds that high-wage, high-skilled jobs are vital to the economic health of the state's citizens, and that targeted tax incentives will encourage the formation of high-wage, high-skilled jobs. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure pro-

grams, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

The legislature also finds that high-technology businesses are a vital and growing source of high-wage, high-skilled jobs in this state, and that the high-technology sector is a key component of the state's effort to encourage economic diversification. However, the legislature finds that many high-technology businesses incur significant costs associated with research and development and pilot scale manufacturing many years before a marketable product can be produced, and that current state tax policy discourages the growth of these companies by taxing them long before they become profitable.

The legislature further finds that stimulating growth of high-technology businesses early in their development cycle, when they are turning ideas into marketable products, will build upon the state's established high-technology base, creating additional research and development jobs and subsequent manufacturing facilities.

For these reasons, the legislature hereby establishes a program of business and occupation tax credits for qualified research and development expenditures. The legislature also hereby establishes a tax deferral program for high-technology research and development and pilot scale manufacturing facilities. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in research and development, supporting, and sustaining as they develop new technologies and products, and creating quality employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [2004 c 2 § 1; 1994 sp.s. c 5 § 1.]

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

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

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

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

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

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

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

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

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

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

(ii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.63.020(2); and

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

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

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

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

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

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

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

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

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

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

(12) "Person" has the meaning given in RCW 82.04.030 and includes state universities as defined in RCW 28B.10.016.

(13) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in

the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(14) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building or buildings are used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral is determined by apportionment of the costs of construction under rules adopted by the department. Such rules may include provisions for determining the amount of the deferral based on apportionment of costs of construction of an investment project consisting of a building or multiple buildings, where qualified research and development or pilot scale manufacturing activities are shifted within a building or from one building to another building.

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

(b) "Qualified machinery and equipment" does not include any fixtures, equipment, or support facilities, if the sale to or use by the recipient is not eligible for an exemption under RCW 82.08.02565 or 82.12.02565 solely because the recipient is an ineligible person as defined in RCW 82.08.02565.

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

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

(18) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating techno-

logical information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design. [2020 c 139 § 43; 2015 3rd sp.s. c 5 § 303. Prior: 2009 c 268 § 2; 2004 c 2 § 3; 1995 1st sp.s. c 3 § 12; 1994 sp.s. c 5 § 3.]

Construction—2017 c 323: See note following RCW 82.08.052.

Application—2015 3rd sp.s. c 5 § 303: "Section 303 of this act does not apply with respect to deferral certificates issued under chapter 82.63 RCW before January 1, 2015." [2015 3rd sp.s. c 5 § 304.]

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Conflicting laws—2015 3rd sp.s. c 5: See note following RCW 82.08.02565.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

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

(2) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(3) A recipient who must repay deferred taxes under RCW 82.63.045 because the department has found that an investment project is used for purposes other than research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 37;

2010 c 114 § 140; 2009 c 268 § 3; 2004 c 2 § 4; 1994 sp.s. c 5 § 4.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions.

(1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

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

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

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

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

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

(5) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase

would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 38; 2010 c 114 § 141; 2009 c 268 § 5; 2004 c 2 § 6; 2000 c 106 § 10; 1995 1st sp.s. c 3 § 13.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.63.060 Administration. Chapter 82.32 RCW applies to the administration of this chapter. [1994 sp.s. c 5 § 8.]

82.63.065 Administration—Department may adopt rules. The department may adopt rules as may be necessary to administer this chapter. [2009 c 268 § 6.]

Additional notes found at www.leg.wa.gov

82.63.070 Public disclosure. Applications approved by the department under this chapter are not confidential and are subject to disclosure. [2010 c 106 § 108; 2004 c 2 § 7; 1994 sp.s. c 5 § 9.]

Additional notes found at www.leg.wa.gov

82.63.090 Multiple qualified buildings. (1) In the case of multiple qualified buildings, if the lessee who will conduct the qualified research and development or pilot scale manufacturing within the multiple qualified buildings desires to treat the multiple qualified buildings as a single investment project, the lessee must make a preliminary election to treat the multiple qualified buildings as a single investment project. The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the multiple qualified buildings.

(2)(a) A final election whether or not to treat the multiple qualified buildings as a single investment project must be made by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election under subsection (1) of this section; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last qualified building to be completed and that will be included in the final election.

(b) All buildings included in a final election to treat multiple qualified buildings as a single investment project must have been issued a temporary certificate of occupancy or its equivalent.

(c) Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project.

(d) When a qualified building for which a preliminary election has been made under subsection (1) of this section is, for any reason, not included in a final election to treat the multiple qualified buildings as a single investment project, the qualified building will be treated as an individual investment project under the original application for that building.

(e) If a final election is made not to treat the multiple qualified buildings as a single investment project or a final election is not made by the deadline in (a) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(3) When a final election is made to treat multiple qualified buildings as a single investment project, the department must review the investment project to determine whether to certify the investment project as being operationally complete. If the department certifies that an investment project is operationally complete, the certification is deemed to have occurred in the calendar year in which the final election is made.

(4) The department may not certify as operationally complete an investment project consisting of multiple qualifying buildings unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other security acceptable to the department equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(5) The preliminary election and final election must be made in a form and manner prescribed by the department. [2009 c 268 § 4.]

Additional notes found at www.leg.wa.gov

82.63.900 Effective date—1994 sp.s. c 5. This act shall take effect January 1, 1995. [1994 sp.s. c 5 § 12.]

Chapter 82.64 RCW SYRUP TAX

Sections

82.64.010	Definitions.
82.64.020	Tax imposed—Wholesale, retail—Revenue deposited in the general fund.
82.64.025	Tax preferences—Expiration dates.
82.64.030	Exemptions.
82.64.040	Credit against tax.
82.64.050	Wholesaler to collect tax from buyer.
82.64.901	Effective dates—1989 c 271.
82.64.902	Severability—1989 c 271.

82.64.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Previously taxed syrup" means syrup in respect to which a tax has been paid under this chapter.

(3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1994 sp.s. c 7 § 905 (Referendum Bill No. 43,

approved November 8, 1994); 1991 c 80 § 1; 1989 c 271 § 505.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in the general fund. (1) A tax is imposed on each sale at wholesale of syrup in this state. The rate of the tax shall be equal to one dollar per gallon. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the state general fund.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter. [2009 c 479 § 72; 1994 sp.s. c 7 § 906 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 2; 1989 c 271 § 506.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.64.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1720.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.64.030 Exemptions. The following are exempt from the taxes imposed in this chapter:

(1) Any successive sale of a previously taxed syrup.

(2) Any syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) Any sale at wholesale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory.

(4) Any sale of syrup in respect to which a tax on the privilege of possession was paid under this chapter before June 1, 1991. [1994 sp.s. c 7 § 907 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 3; 1989 c 271 § 507.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.64.040 Credit against tax. (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any syrup tax paid to another state with respect to the same syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that syrup.

(2) For the purpose of this section:

(a) "Syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1994 sp.s. c 7 § 908 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 7; 1989 c 271 § 508.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

82.64.050 Wholesaler to collect tax from buyer. (1)

The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

(2) The tax required to be collected by the wholesaler shall be stated separately from the selling price in any sales invoice or other instrument of sale.

(3) Any wholesaler who fails or refuses to collect tax under this section, with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, is guilty of a misdemeanor.

(4) The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler. [1991 c 80 § 4.]

Additional notes found at www.leg.wa.gov

82.64.901 Effective dates—1989 c 271. See note following RCW 66.28.200.

82.64.902 Severability—1989 c 271. See note following RCW 9.94A.510.

Chapter 82.65A RCW

INTERMEDIATE CARE FACILITIES FOR PERSONS WITH INTELLECTUAL DISABILITIES

(Formerly: Intermediate care facilities for the mentally retarded)

Sections

- 82.65A.010 Expiration date defined.
- 82.65A.020 Definitions.
- 82.65A.030 Tax imposed.
- 82.65A.040 Administration.
- 82.65A.900 Expiration date—Savings—Application—1992 c 80.
- 82.65A.901 Effective date—1992 c 80.

82.65A.010 Expiration date defined. As used in this chapter, "expiration date" means the earliest of:

(2022 Ed.)

(1) The effective date that federal medicaid matching funds for the purposes specified in *section 7 of this act become unavailable or are substantially reduced, as such date is certified by the secretary of social and health services;

(2) The effective date that federal medicaid matching funds for the purposes specified in *section 7 of this act become unavailable or are substantially reduced, as determined by a permanent injunction, court order, or final court decision; or

(3) The effective date of a permanent injunction, court order, or final court decision that prohibits in whole or in part the collection of taxes under RCW 82.65A.030. [1992 c 80 § 1.]

***Reviser's note:** "Section 7 of this act" was originally an appropriation section, however a senate amendment removed the appropriation section, and the corresponding internal and substantive references were not corrected.

82.65A.020 Definitions. (Contingent expiration date.)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Gross income" means all income from whatever source derived, including but not limited to gross income of the business as defined in RCW 82.04.080 and moneys received from state appropriations.

(2) "Intermediate care facility for persons with intellectual disabilities" means an intermediate care facility for the mentally retarded, as described by federal law, that is certified by the department of social and health services and the federal department of health and human services to provide residential care under 42 U.S.C. Sec. 1396d(d). [2010 c 94 § 30; 1992 c 80 § 2.]

Purpose—2010 c 94: See note following RCW 44.04.280.

82.65A.030 Tax imposed. (Contingent expiration date.)

In addition to any other tax, a tax is imposed on every intermediate care facility for persons with developmental disabilities for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the persons with developmental disabilities, multiplied by the rate of six percent. [2010 c 94 § 31; 1993 c 276 § 1; 1992 c 80 § 3.]

Purpose—2010 c 94: See note following RCW 44.04.280.

***Reviser's note:** 1993 c 276 took effect in 1993. See RCW 82.65A.900 for the contingent expiration of this section.

Additional notes found at www.leg.wa.gov

82.65A.040 Administration. (Contingent expiration date.)

Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter, except the department may not permit returns for taxes under this chapter to cover periods longer than one month. The appropriations in *section 7 of this act shall not be construed as modifying in any manner the obligation of the taxpayer to pay taxes on an accrual basis as ordinarily required under chapter 82.04 RCW. [1992 c 80 § 4.]

***Reviser's note:** See note following RCW 82.65A.010.

82.65A.900 Expiration date—Savings—Application—1992 c 80. (1) RCW 82.65A.020 through 82.65A.040 shall expire on the expiration date determined under RCW 82.65A.010.

(2) The expiration of RCW 82.65A.020 through 82.65A.040 shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

(3) Taxes that have been paid under RCW 82.65A.020 through 82.65A.040, but are properly attributable to taxable events occurring after the expiration of those sections, shall be credited or refunded as provided in RCW 82.32.060. [1992 c 80 § 6.]

82.65A.901 Effective date—1992 c 80. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992. [1992 c 80 § 7.]

Chapter 82.70 RCW COMMUTE TRIP REDUCTION INCENTIVES

Sections

82.70.010	Definitions.
82.70.020	Tax credit authorized.
82.70.025	Application for tax credit.
82.70.030	False statement in application—Penalty.
82.70.040	Tax credit limitations.
82.70.050	Credit taken, director must advise.
82.70.060	Commute trip reduction board.
82.70.070	Administration.
82.70.900	Expiration of chapter.

82.70.010 Definitions. (*Expires July 1, 2024.*) The definitions in this section apply throughout this chapter and *RCW 70.94.996 unless the context clearly requires otherwise.

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

(2) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(5) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(6) "Ride sharing" means the same as "ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

(7) "Telework" means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of

trips to the employee's workplace. [2021 c 135 § 10; 2005 c 297 § 1; 2003 c 364 § 1.]

Reviser's note: *(1) RCW 70.94.996 expired January 1, 2014.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2021 c 135: See note following RCW 46.18.285.

Additional notes found at www.leg.wa.gov

82.70.020 Tax credit authorized. (*Expires July 1, 2024.*) (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before January 1, 2024, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per fiscal year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before January 1, 2024, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per fiscal year.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. No refunds may be granted for credits under this section.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons. [2015 3rd sp.s. c 44 § 413; 2015 1st sp.s. c 10 § 708; 2014 c 222 § 704; 2013 c 306 § 718; 2005 c 297 § 3; 2003 c 364 § 2.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Tax preference performance statement—2015 3rd sp.s. c 44: "This section is the tax preference performance statement for the tax preference contained in RCW 82.70.020. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to reduce traffic congestion, automobile-related air pollution and energy use through employer-based programs that encourage the use of alternatives to the single-occupant vehicle traveling during peak traffic periods for the commute trip. It is the legislature's intent to extend the commute trip reduction tax credit, which encourages employers to provide financial incentives to their employees for using ride sharing, public transportation, car sharing, or nonmotorized commuting. Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the commute trip reduction tax credit established under RCW 82.70.020 by December 1, 2024.

(3) If a review finds that the percentage of Washingtonians using commuter alternatives is increasing, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preferences.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee should refer to the office of financial management's results Washington sustainable transportation performance metric or data used by the department of transportation's commuter trip reduction program." [2015 3rd sp.s. c 44 § 419.]

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2014 c 222: See note following RCW 47.28.030.

Effective date—2013 c 306: See note following RCW 47.64.170.

Additional notes found at www.leg.wa.gov

82.70.025 Application for tax credit. (Expires July 1, 2024.) (1) Application for tax credits under this chapter must be received by the department between the first day of January and the 31st day of January, following the calendar year in which the applicant made payments to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the number of employees for which incentives are paid during the calendar year, the amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, and other information required by the department.

(2) The department must rule on the application within sixty days of the deadline provided in subsection (1) of this section.

(3)(a) The department must disapprove any application not received by the deadline provided in subsection (1) of this section except that the department may accept applications received up to fifteen calendar days after the deadline if the application was not received by the deadline because of circumstances beyond the control of the taxpayer.

(b) In making a determination whether the failure of a taxpayer to file an application by the deadline was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(4) After an application is approved and tax credit granted, no increase in the credit is allowed.

(5) To claim a credit under this chapter, a person must electronically file with the department all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050. [2015 3rd sp.s. c 44 § 417; 2005 c 297 § 2.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.70.030 False statement in application—Penalty. (Expires July 1, 2024.) Any person who knowingly makes a false statement of a material fact in the application required under RCW 82.70.025 for a credit under RCW 82.70.020 is guilty of a gross misdemeanor. [2005 c 297 § 4; 2003 c 364 § 3.]

Additional notes found at www.leg.wa.gov

82.70.040 Tax credit limitations. (Expires July 1, 2024.) (1)(a) The department must keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department may not allow any credits that would cause the total amount allowed to exceed \$2,750,000 in any fiscal year.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department must ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. For credits approved by the department through June 30, 2015, the approved credit may be carried forward and used for tax reporting periods through December 31, 2016. Credits approved after June 30, 2015, must be used for tax reporting periods within the calendar year for which they are approved by the department and may not be carried forward to subsequent tax reporting periods. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person may be approved for tax credits under RCW 82.70.020 in excess of \$100,000 in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, 2024. [2022 c 182 § 311; 2016 c 32 § 3; 2015 3rd sp.s. c 44 § 414; 2015 1st sp.s. c 10 § 709; 2014 c 222 § 705; 2013 c 306 § 719; 2005 c 297 § 5; 2003 c 364 § 4.]

Expiration date—2022 c 182 §§ 311 and 403: "Sections 311 and 403 of this act expire July 1, 2024." [2022 c 182 § 503.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Intent—Retroactive application—Effective date—2016 c 32: See notes following RCW 46.20.202.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2014 c 222: See note following RCW 47.28.030.

Effective date—2013 c 306: See note following RCW 47.64.170.

Additional notes found at www.leg.wa.gov

82.70.050 Credit taken, director must advise. The director must on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under RCW 82.70.020 during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively. [2022 c 182 § 312; 2015 3rd sp.s. c 44 § 415; 2015 1st sp.s. c 10 § 710; 2014 c 222 § 706; 2003 c 364 § 5.]

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2014 c 222: See note following RCW 47.28.030.
Additional notes found at www.leg.wa.gov

82.70.060 Commute trip reduction board. (Expires July 1, 2024.) The commute trip reduction board must determine the effectiveness of the tax credit under RCW 82.70.020 as part of its ongoing evaluation of the commute trip reduction law. The department must provide requested information to the commute trip reduction board for its assessment. [2015 3rd sp.s. c 44 § 418; 2005 c 319 § 138; 2003 c 364 § 6.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Additional notes found at www.leg.wa.gov

82.70.070 Administration. (Expires July 1, 2024.) Chapter 82.32 RCW applies to the administration of this chapter. [2003 c 364 § 7.]

Additional notes found at www.leg.wa.gov

82.70.900 Expiration of chapter. (Expires July 1, 2024.) Except for RCW 82.70.050, this chapter expires July 1, 2024. [2015 3rd sp.s. c 44 § 416; 2015 1st sp.s. c 10 § 711; 2014 c 222 § 707; 2013 c 306 § 720; 2003 c 364 § 8.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2014 c 222: See note following RCW 47.28.030.

Effective date—2013 c 306: See note following RCW 47.64.170.

Additional notes found at www.leg.wa.gov

Chapter 82.73 RCW

WASHINGTON MAIN STREET PROGRAM TAX INCENTIVES

Sections

82.73.010	Definitions.
82.73.020	Application for credit.
82.73.025	Approved contribution deadline for tax credit.
82.73.030	Credit authorized—Limitations.
82.73.040	Filing requirements.
82.73.050	Administrative assistance by archaeology and historic preservation.
82.73.060	Application of chapter 82.32 RCW.
82.73.900	Expiration of chapter.

Washington main street program: Chapter 43.360 RCW.

82.73.010 Definitions. (Expires January 1, 2032.)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Contribution" means cash contributions.

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

(4) "Main street trust fund" means the Washington main street trust fund account under RCW 43.360.050.

(5) "Person" has the meaning given in RCW 82.04.030.

(6) "Program" means a nonprofit organization under internal revenue code sections 501(c)(3) or 501(c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area, that is designated by the department of archaeology and historic preservation as described in RCW 43.360.010 through 43.360.050. [2010 c 30 § 4. Prior: 2009 c 565 § 55; 2005 c 514 § 902.]

Finding—Effective date—2010 c 30: See notes following RCW 43.360.010.

Additional notes found at www.leg.wa.gov

82.73.020 Application for credit. (Expires January 1, 2032.)

(1) Application for tax credits under this chapter must be submitted to the department before making a contribution to a program or the main street trust fund. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the proposed amount of contribution to a program or the main street trust fund, and other information required by the department to determine eligibility under this chapter. The department must rule on the application within forty-five days. Except as provided in RCW 82.73.030(5), applications must be approved on a first-come basis.

(2) The department may not accept any applications before the second Monday in January of each calendar year. [2017 3rd sp.s. c 37 § 102; 2005 c 514 § 903.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.73.025 Approved contribution deadline for tax credit. (Expires January 1, 2032.)

(1) A person that was approved for credit as provided in RCW 82.73.020 must make the total approved contribution by November 15th of the calendar year in which the application is approved. If November 15th falls upon a Saturday, Sunday, or legal holiday, the payment of the contribution will be considered timely if made on the next business day.

(2)(a) A person that does not make a contribution as required in subsection (1) of this section forfeits all credits for the approved contribution.

(b) The department must make credits forfeited as provided in (a) of this subsection available to new applicants.

(3) A person that was approved for credit as provided in RCW 82.73.020 after November 15th must make the total approved contribution by the end of the calendar year in which the contribution was approved. [2017 3rd sp.s. c 37 § 104.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

82.73.030 Credit authorized—Limitations. (Expires January 1, 2032.) (1) Subject to the limitations in this chapter, a credit is allowed against the tax imposed by chapters 82.04 and 82.16 RCW for approved contributions that are made by a person to a program or the main street trust fund.

(2)(a) Except as provided in (b) of this subsection, the credit allowed under this section is limited to an amount equal to:

(i) Seventy-five percent of the approved contribution made by a person to a program; or

(ii) Fifty percent of the approved contribution made by a person to the main street trust fund.

(b) Beginning with contributions made in calendar year 2021, an additional credit is allowed equal to 25 percent of the approved contribution made by a person to the main street trust fund.

(3) The department may not approve credit with respect to a program in a city or town with a population of one hundred ninety thousand persons or more.

(4) The department must keep a running total of all credits approved under this chapter for each calendar year. The department may not approve any credits under this section that would cause the total amount of approved credits statewide to exceed \$5,000,000 in any calendar year.

(5)(a)(i) The total credits allowed under this chapter for contributions made to each program may not exceed \$160,000 in a calendar year.

(ii) Between 8:00 a.m., Pacific standard time, on the second Monday in January and 8:00 a.m., Pacific daylight time, on April 1st of the same calendar year, the department must evenly allocate the amount of statewide credits allowed under subsection (4) of this section based on the total number of programs and the main street trust fund as of January 1st in the same calendar year. The department may not approve contributions for a program or the main street trust fund that would cause the total amount of approved credits for a program or the main street trust fund to exceed the allocated amount.

(b) The total credits allowed under this chapter for a person may not exceed two hundred fifty thousand dollars in a calendar year.

(6) Except as provided in subsection (8) of this section, the credit may be claimed against any tax due under chapters 82.04 and 82.16 RCW only in the calendar year immediately following the calendar year in which the credit was approved by the department and the contribution was made to the program or the main street trust fund. Credits may not be carried over to subsequent years. No refunds may be granted for credits under this chapter.

(7) The total amount of the credit claimed in any calendar year by a person may not exceed the lesser amount of:

(a) The approved credit; or

(b) Seventy-five percent of the amount of the contribution that is made by the person to a program and 75 percent of the amount of the contribution that is made by the person to the main street trust fund, in the prior calendar year.

(8) Any credits provided in accordance with this chapter for approved contributions made in calendar year 2020 may be carried over for an additional two years and must be used by December 31, 2023.

(2022 Ed.)

(9) No credit is allowed or may be claimed under this section on or after January 1, 2032. [2021 c 112 § 2; 2017 3rd sp.s. c 37 § 103; 2005 c 514 § 904.]

Finding—Intent—2021 c 112: "The legislature finds that as a result of the economic impacts of the COVID-19 pandemic, certain businesses that made contributions to a Washington main street community or to the main street trust fund in 2020, and qualified for a credit against the business and occupation tax or public utility tax, have received insufficient revenues, and have insufficient tax liabilities, to allow them to use the full amount of the credit for which they have qualified. With this act, the legislature intends to address this finding by allowing credits earned as result of contributions made in calendar year 2020 to be carried over for an additional two years, and by providing an additional credit against the business and occupation tax or public utility tax." [2021 c 112 § 1.]

Effective date—2021 c 112: "Sections 2 and 3 of this act take effect October 1, 2021." [2021 c 112 § 4.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 103: "This section is the tax preference performance statement for the tax preference contained in section 103, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to promote contributions to main street programs and to enhance community and economic revitalization and development of main street business districts under categories as indicated in RCW 82.32.808(2) (a) and (f).

(2) It is the legislature's specific public policy objective to support and work in concert with main street programs to accomplish community and economic revitalization of business districts as specified in RCW 43.360.005. It is the legislature's intent to provide tax credits to businesses in main street communities to promote contributions to such programs as provided in RCW 82.73.030, in order to maintain the economic viability of rural downtown areas (main streets), thereby ensuring the growth and retention of businesses in rural communities.

(3) If a review finds that the number of businesses that are a part of main street communities has increased or stayed the same, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data collected by the department of archaeology and historic preservation." [2017 3rd sp.s. c 37 § 101.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.73.040 Filing requirements. (Expires January 1, 2032.) To claim a credit under this chapter, a person must electronically file with the department all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050. [2005 c 514 § 905.]

Additional notes found at www.leg.wa.gov

82.73.050 Administrative assistance by archaeology and historic preservation. (Expires January 1, 2032.) The department of archaeology and historic preservation shall provide information to the department to administer this chapter, including a list of designated programs that shall be updated as necessary. [2010 c 30 § 5; 2005 c 514 § 906.]

Finding—Effective date—2010 c 30: See notes following RCW 43.360.010.

Additional notes found at www.leg.wa.gov

82.73.060 Application of chapter 82.32 RCW. (*Expires January 1, 2032.*) Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 514 § 907.]

Additional notes found at www.leg.wa.gov

82.73.900 Expiration of chapter. This chapter expires January 1, 2032. [2021 c 112 § 3.]

Finding—Intent—Effective date—2021 c 112: See notes following RCW 82.73.030.

Chapter 82.74 RCW

TAX DEFERRALS FOR FRUIT AND VEGETABLE BUSINESSES

Sections

82.74.010	Definitions.
82.74.020	Application for tax deferral.
82.74.040	Annual tax performance report.
82.74.050	Repayment of deferred taxes.
82.74.060	Application of chapter 82.32 RCW.
82.74.070	Confidentiality of applications.

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

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

(2) "Cold storage warehouse" means a storage warehouse owned or operated by a wholesaler or third-party warehouse as those terms are defined in RCW 82.08.820 to store fresh and/or frozen perishable fruits or vegetables, dairy products, seafood products, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

(3) "Dairy product" means dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein.

(4) "Dairy product manufacturing" means manufacturing, as defined in RCW 82.04.120, of dairy products.

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

(6) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. The lessor or owner of a qualified building is not eligible for a deferral unless (a) the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or (b)(i) the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments, and (ii) the lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report under RCW 82.74.040. The economic benefit of the deferral to the lessee may be evidenced by any type of payment, credit, or any other financial arrangement between the lessor or owner of the qualified building and the lessee.

(7) "Fresh fruit and vegetable processing" means manufacturing as defined in RCW 82.04.120 which consists of the canning, preserving, freezing, processing, or dehydrating fresh fruits and/or vegetables.

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

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

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (6) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (6) of this section.

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

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

(9) "Person" has the meaning given in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, plant, or laboratory used for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development. If a building is used partly for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development and partly for other purposes, the applicable tax deferral is determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

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

(13) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process related to fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, or cold storage warehousing before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(14) "Seafood product" means any edible marine fish and shellfish that remains in a raw, raw frozen, or raw salted state.

(15) "Seafood product manufacturing" means the manufacturing, as defined in RCW 82.04.120, of seafood products. [2020 c 139 § 44; 2006 c 354 § 6; 2005 c 513 § 4.]

Additional notes found at www.leg.wa.gov

82.74.020 Application for tax deferral. (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) No application may be made under this chapter for a project for which a refund is requested under RCW 82.08.820 or 82.12.820. [2005 c 513 § 5.]

Additional notes found at www.leg.wa.gov

82.74.040 Annual tax performance report. (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(2) A recipient who must repay deferred taxes under RCW 82.74.050(2) because the department has found that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 39; 2010 c 114 § 142; 2006 c 354 § 8; 2005 c 513 § 7.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.74.050 Repayment of deferred taxes. (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufac-

(2022 Ed.)

ture, seafood product manufacturing, cold storage warehousing, or research and development at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

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

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department must assess interest, but not penalties, on the deferred taxes under subsection (2) of this section. The interest must be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date of deferral, and will accrue until the deferred taxes are repaid. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 40; 2010 c 114 § 143; 2006 c 354 § 9; 2005 c 513 § 8.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.74.060 Application of chapter 82.32 RCW. Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 513 § 9.]

Additional notes found at www.leg.wa.gov

82.74.070 Confidentiality of applications. Applications approved by the department under this chapter are not confidential and are subject to disclosure. [2010 c 106 § 109; 2005 c 513 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 82.75 RCW
TAX DEFERRALS FOR BIOTECHNOLOGY AND
MEDICAL DEVICE MANUFACTURING
BUSINESSES

Sections

82.75.005	Findings—Intent.
82.75.010	Definitions.
82.75.020	Application for tax deferral.
82.75.040	Repayment of deferred taxes.
82.75.050	Application of chapter 82.32 RCW.
82.75.060	Confidentiality of applications.
82.75.070	Annual tax performance report requirement.

82.75.005 Findings—Intent. The legislature finds that the state's economy is increasingly dependent on the expansion of knowledge-based sectors, including the life sciences. The legislature also finds that commercial enterprises in the life sciences create high-wage, high-skilled jobs that are part of the state's effort to encourage economic diversification and stability. However, the legislature also finds that commercial life sciences businesses, particularly in biotechnology product and medical device manufacturing, incur significant costs associated with capital infrastructure and job training often years before a product is licensed for marketing or a facility is licensed for manufacturing by governmental agencies in the United States and abroad. The legislature also finds that current state tax policy discourages the growth of these companies in two ways: (1) Washington state's higher rate of taxation compared with other states and nations encourages the export of intellectual property and commercial operations out of Washington; and (2) taxing these businesses before facilities, or products produced therein, are licensed for marketing by regulatory agencies.

The legislature further finds that targeted tax incentives may encourage the formation, expansion, and retention of commercial operations within the life sciences sector. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

For these reasons, the legislature hereby establishes a tax deferral program for commercial manufacturing facilities in this sector. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in commercial life science operations and the development of employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [2006 c 178 § 1.]

Additional notes found at www.leg.wa.gov

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

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

(2) "Biotechnology" means a technology based on the science of biology, microbiology, molecular biology, cellular biology, biochemistry, or biophysics, or any combination of these, and includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms.

(3) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans.

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

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

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

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

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

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.75.070; and

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

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

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

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section.

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

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

(7) "Manufacturing" has the meaning provided in RCW 82.04.120.

(8) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is designed or developed and:

(a) Recognized in the national formulary, or the United States pharmacopeia, or any supplement to them;

(b) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or other animals; or

(c) Intended to affect the structure or any function of the body of human beings or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of human beings or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Person" has the meaning provided in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for biotechnology product manufacturing or medical device manufacturing activities, including plant offices, commercial laboratories for process development, quality assurance and quality control, and warehouses or other facilities for the storage of raw material or finished goods if the facilities are an essential or an integral part of a factory, plant, or laboratory used for biotechnology product manufacturing or medical device manufacturing. If a building is used partly for biotechnology product manufacturing or medical device manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

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

(12) "Recipient" means a person receiving a tax deferral under this chapter. [2020 c 139 § 45; 2010 c 114 § 145; 2009 c 549 § 1033; 2006 c 178 § 2.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.75.020 Application for tax deferral. Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days. [2010 c 114 § 146; 2006 c 178 § 3.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

82.75.040 Repayment of deferred taxes. (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities at any time during the calendar year in which the eligible investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due and payable according to the following schedule:

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

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For a violation of subsection (2)(a) of this section, the department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 41; 2010 c 114 § 147; 2006 c 178 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.75.050 Application of chapter 82.32 RCW. Chapter 82.32 RCW applies to the administration of this chapter. [2006 c 178 § 6.]

Additional notes found at www.leg.wa.gov

82.75.060 Confidentiality of applications. Applications approved by the department under this chapter are not confidential and are subject to disclosure. [2010 c 106 § 110; 2006 c 178 § 7.]

Additional notes found at www.leg.wa.gov

82.75.070 Annual tax performance report requirement. (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010(5), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(2) A recipient who must repay deferred taxes under RCW 82.75.040(2) because the department has found that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 42; 2010 c 114 § 144.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.005	"District" defined.
82.80.010	Motor vehicle and special fuel tax.
82.80.030	Commercial parking tax.
82.80.035	Commercial parking tax for passenger-only ferry service districts—Definitions.
82.80.070	Use of revenues.
82.80.080	Distribution of taxes.
82.80.090	Referendum.
82.80.100	Regional transportation investment district—Local option vehicle license fee.
82.80.110	Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan.
82.80.120	Motor vehicle and special fuel tax—Regional transportation investment district.
82.80.130	Passenger-only ferry service—Local option motor vehicle excise tax authorized.
82.80.140	Vehicle fee—Transportation benefit district—Exemptions.
82.80.900	Purpose—Effective dates—Application—Implementation—1990 c 42.

82.80.005 "District" defined. For the purposes of this chapter, "district" means a regional transportation investment district created under chapter 36.120 RCW. [2002 c 56 § 415.]

82.80.010 Motor vehicle and special fuel tax. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020 and sells or distributes the fuel into a county.

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

(2) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority

of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the statewide fuel tax rates under RCW 82.38.030 on motor vehicle fuel and special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section must be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on motor vehicle fuel and on special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section must be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county may not levy the tax under this section if they are levying the tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the tax in RCW 82.80.120. [2014 c 216 § 203; 2013 c 225 § 641; 2003 c 350 § 1; 1998 c 176 § 86; 1991 c 339 § 12; 1990 c 42 § 201.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Effective date—2013 c 225: See note following RCW 82.38.010.

82.80.030 Commercial parking tax. (1) Subject to the conditions of this section, the legislative authority of a county, city, or district may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction. A city or county may impose the tax only to the extent that it has not been imposed by the district, and a district may impose the tax only to the extent that it has not been imposed by a city or county. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city or district includes only the area within its boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city, a county in its unincorporated area, or a district may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city, county, or district may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city, county, or district;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with a disabled parking placard, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(5) The county, city, or district levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed by a city or county under subsection (1) or (2) of this section shall be used for transportation purposes in accordance with RCW 82.80.070 or for transportation improvements in accordance with chapter 36.73 RCW. The proceeds of the parking tax imposed by a district must be used as provided in chapter 36.120 RCW. [2020 c 274 § 69; 2005 c 336 § 24; 2002 c 56 § 412; 1990 c 42 § 208.]

Additional notes found at www.leg.wa.gov

82.80.035 Commercial parking tax for passenger-only ferry service districts—Definitions. (1) Subject to the conditions of this section, a passenger-only ferry service district located in a county with a population of one million or

less as of January 1, 2016, may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction.

(2) In lieu of the tax in subsection (1) of this section, a passenger-only ferry service district located in a county with a population of one million or less as of January 1, 2016, may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business. The passenger-only ferry service district may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city, county, or passenger-only ferry service district;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with special license plates and parking placards for persons with disabilities, or government vehicles are exempt from the tax.

(3) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(4) The passenger-only ferry service district levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis.

(5) The proceeds of the parking tax imposed by a passenger-only ferry service district under subsection (1) or (2) of this section must be used as provided in RCW 36.57A.224.

(6) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles. [2015 3rd sp.s. c 44 § 316.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

82.80.070 Use of revenues. (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010 and 82.80.030 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs; and planning, design, and acquisition of right-of-way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special

fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to

replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes.

(7) Local governments are encouraged to enter into inter-local agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section.

(9) Subsections (1) through (8) of this section do not apply to a regional transportation investment district imposing a tax or fee under the local option authority of this chapter. Proceeds collected under the exercise of local option authority under this chapter by a district must be used in accordance with chapter 36.120 RCW. [2017 3rd sp.s. c 25 § 43; 2005 c 319 § 139; 2002 c 56 § 413; 1991 c 141 § 4. Prior: 1990 c 42 § 212.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

82.80.080 Distribution of taxes. (1) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and *82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution based on information supplied by the departments of licensing and revenue, as appropriate.

(2) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and *82.80.020 levied by qualifying cities and towns to the levying cities and towns.

(3) The state treasurer shall distribute to the district revenues, less authorized deductions, generated by the local option taxes under RCW 82.80.010 or fees under RCW 82.80.100 levied by a district. [2002 c 56 § 414; 1998 c 281 § 2; 1990 c 42 § 213.]

*Reviser's note: RCW 82.80.020 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

82.80.090 Referendum. A referendum petition to repeal a county or city ordinance imposing a tax or fee authorized under RCW 82.80.030 must be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or fee being imposed and a negative answer to the question and a negative vote on the measure results in the tax or fee not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29A.04.321 as determined by the county or city legislative authority, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

The referendum procedure provided in this section is the exclusive method for subjecting any county or city ordinance imposing a tax or fee under RCW 82.80.030 to a referendum vote. [2015 c 53 § 99; 1990 c 42 § 214.]

82.80.100 Regional transportation investment district—Local option vehicle license fee. (1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may set and impose an annual local option vehicle license fee, or a schedule of fees based upon the age of the vehicle, of up to one hundred dollars per motor vehicle registered within the boundaries of the region on every motor vehicle. As used in this section "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546. Vehicles registered under chapter 46.87 RCW and the international registration plan are exempt from the annual local option vehicle license fee set forth in this section. The department of licensing shall administer and collect this fee on behalf of regional transportation investment districts and remit this fee to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(2) The local option vehicle license fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(3) A regional transportation investment district imposing the local option vehicle license fee or initiating an exemption process shall enter into a contract with the department of licensing. The contract must contain provisions that fully recover the costs to the department of licensing for collection and administration of the fee.

(4) A regional transportation investment district imposing the local option fee shall delay the effective date of the local option vehicle license fee imposed by this section at least six months from the date of the final certification of the approval election to allow the department of licensing to implement the administration and collection of or exemption from the fee. [2011 c 171 § 125; 2002 c 56 § 408.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

(2022 Ed.)

82.80.110 Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020 and sells or distributes the fuel into a county.

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

(2) For purposes of dedication to a regional transportation investment district plan under chapter 36.120 RCW, subject to the conditions of this section, a county may levy additional excise taxes equal to ten percent of the statewide fuel tax rates under RCW 82.38.030 on motor vehicle fuel and special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. The additional excise tax is subject to the approval of the county's legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state that the revenues from the tax will be used for a regional transportation investment district plan. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on motor vehicle fuel and on special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the county levying the tax as part of a regional transportation investment plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

[Title 82 RCW—page 469]

(8) The proceeds of the additional taxes levied by a county in this section, to be used as a part of a regional transportation investment plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A county may not levy the tax under this section if they are a member of a regional transportation investment district that is levying the tax in RCW 82.80.120 or the county is levying the tax in RCW 82.80.010. [2014 c 216 § 204; 2013 c 225 § 642; 2003 c 350 § 2.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Effective date—2013 c 225: See note following RCW 82.38.010.

82.80.120 Motor vehicle and special fuel tax—Regional transportation investment district. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020 and sells or distributes the fuel into a county.

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

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide fuel tax rates under RCW 82.38.030 on motor vehicle fuel and special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on motor vehicle fuel and on special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The

department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may only levy the tax under this section if the district is comprised of boundaries identical to the boundaries of a county or counties. A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110. [2014 c 216 § 205; 2013 c 225 § 643; 2010 c 106 § 233; 2006 c 311 § 18; 2003 c 350 § 3.]

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—2006 c 311: See note following RCW 36.120.020.

Additional notes found at www.leg.wa.gov

82.80.130 Passenger-only ferry service—Local option motor vehicle excise tax authorized. (1) Public transportation benefit areas authorized to implement passenger-only ferry service under RCW 36.57A.200 whose boundaries (a) are on the Puget Sound, but (b) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding four-tenths of one percent on the value of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing passenger-only ferry service. The tax must be collected only at the time of vehicle registration renewal under *chapter 46.16 RCW. The tax will be imposed on vehicles previously registered in another state or nation when they are initially registered in this state. The tax will not be imposed at the time of sale by a licensed vehicle dealer. In a county imposing a motor vehicle excise tax surcharge under RCW 81.100.060, the maximum tax rate under this section must be reduced to a rate equal to four-tenths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed under RCW 81.100.060. This rate does not apply to vehicles registered under RCW 46.16A.455 with a scale weight more than six thousand pounds, or to vehicles registered under RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(2) The department of licensing shall administer and collect the tax in accordance with chapter 82.44 RCW. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer for monthly distribution to the public transportation benefit area.

(3) The public transportation benefit area imposing this tax shall delay the effective date at least six months from the

date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the tax.

(4) Before an authority may impose a tax authorized under this section, the authorization for imposition of the tax must be approved by a majority of the qualified electors of the authority area voting on that issue. [2010 c 161 § 916; 2006 c 318 § 4; 2003 c 83 § 206.]

Reviser's note: *(1) Although directed to be recodified within chapter 46.16 RCW pursuant to chapter 161, Laws of 2010, a majority of chapter 46.16 RCW was recodified under chapter 46.16A RCW pursuant to RCW 1.08.015 (2)(k) and (3).

(2) This section was previously repealed by Initiative Measure No. 976 (chapter 1, Laws of 2020). The Washington state supreme court ruled in *Garfield Cty. Transp. Auth. v. State*, No. 98320-8, 2020 Wash. LEXIS 592 (Oct. 15, 2020) that Initiative Measure No. 976 is in violation of Article II, section 19 of the state Constitution and is therefore void in its entirety.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

82.80.140 Vehicle fee—Transportation benefit district—Exemptions. (1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to vehicle license fees under RCW 46.17.350(1) (a), (c), (d), (e), (g), (h), (j), or (n) through (q) and for each vehicle subject to gross weight license fees under RCW 46.17.355 with a scale weight of six thousand pounds or less.

(2)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district up to: (i) Twenty dollars of the vehicle fee authorized in subsection (1) of this section, (ii) forty dollars of the vehicle fee authorized in subsection (1) of this section if a twenty dollar vehicle fee has been imposed for at least twenty-four months, or (iii) fifty dollars of the vehicle fee authorized in subsection (1) of this section if a vehicle fee of forty dollars has been imposed for at least twenty-four months and a district has met the requirements of RCW 36.73.065(6).

If the district is countywide, the revenues of the fee must be distributed to each city within the district by interlocal agreement. The interlocal agreement is effective when approved by the district and sixty percent of the cities representing seventy-five percent of the population of the cities within the district in which the countywide fee is collected.

(b) A district may not impose a fee under this subsection (2):

(i) For a passenger-only ferry transportation improvement unless the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district; or

(ii) That, if combined with the fees previously imposed by another district within its boundaries under RCW 36.73.065(4)(a)(i), exceeds fifty dollars.

If a district imposes or increases a fee under this subsection (2) that, if combined with the fees previously imposed by another district within its boundaries, exceeds fifty dollars, the district shall provide a credit for the previously imposed

(2022 Ed.)

fees so that the combined vehicle fee does not exceed fifty dollars.

(3) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(4) No fee under this section may be collected until six months after approval under RCW 36.73.065.

(5) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the fee under this section:

(a) Campers, as defined in RCW 46.04.085;

(b) Farm tractors or farm vehicles, as defined in RCW 46.04.180 and 46.04.181;

(c) Mopeds, as defined in RCW 46.04.304;

(d) Off-road and nonhighway vehicles, as defined in RCW 46.04.365;

(e) Private use single-axle trailer, as defined in RCW 46.04.422;

(f) Snowmobiles, as defined in RCW 46.04.546; and

(g) Vehicles registered under chapter 46.87 RCW and the international registration plan. [2015 3rd sp.s. c 44 § 310; 2010 c 161 § 917; 2007 c 329 § 2; 2005 c 336 § 16.]

Reviser's note: This section was previously repealed by Initiative Measure No. 976 (chapter 1, Laws of 2020). The Washington state supreme court ruled in *Garfield Cty. Transp. Auth. v. State*, No. 98320-8, 2020 Wash. LEXIS 592 (Oct. 15, 2020) that Initiative Measure No. 976 is in violation of Article II, section 19 of the state Constitution and is therefore void in its entirety.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

82.80.900 Purpose—Effective dates—Application—Implementation—1990 c 42. See notes following RCW 46.68.090.

Chapter 82.82 RCW

COMMUNITY EMPOWERMENT ZONES—TAX DEFERRAL PROGRAM

Sections

82.82.010	Definitions.
82.82.020	Application for deferral—Annual tax performance report.
82.82.030	Deferral certificate.
82.82.040	Repayment of deferred taxes.
82.82.050	Qualified employment positions—Requirements.

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

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

(2) "Corporate headquarters" means a facility or facilities where corporate staff employees are physically employed, and where the majority of the company's management services are handled either on a regional or a national basis. Company management services may include: Accounts receivable and payable, accounting, data processing, distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchasing procurement, planning, reporting and compliance, research and development, tax, treasury, or other headquarters-related services. "Corporate headquarters" does not include a facility or facilities used for manufacturing, wholesaling, or warehousing.

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

(4) "Eligible area" means a designated community empowerment zone approved under RCW 43.31C.020.

(5)(a) "Eligible investment project" means an investment project in a qualified building or buildings in an eligible area, as defined in subsection (4) of this section, which will have employment at the qualified building or buildings of at least three hundred employees in qualified employment positions, each of whom must earn for the year reported at least the average annual wage for the state for that year as determined by the employment security department.

(b) The lessor or owner of a qualified building or buildings is not eligible for a deferral unless:

(i) The underlying ownership of the building or buildings vests exclusively in the same person; or

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

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.82.020; and

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

(6) "Investment project" means a capital investment of at least thirty million dollars in a qualified building or buildings including tangible personal property and fixtures that will be incorporated as an ingredient or component of such buildings during the course of their construction, and including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacture" has the same meaning as provided in RCW 82.04.120.

(8) "Operationally complete" means a date no later than one year from the date the project is issued an occupancy permit by the local permit issuing authority.

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

(10) "Qualified building or buildings" means construction of a new structure or structures or expansion of an existing structure or structures to be used for corporate headquarters. If a building is used partly for corporate headquarters and partly for other purposes, the applicable tax deferral is determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

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

(13) "Warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation.

(14) "Wholesale sale" has the same meaning as provided in RCW 82.04.060. [2020 c 139 § 46; 2008 c 15 § 1.]

Additional notes found at www.leg.wa.gov

82.82.020 Application for deferral—Annual tax performance report.

(1) Application for deferral of taxes under this chapter can be made at any time prior to completion of construction of a qualified building or buildings, but tax liability incurred prior to the department's receipt of an application may not be deferred. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) Applications for deferral of taxes under this section may not be made after December 31, 2020.

(3) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(4) A recipient who must repay deferred taxes under RCW 82.82.040 because the department has found that an investment project is no longer an eligible investment project is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 43; 2010 c 114 § 148; 2008 c 15 § 2.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.82.030 Deferral certificate. (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project meeting the requirements of this chapter.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or 82.63 RCW or this chapter, except that an investment project for qualified research and development that has already

received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

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

(4) The number of eligible investment projects for which the benefits of this chapter will be allowed is limited to two per biennium. The department must approve deferral certificates for completed applications on a first-in-time basis. During any biennium, only one deferral certificate may be issued per community empowerment zone. [2008 c 15 § 3.]

Additional notes found at www.leg.wa.gov

82.82.040 Repayment of deferred taxes. (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is no longer an "eligible investment project" under RCW 82.82.010 at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes are immediately due according to the following schedule:

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

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department must assess interest at the rate provided for delinquent taxes under chapter 82.32 RCW, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2017 c 135 § 44; 2010 c 114 § 149; 2008 c 15 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Additional notes found at www.leg.wa.gov

82.82.050 Qualified employment positions—Requirements. The qualified employment positions must be filled by the end of the calendar year following the year in

(2022 Ed.)

which the project is certified as operationally complete. If a recipient does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2008 c 15 § 6.]

Additional notes found at www.leg.wa.gov

**Chapter 82.84 RCW
LOCAL GROCERY TAX RESTRICTIONS**

Sections

- 82.84.010 Short title.
- 82.84.020 Findings and declarations.
- 82.84.030 Definitions.
- 82.84.040 Grocery tax, fee, and assessment exemption.
- 82.84.050 Application.

82.84.010 Short title. This chapter may be known and cited as the "keep groceries affordable act of 2018." [2019 c 2 § 1 (Initiative Measure No. 1634, approved November 6, 2018).]

82.84.020 Findings and declarations. (1) Whereas access to food is a basic human need of every Washingtonian; and

(2) Whereas keeping the price of groceries as low as possible improves the access to food for all Washingtonians; and

(3) Whereas taxing groceries is regressive and hurts low- and fixed-income Washingtonians the most; and

(4) Whereas working families in Washington pay a greater share of their family income in state and local taxes than their wealthier counterparts; now, therefore,

(5) The people of the state of Washington find and declare that no local governmental entity may impose any new tax, fee, or other assessment that targets grocery items. [2019 c 2 § 2 (Initiative Measure No. 1634, approved November 6, 2018).]

82.84.030 Definitions. For purposes of this chapter:

(1) "Alcoholic beverages" has the same meaning as provided in RCW 82.08.0293.

(2) "Groceries" means any raw or processed food or beverage, or any ingredient thereof, intended for human consumption except alcoholic beverages, cannabis products, and tobacco. "Groceries" includes, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, nonalcoholic beverages, kombucha with less than 0.5% alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed.

(3) "Local governmental entity" has the same meaning as provided in RCW 4.96.010.

(4) "Cannabis products" has the same meaning as provided in RCW 69.50.101.

(5) "Tax, fee, or other assessment on groceries" includes, but is not limited to, a sales tax, gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, distribution, sale, possession, ownership, transfer, transportation, container, use, or consumption thereof.

(6) "Tobacco" has the same meaning as provided in RCW 82.08.0293. [2022 c 16 § 165; 2019 c 2 § 3 (Initiative Measure No. 1634, approved November 6, 2018).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

82.84.040 Grocery tax, fee, and assessment exemption. Notwithstanding any other law to the contrary:

(1) Except as provided in subsections (2) through (4) of this section, a local governmental entity may not impose or collect any tax, fee, or other assessment on groceries.

(2) Nothing in this section precludes the continued collection of any existing tax, fee, or other assessment on groceries as is in effect as of January 15, 2018; but no existing tax, fee, or other assessment on groceries may be increased in rate, scope, base, or otherwise after January 15, 2018, except as provided in subsections (3) and (4) of this section.

(3) Nothing in this section prohibits the imposition and collection of a tax, fee, or other assessment on groceries if:

(a) The tax, fee, or other assessment is generally applicable to a broad range of businesses and business activity; and

(b) The tax, fee, or other assessment does not establish or rely on a classification related to or involving groceries or a subset of groceries for purposes of establishing or otherwise resulting in a higher tax rate due to such classification.

(4) Nothing in this section prohibits the imposition and collection of a local retail sales and use tax pursuant to RCW 82.14.030 on those persons taxable by the state under chapters 82.08 and 82.12 RCW. [2019 c 2 § 4 (Initiative Measure No. 1634, approved November 6, 2018).]

82.84.050 Application. Notwithstanding any other law to the contrary:

(1) This chapter applies to any tax, fee, or other assessment on groceries first imposed, increased, or collected by a local governmental entity on or after January 15, 2018.

(2) The provisions of this chapter are to be construed liberally so as to effectuate their intent, policy, and purposes. [2019 c 2 § 5 (Initiative Measure No. 1634, approved November 6, 2018).]

Chapter 82.85 RCW

JOB CREATION AND ECONOMIC DEVELOPMENT INVESTMENT INCENTIVES—PILOT PROGRAM

Sections

82.85.010	Findings—Tax preference performance statement.
82.85.020	Definitions.
82.85.030	Deferral eligibility—Lessor or owner of qualified building.
82.85.040	Deferral application.
82.85.050	Deferral certificate—Issued by the department.
82.85.060	Repayment—Deferred taxes.
82.85.070	Invest in Washington account—Created—Funded.
82.85.080	Annual tax performance report.
82.85.900	Short title.

82.85.010 Findings—Tax preference performance statement. (Expires January 1, 2026.) (1) Businesses that invest capital create jobs and generate economic activity that supports a healthy Washington economy. The legislature finds that these investments result in future revenues that support schools and our communities. Therefore, the legislature finds that a pilot program must be conducted to evaluate the effectiveness of a program that invests business taxes from

new investments into workforce training programs that support manufacturing businesses in the state of Washington thereby creating jobs and capital investments in the state for the benefit of its citizens.

(2)(a) This subsection is the tax preference performance statement for the sales and use tax deferral provided in RCW 82.85.040 on expenditures made to build or expand qualified investment projects and purchases of machinery and equipment. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

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

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

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 801; 2015 3rd sp.s. c 6 § 401.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.020 Definitions. (Expires January 1, 2026.) (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(b) "Eligible investment project" means an investment project for qualified buildings and machinery and equipment on two new, renovated, or expanded manufacturing operations per calendar year, one of which must be located east of the crest of the Cascade mountains and one of which must be

located west of the crest of the Cascade mountains. The deferral provided in this section only applies to the state and local sales and use taxes due on the first ten million dollars in costs for qualified buildings and machinery and equipment.

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

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

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

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

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

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

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

(2) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 802; 2015 3rd sp.s. c 6 § 402.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.030 Deferral eligibility—Lessor or owner of qualified building. The lessor or owner of a qualified building is not eligible for a deferral unless:

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

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.32.534; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2020 c 139 § 47; 2015 3rd sp.s. c 6 § 403.]

(2022 Ed.)

Reviser's note: For information on the expiration of tax preferences, see RCW 82.32.805.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.040 Deferral application. (Expires January 1, 2026.) (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The deferrals are available on a first-in-time basis. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) The department may not approve applications for more than two eligible investment projects per calendar year.

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 803; 2015 3rd sp.s. c 6 § 404.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.050 Deferral certificate—Issued by the department.

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

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

(3) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium. [2015 3rd sp.s. c 6 § 405.]

Reviser's note: For information on the expiration of tax preferences, see RCW 82.32.805.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.060 Repayment—Deferred taxes. (1) The recipient must begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the investment project has been operationally completed. The first payment of ten percent of the deferred taxes will be due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments of ten percent of the deferred taxes due on December 31st for each of the following nine years.

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

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise

taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2015 3rd sp.s. c 6 § 406.]

Application—2015 3rd sp.s. c 6 §§ 406-409: "The expiration provisions of RCW 82.32.805(1)(a) do not apply to sections 406 through 409 of this act." [2015 3rd sp.s. c 6 § 411.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

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

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

(3) By June 1, 2016, and by June 1st of every subsequent year, the department must notify the state treasurer of the amount of tax, interest, and penalties collected under this section since September 1, 2015, through May 1, 2016, in the case of the first notification under this subsection (3), and since the previous May 1st for subsequent notifications under this subsection (3). The department may make adjustments to the annual notification under this subsection (3) as may be necessary to correct errors in the previous notification or offset previous amounts that did not qualify for deferral under this section.

(4) By July 1, 2016, and by July 1st of every subsequent year, the state treasurer must transfer the amount included in the department's most recent notification under subsection (3) of this section from the general fund to the invest in Washington account. Money in the account may only be appropriated for the purposes specified in subsection (1) of this section. [2015 3rd sp.s. c 6 § 407.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.080 Annual tax performance report. (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.85.030, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(2) If, on the basis of a tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter due to the fact the investment project is no longer

used for qualified activities, the amount of deferred taxes outstanding for the investment project is immediately due and payable.

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in RCW 82.85.030, the lessee is responsible for payment to the extent the lessee has received the economic benefit. [2020 c 139 § 48; 2015 3rd sp.s. c 6 § 408.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.900 Short title. This part [chapter] may be known and cited as the invest in Washington act. [2015 3rd sp.s. c 6 § 409.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Chapter 82.86 RCW

988 BEHAVIORAL HEALTH CRISIS RESPONSE AND SUICIDE PREVENTION LINE TAX

Sections

82.86.010	Definitions.
82.86.020	Tax imposed.
82.86.030	Collection of tax.
82.86.040	Payment and collection.
82.86.050	Account creation.
82.86.060	Preemption.

82.86.010 Definitions. (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "988 crisis hotline" has the same meaning as in RCW 71.24.025.

(b) "Crisis call center hub" has the same meaning as in RCW 71.24.025.

(2) The definitions in RCW 82.14B.020 apply to this chapter. [2021 c 302 § 201.]

Effective date—2021 c 302 §§ 201-205: "Sections 201 through 205 of this act take effect October 1, 2021." [2021 c 302 § 405.]

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

82.86.020 Tax imposed. (1)(a) A statewide 988 behavioral health crisis response and suicide prevention line tax is imposed on the use of all radio access lines:

(i) By subscribers whose place of primary use is located within the state in the amount set forth in (a)(ii) of this subsection (1) per month for each radio access line. The tax must be uniform for each radio access line under this subsection (1); and

(ii) By consumers whose retail transaction occurs within the state in the amount set forth in this subsection (1)(a)(ii) per retail transaction. The amount of tax must be uniform for each retail transaction under this subsection (1) and is as follows:

(A) Beginning October 1, 2021, through December 31, 2022, the tax rate is 24 cents for each radio access line; and

(B) Beginning January 1, 2023, the tax rate is 40 cents for each radio access line.

(b) The tax imposed under this subsection (1) must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications service, on a tax return provided by the department. Tax proceeds must be deposited by the treasurer into the statewide 988 behavioral health crisis response and suicide prevention line account created in RCW 82.86.050.

(c) For the purposes of this subsection (1), the retail transaction is deemed to occur at the location where the transaction is sourced under RCW 82.32.520(3)(c).

(2) A statewide 988 behavioral health crisis response and suicide prevention line tax is imposed on all interconnected voice over internet protocol service lines in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that is capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection (2) must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department. The amount of tax for each interconnected voice over internet protocol service line whose place of primary use is located in the state is as follows:

(a) Beginning October 1, 2021, through December 31, 2022, the tax rate is 24 cents for an interconnected voice over internet protocol service line; and

(b) Beginning January 1, 2023, the tax rate is 40 cents for an interconnected voice over internet protocol service line.

(3) A statewide 988 behavioral health crisis response and suicide prevention line tax is imposed on all switched access lines in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of switched access lines on an account that is capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection (3) must be remitted to the department by local exchange companies on a tax return provided by the department. The amount of tax for each switched access line whose place of primary use is located in the state is as follows:

(a) Beginning October 1, 2021, through December 31, 2022, the tax rate is 24 cents for each switched access line; and

(b) Beginning January 1, 2023, the tax rate is 40 cents for each switched access line.

(4) Tax proceeds collected pursuant to this section must be deposited by the treasurer into the statewide 988 behavioral health crisis response and suicide prevention line account created in RCW 82.86.050. [2021 c 302 § 202.]

Effective date—2021 c 302 §§ 201-205: See note following RCW 82.86.010.

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

82.86.030 Collection of tax. (1) Except as provided otherwise in subsection (2) of this section:

(a) The statewide 988 behavioral health crisis response and suicide prevention line tax on radio access lines must be collected from the subscriber by the radio communications service company, including those companies that resell radio access lines, providing the radio access line to the subscriber,

(2022 Ed.)

and the seller of prepaid wireless telecommunications services.

(b) The statewide 988 behavioral health crisis response and suicide prevention line tax on interconnected voice over internet protocol service lines must be collected from the subscriber by the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line to the subscriber.

(c) The statewide 988 behavioral health crisis response and suicide prevention line tax on switched access lines must be collected from the subscriber by the local exchange company.

(d) The amount of the tax must be stated separately on the billing statement which is sent to the subscriber.

(2)(a) The statewide 988 behavioral health crisis response and suicide prevention line tax imposed by this chapter must be collected from the consumer by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state.

(b) The department must transfer all tax proceeds remitted by a seller under this subsection (2) to the statewide 988 behavioral health crisis response and suicide prevention line account created in RCW 82.86.050.

(c) The taxes required by this subsection to be collected by the seller must be separately stated in any sales invoice or instrument of sale provided to the consumer. [2021 c 302 § 203.]

Effective date—2021 c 302 §§ 201-205: See note following RCW 82.86.010.

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

82.86.040 Payment and collection. (1)(a) The statewide 988 behavioral health crisis response and suicide prevention line tax imposed by this chapter must be paid by the subscriber to the radio communications service company providing the radio access line, the local exchange company, or the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line.

(b) Each radio communications service company, each local exchange company, and each interconnected voice over internet protocol service company, must collect from the subscriber the full amount of the taxes payable. The statewide 988 behavioral health crisis response and suicide prevention line tax required by this chapter to be collected by a company or seller, are deemed to be held in trust by the company or seller until paid to the department. Any radio communications service company, local exchange company, or interconnected voice over internet protocol service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any radio communications service company, local exchange company, or interconnected voice over internet protocol service company fails to collect the statewide 988 behavioral health crisis response and suicide prevention line tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the company or seller is personally liable

to the state for the amount of the tax, unless the company or seller has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or consumer or is otherwise not liable for the statewide 988 behavioral health crisis response and suicide prevention line tax.

(3) The amount of tax, until paid by the subscriber to the radio communications service company, local exchange company, the interconnected voice over internet protocol service company, or to the department, constitutes a debt from the subscriber to the company, or from the consumer to the seller. Any company or seller that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber or consumer who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The statewide 988 behavioral health crisis response and suicide prevention line tax required by this chapter to be collected by the radio communications service company, local exchange company, or interconnected voice over internet protocol service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the radio communications service company, local exchange company, or interconnected voice over internet protocol service company, the statewide 988 behavioral health crisis response and suicide prevention line tax imposed by this chapter and the company or seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber or consumer for collection of the tax, in which case a penalty of 10 percent may be added to the amount of the tax for failure of the subscriber or consumer to pay the tax to the company or seller, regardless of when the tax is collected by the department. [2021 c 302 § 204.]

Effective date—2021 c 302 §§ 201-205: See note following RCW 82.86.010.

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

82.86.050 Account creation. (1) The statewide 988 behavioral health crisis response and suicide prevention line account is created in the state treasury. All receipts from the statewide 988 behavioral health crisis response and suicide prevention line tax imposed pursuant to this chapter must be deposited into the account. Moneys may only be spent after appropriation.

(2) Expenditures from the account may only be used for (a) ensuring the efficient and effective routing of calls made to the 988 crisis hotline to an appropriate crisis hotline center or crisis call center hub; and (b) personnel and the provision of acute behavioral health, crisis outreach, and crisis stabilization services, as defined in RCW 71.24.025, by directly responding to the 988 crisis hotline.

(3) Moneys in the account may not be used to supplant general fund appropriations for behavioral health services or for medicaid covered services to individuals enrolled in the medicaid program. [2021 c 302 § 205.]

Effective date—2021 c 302 §§ 201-205: See note following RCW 82.86.010.

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

82.86.060 Preemption. A city or county may not impose a tax, measured on a per line basis, on radio access lines, interconnected voice over internet protocol service lines, or switched access lines, for the purpose of ensuring the efficient and effective routing of calls made to the 988 crisis hotline to an appropriate crisis hotline center or crisis call center hub; or providing personnel or acute behavioral health, crisis outreach, or crisis stabilization services, as defined in RCW 71.24.025, associated with directly responding to the 988 crisis hotline. [2021 c 302 § 206.]

Findings—Intent—2021 c 302: See note following RCW 71.24.890.

Chapter 82.87 RCW CAPITAL GAINS TAX

Sections

82.87.010	Findings—Intent—2021 c 196.
82.87.020	Definitions.
82.87.030	Distribution of revenues.
82.87.040	Tax imposed—Long-term capital assets.
82.87.050	Exemptions.
82.87.060	Deductions.
82.87.070	Qualified family-owned small business deduction.
82.87.080	Charitable donation deduction.
82.87.090	Other taxes.
82.87.100	Allocation of long-term capital gains and losses—Credit.
82.87.110	Filing of returns—Additional documentation—Penalty.
82.87.120	Joint filers—Separate filers—Tax liability.
82.87.130	Administration of taxes.
82.87.140	Tax criminal penalties.
82.87.150	Annual adjustments.

82.87.010 Findings—Intent—2021 c 196. The legislature finds that it is the paramount duty of the state to amply provide every child in the state with an education, creating the opportunity for the child to succeed in school and thrive in life. The legislature further finds that high quality early learning and child care is critical to a child's success in school and life, as it supports the development of the child's social-emotional, physical, cognitive, and language skills. Therefore, the legislature will invest in the ongoing support of K-12 education and early learning and child care by dedicating revenues from chapter 196, Laws of 2021 to the education legacy trust account and the common school construction account [fund].

The legislature further recognizes that a tax system that is fair, balanced, and works for everyone is essential to help all Washingtonians grow and thrive. But Washington's tax system today is the most regressive in the nation because it asks those making the least to pay the most as a percentage of their income. Middle-income families in Washington pay two to four times more in taxes, as a percentage of household income, as compared to top earners in the state. Low-income Washingtonians pay at least six times more than do our wealthiest residents.

To help meet the state's paramount duty, the legislature intends to levy a seven percent tax on the voluntary sale or exchange of stocks, bonds, and other capital assets where the profit is in excess of \$250,000 annually to fund K-12 education, early learning, and child care, and advance our paramount duty to amply provide an education to every child in the state. The legislature recognizes that levying this tax will have the additional effect of making material progress toward rebalancing the state's tax code.

The legislature further intends to exempt certain assets from the tax including, but not limited to, qualified family-owned small businesses, all residential and other real property, and retirement accounts. [2021 c 196 § 1.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act." [2021 c 196 § 18.]

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

(1) "Adjusted capital gain" means federal net long-term capital gain:

(a) Plus any amount of long-term capital loss from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such loss was included in calculating federal net long-term capital gain;

(b) Plus any amount of long-term capital loss from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such loss was included in calculating federal net long-term capital gain;

(c) Plus any amount of loss carryforward from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such loss was included in calculating federal net long-term capital gain;

(d) Less any amount of long-term capital gain from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such gain was included in calculating federal net long-term capital gain; and

(e) Less any amount of long-term capital gain from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such gain was included in calculating federal net long-term capital gain.

(2) "Capital asset" has the same meaning as provided by Title 26 U.S.C. Sec. 1221 of the internal revenue code and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under Title 26 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

(3) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes determined as if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the internal revenue code did not exist.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of July 25, 2021, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(6) "Long-term capital asset" means a capital asset that is held for more than one year.

(7) "Long-term capital gain" means gain from the sale or exchange of a long-term capital asset.

(8) "Long-term capital loss" means a loss from the sale or exchange of a long-term capital asset.

(9) "Real estate" means land and fixtures affixed to land. "Real estate" also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

(10)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(11) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(12) "Taxpayer" means an individual subject to tax under this chapter.

(13) "Washington capital gains" means an individual's adjusted capital gain, as modified in RCW 82.87.060, for each return filed under this chapter. [2021 c 196 § 4.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.030 Distribution of revenues. (1) All taxes, interest, and penalties collected under this chapter shall be distributed as follows:

(a) The first \$500,000,000 collected each fiscal year shall be deposited into the education legacy trust account created in RCW 83.100.230; and

(b) Any remainder collected each fiscal year shall be deposited into the common school construction account [fund].

(2) The amounts specified under subsection (1)(a) of this section shall be adjusted annually as provided under RCW 82.87.150. [2021 c 196 § 2.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.040 Tax imposed—Long-term capital assets.

(1) Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals seven percent multiplied by an individual's Washington capital gains.

(2) The tax levied in subsection (1) of this section is necessary for the support of the state government and its existing public institutions.

(3) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section and no such amount is allowed as a carryover for use in the calculation of that individual's adjusted capital gain, as defined in RCW 82.87.020(1), for any taxable year. To the extent that a loss carryforward is included in the calculation of an individual's federal net long-term capital gain and that loss carryforward is directly attributable to losses from sales or exchanges allocated to this state under RCW 82.87.100, the loss carryforward is included in the calculation of that individual's adjusted capital gain for the purposes of this

chapter. An individual may not include any losses carried back for federal income tax purposes in the calculation of that individual's adjusted capital gain for any taxable year.

(4)(a) The tax imposed in this section applies to the sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or beneficial owner of such assets at the time of the sale or exchange. The tax applies when the Washington capital gains are recognized by the taxpayer in accordance with this chapter.

(b) For purposes of this chapter:

(i) An individual is considered to be a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S corporation, or grantor trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

(ii) A nongrantor trust is deemed to be a grantor trust if the trust does not qualify as a grantor trust for federal tax purposes, and the grantor's transfer of assets to the trust is treated as an incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal revenue code and its accompanying regulations. A grantor of such trust is considered the beneficial owner of the capital assets of the trust for purposes of the tax imposed in this section and must include any long-term capital gain or loss from the sale or exchange of a capital asset by the trust in the calculation of that individual's adjusted capital gain, if such gain or loss is allocated to this state under RCW 82.87.100. [2021 c 196 § 5.]

Contingency—2021 c 196 §§ 5 and 16: "(1) If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges section 5 of this act unconstitutional, or otherwise invalid, in its entirety, section 16 of this act is null and void in its entirety. Any credits previously claimed under section 16 of this act must be repaid within 30 days of the department of revenue's notice to the taxpayer of the amount due.

(2) If the taxpayer fails to repay the credit by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency." [2021 c 196 § 20.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.050 Exemptions. This chapter does not apply to the sale or exchange of:

(1) All real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where real property is located;

(2)(a) An interest in a privately held entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity.

(b)(i) Except as provided in (b)(ii) and (iii) of this subsection, the value of the exemption under this subsection is equal to the fair market value of the real estate owned directly by the entity less its basis, at the time that the sale or exchange of the individual's interest occurs, multiplied by the percentage of the ownership interest in the entity which is sold or exchanged by the individual.

(ii) If a sale or exchange of an interest in an entity results in an amount directly attributable to real property and that is considered as an amount realized from the sale or exchange of property other than a capital asset under Title 26 U.S.C. Sec. 751 of the internal revenue code, such amount must not

be considered in the calculation of an individual's exemption amount under (b)(i) of this subsection (2).

(iii) Real estate not owned directly by the entity in which an individual is selling or exchanging the individual's interest must not be considered in the calculation of an individual's exemption amount under (b)(i) of this subsection (2).

(c) Fair market value of real estate may be established by a fair market appraisal of the real estate or an allocation of assets by the seller and the buyer made under Title 26 U.S.C. Sec. 1060 of the internal revenue code, as amended. However, the department is not bound by the parties' agreement as to the allocation of assets, allocation of consideration, or fair market value, if such allocations or fair market value do not reflect the fair market value of the real estate. The assessed value of the real estate for property tax purposes may be used to determine the fair market value of the real estate, if the assessed value is current as of the date of the sale or exchange of the ownership interest in the entity owning the real estate and the department determines that this method is reasonable under the circumstances.

(d) The value of the exemption under this subsection (2) may not exceed the individual's long-term capital gain or loss from the sale or exchange of an interest in an entity for which the individual is claiming this exemption;

(3) Assets held under a retirement savings account under Title 26 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered annuity or custodial account described in Title 26 U.S.C. Sec. 403(b) of the internal revenue code, a deferred compensation plan under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an individual retirement account or individual retirement annuity described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a Roth individual retirement account described in Title 26 U.S.C. Sec. 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;

(4) Assets pursuant to, or under imminent threat of, condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation;

(5) Cattle, horses, or breeding livestock if for the taxable year of the sale or exchange, more than 50 percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;

(6) Property depreciable under Title 26 U.S.C. Sec. 167(a)(1) of the internal revenue code, or that qualifies for expensing under Title 26 U.S.C. Sec. 179 of the internal revenue code;

(7) Timber, timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber and timberland. "Timber" means forest trees, standing or down, on privately or publicly owned land, and includes Christmas trees and short-rotation hardwoods. The sale or exchange of timber includes the cutting or disposal of timber qualifying for capital gains treatment under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue code;

(8)(a) Commercial fishing privileges.

(b) For the purposes of this subsection (8), "commercial fishing privilege" means a right, held by a seafood harvester

or processor, to participate in a limited access fishery. "Commercial fishing privilege" includes and is limited to:

(i) In the case of federally managed fisheries, quota and access to fisheries assigned pursuant to individual fishing quota programs, limited entry and catch share programs, cooperative fishing management agreements, or similar arrangements; and

(ii) In the case of state-managed fisheries, quota and access to fisheries assigned under fishery permits, limited entry and catch share programs, or similar arrangements; and

(9) Goodwill received from the sale of an auto dealership licensed under chapter 46.70 RCW whose activities are subject to chapter 46.96 RCW. [2021 c 196 § 6.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.060 Deductions. In computing tax for a taxable year, a taxpayer may deduct from his or her Washington capital gains:

(1) A standard deduction of \$250,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to \$250,000, regardless of whether they file joint or separate returns. The amount of the standard deduction shall be adjusted pursuant to RCW 82.87.150;

(2) Amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(3) The amount of adjusted capital gain derived from the sale or transfer of the taxpayer's interest in a qualified family-owned small business pursuant to RCW 82.87.070; and

(4) Charitable donations deductible under RCW 82.87.080. [2021 c 196 § 7.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.070 Qualified family-owned small business deduction. (1) In computing tax under this chapter for a taxable year, a taxpayer may deduct from his or her Washington capital gains the amount of adjusted capital gain derived in the taxable year from the sale of substantially all of the fair market value of the assets of, or the transfer of substantially all of the taxpayer's interest in, a qualified family-owned small business, to the extent that such adjusted capital gain would otherwise be included in the taxpayer's Washington capital gains.

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

(a) "Assets" means real property and personal property, including tangible personal property and intangible property.

(b) "Family" means the same as "member of the family" in RCW 83.100.046.

(c)(i) "Materially participated" means an individual was involved in the operation of a business on a basis that is regular, continuous, and substantial.

(ii) The term "materially participated" must be interpreted consistently with the applicable treasury regulations for Title 26 U.S.C. Sec. 469 of the internal revenue code, to the extent that such interpretation does not conflict with any provision of this section.

(2022 Ed.)

(d) "Qualified family-owned small business" means a business:

(i) In which the taxpayer held a qualifying interest for at least five years immediately preceding the sale or transfer described in subsection (1) of this section;

(ii) In which either the taxpayer or members of the taxpayer's family, or both, materially participated in operating the business for at least five of the 10 years immediately preceding the sale or transfer described in subsection (1) of this section, unless such sale or transfer was to a qualified heir; and

(iii) That had worldwide gross revenue of \$10,000,000 or less in the 12-month period immediately preceding the sale or transfer described in subsection (1) of this section. The worldwide gross revenue amount under this subsection (2)(d)(iii) shall be adjusted annually as provided in RCW 82.87.150.

(e) "Qualified heir" means a member of the taxpayer's family.

(f) "Qualifying interest" means:

(i) An interest as a proprietor in a business carried on as a sole proprietorship; or

(ii) An interest in a business if at least:

(A) Fifty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both;

(B) Thirty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both, and at least:

(I) Seventy percent of the business is owned, directly or indirectly, by members of two families; or

(II) Ninety percent of the business is owned, directly or indirectly, by members of three families.

(g) "Substantially all" means at least 90 percent. [2021 c 196 § 8.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.080 Charitable donation deduction. (1) In computing tax under this chapter for a taxable year, a taxpayer may deduct from his or her Washington capital gains the amount donated by the taxpayer to one or more qualified organizations during the same taxable year in excess of the minimum qualifying charitable donation amount. For the purposes of this section, the minimum qualifying charitable donation amount equals \$250,000. The minimum qualifying charitable donation amount under this subsection (1) shall be adjusted pursuant to RCW 82.87.150.

(2) The deduction authorized under subsection (1) of this section may not exceed \$100,000 for the taxable year. The maximum amount of the available deduction under this subsection (2) shall be adjusted pursuant to RCW 82.87.150.

(3) The deduction authorized under subsection (1) of this section may not be carried forward or backward to another tax reporting period.

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

(a) "Nonprofit organization" means an organization exempt from tax under Title 26 U.S.C. Sec. 501(c)(3) of the internal revenue code.

(b) "Qualified organization" means a nonprofit organization, or any other organization, that is:

- (i) Eligible to receive a charitable deduction as defined in Title 26 U.S.C. Sec. 170(c) of the internal revenue code; and
- (ii) Principally directed or managed within the state of Washington. [2021 c 196 § 9.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.090 Other taxes. The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in, or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW. [2021 c 196 § 10.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.100 Allocation of long-term capital gains and losses—Credit. (1) For purposes of the tax imposed under this chapter, long-term capital gains and losses are allocated to Washington as follows:

(a) Long-term capital gains or losses from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Long-term capital gains or losses from the sale or exchange of tangible personal property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

- (i) The property was located in the state at any time during the taxable year in which the sale or exchange occurred or the immediately preceding taxable year;
- (ii) The taxpayer was a resident at the time the sale or exchange occurred; and
- (iii) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the long-term capital gains or losses by another taxing jurisdiction.

(b) Long-term capital gains or losses derived from intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the sale or exchange occurred.

(2)(a) A credit is allowed against the tax imposed in RCW 82.87.040 equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

(b) As used in this section, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country. [2021 c 196 § 11.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.110 Filing of returns—Additional documentation—Penalty. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2) In addition to the Washington return required to be filed under subsection (1) of this section, taxpayers owing tax under this chapter must file with the department on or before the date the federal return is required to be filed a copy of the federal income tax return along with all schedules and supporting documentation.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4)(a) In addition to the Washington return required to be filed under subsection (1) of this section, an individual claiming an exemption under RCW 82.87.050(2) must file documentation substantiating the following:

(i) The fair market value and basis of the real estate held directly by the entity in which the interest was sold or exchanged;

(ii) The percentage of the ownership interest sold or exchanged in the entity owning real estate; and

(iii) The methodology, if any, established by the entity in which the interest was sold or exchanged, for allocating gains or losses to the owners, partners, or shareholders of the entity from the sale of real estate.

(b) The department may by rule prescribe additional filing requirements to substantiate an individual's claim for an exemption under RCW 82.87.050(2). Prior to adopting any rule under this subsection (4)(b), the department must allow for an opportunity for participation by interested parties in the rule-making process in accordance with the administrative procedure act, chapter 34.05 RCW.

(5) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year, the taxpayer is entitled to the same extension of time for filing the return required under this section if the taxpayer provides the department, before the due date provided in subsection (1) of this section, the extension confirmation number or other evidence satisfactory to the department confirming the federal extension. An extension under this subsection for the filing of

a return under this chapter is not an extension of time to pay the tax due under this chapter.

(6)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years. [2021 c 196 § 12.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.120 Joint filers—Separate filers—Tax liability.

(1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow Title 26 U.S.C. Sec. 6015. [2021 c 196 § 13.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.130 Administration of taxes. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter. [2021 c 196 § 14.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.140 Tax criminal penalties. (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2022 Ed.)

(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW. [2021 c 196 § 15.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

82.87.150 Annual adjustments. (1) Beginning December 2023 and each December thereafter, the department must adjust the applicable amounts by multiplying the current applicable amounts by one plus the percentage by which the most current consumer price index available on December 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest \$1,000. If an adjustment under this subsection (1) would reduce the applicable amounts, the department must not adjust the applicable amounts for use in the following year. The department must publish the adjusted applicable amounts on its public website by December 31st. The adjusted applicable amounts calculated under this subsection (1) take effect for taxes due and distributions made, as the case may be, in the following calendar year.

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

(a) "Applicable amounts" means:

(i) The distribution amount to the education legacy trust account as provided in RCW 82.87.030(1)(a);

(ii) The standard deduction amount in RCW 82.87.020(13) and 82.87.060(1);

(iii) The worldwide gross revenue amount under RCW 82.87.070; and

(iv) The minimum qualifying charitable donation amount and maximum charitable donation amount under RCW 82.87.080.

(b) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(c) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas. [2021 c 196 § 17.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.

Chapter 82.89 RCW

TAX DEFERRALS FOR INVESTMENT PROJECTS

Sections

82.89.010	Definitions.
82.89.020	Conditions for lessors.
82.89.030	Applications.
82.89.040	Tax deferral certificates.
82.89.050	Requirements for recipients—Meaningful construction.
82.89.060	Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership.
82.89.070	Reduction of taxes.
82.89.080	Conditions on recipients—Annual tax performance report—Immediate repayment.
82.89.900	Applicability of general administrative provisions.
82.89.901	Effective date—2022 c 185.

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

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

(2) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(a) Manufacturing operations;

(b) Facilities to produce clean fuels, subject to the limitations in subsection (8)(d) of this section, renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(c) Storage facilities.

(3) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(4) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

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

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

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020.

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

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

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

(7) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(8) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(a) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(d) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under *RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(e) Electricity from renewable resources; or

(f) Storage facilities.

(9) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

(10) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

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

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

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

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

(15) "Renewable resource" has the same meaning as in RCW 82.08.816.

(16) "Storage facility" means a facility that:

(a) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(b) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption. [2022 c 185 § 1.]

*Reviser's note: RCW 70A.535.020 was repealed by 2022 c 182 § 414.

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.020 Conditions for lessors. The lessor or owner of a qualified building is not eligible for a deferral under this chapter unless:

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

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.32.534; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2022 c 185 § 2.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.030 Applications. (Expires January 1, 2033.)

(1) Applications for deferral of taxes under this chapter must be made before initiation of the construction of the eligible investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the eligible investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the eligible investment project, estimated or actual wages of employees related to the eligible investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires January 1, 2033. [2022 c 185 § 3.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.040 Tax deferral certificates. (Expires January 1, 2033.) (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project. The certificate may only be used to make purchases of materials and equipment, labor, or services to be incorporated in the eligible investment project at the location listed on the certificate.

(2) No certificate may be issued for an investment project that has already received a deferral under this chapter or chapter 82.60 or 82.85 RCW.

(3) No certificate may be issued for an eligible investment project that has not had an application approved by the department as provided in RCW 82.89.030.

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

(5) This section expires January 1, 2033. [2022 c 185 § 4.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

(2022 Ed.)

82.89.050 Requirements for recipients—Meaningful construction. (1) The recipient of a deferral certificate under RCW 82.89.040 must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the deferral certificate issued under RCW 82.89.040 is invalid and taxes deferred under this chapter are due immediately. [2022 c 185 § 5.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.060 Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership. (1) The recipient must begin paying the deferred taxes in the second year after the date certified by the department as the date on which the eligible investment project has been operationally completed. The first payment of 10 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 10 percent of the deferred taxes due on December 31st for each of the following nine years.

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

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this chapter because the department has found that a purchase is not eligible for tax deferral.

(5) The debt for deferred taxes are not extinguished by insolvency or other failure of the recipient.

(6) Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2022 c 185 § 6.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.070 Reduction of taxes. (1) The recipient of the deferral under this chapter must receive a reduction of the amount of state sales and use tax to be repaid under RCW 82.89.060 only as follows:

(a) Fifty percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project includes procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the eligible investment project is being constructed. In the event that an eligible

investment project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard;

(b) Seventy-five percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project complies with (a) of this subsection and compensates workers at prevailing wage rates determined by local collective bargaining as determined by the department of labor and industries; or

(c) One hundred percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project is developed under a community workforce agreement or project labor agreement.

(2)(a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1) of this section as well as documentation requirements and a certification process. The certification process and timeline must be designed to prevent undue delay to project development; and

(ii) Set requirements for all good faith efforts under subsection (1)(a) and (b) of this section. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with the standards, and include:

(A) Proactive outreach to women, minority, and veteran-owned businesses;

(B) Advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

(C) Participating in community job fairs, conferences, and trade shows; and

(D) Other measures.

(b) The standards for procurement from and contracts with women and minority-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the office of minority and women's business enterprises review to determine compliance with the plan.

(c) The labor standard for procurement from and contracts with veteran-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the department of veterans affairs to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the department of veterans affairs review to determine compliance with the plan.

(d) The department of labor and industries must consult with the office of minority and women's business enterprises, the department of veterans affairs, and the Washington apprenticeship and training council in setting standards and good faith efforts.

(3) Nothing in this section reduces the amount of local sales and use taxes to be repaid under RCW 82.89.060. The

recipient must repay all local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW as provided in RCW 82.89.060. [2022 c 185 § 7.]

Tax preference performance automatic expiration exception—2022 c 185: "RCW 82.32.805 does not apply to this act." [2022 c 185 § 10.]

Tax preference performance statement—2022 c 185: "(1) This section is the tax preference performance statement for the tax preference contained in chapter 185, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create jobs.

(3) It is the legislature's specific public policy objective to build manufacturing capacity for carbon-free electricity and to financially incentivize the use of high labor standards.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate at least the first five years of available data, reporting its findings to the legislature by December 31, 2028. The review must include evaluation of:

(i) The average construction wages for eligible projects;

(ii) The number of jobs created in the clean technology sector;

(iii) The use of apprenticeship programs, and women, minority, or veteran-owned businesses by eligible projects;

(iv) The degree to which the preference encouraged manufacturing and component production for technologies that reduce greenhouse gas emissions;

(v) Whether facilities benefiting from the preference would have been developed without the preference; and

(vi) Any other relevant metric.

(b) The legislature does not intend to change the expiration of the preference based on the findings of the review.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2022 c 185 § 11.]

82.89.080 Conditions on recipients—Annual tax performance report—Immediate repayment.

(1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. Reports must be filed for the first calendar year after the eligible investment project is operationally complete and continue through the end of the calendar year in which the final repayment occurs. If the economic benefits of the deferral are passed to a lessee, as provided in RCW 82.89.020, the lessee must file a complete annual tax performance report and the applicant is not required to file a complete annual tax performance report.

(2) If the eligible investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an eligible investment project is used for purposes other than those listed in RCW 82.89.010(2) at any time during the calendar year in which the investment is certified by the department as having been operationally completed, or at any time during any of the repayment period, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1	100
2	100
3	100

Year in which use occurs	Percent of deferred taxes due
4	90
5	80
6	70
7	60
8	50
9	40
10	30
11	20
12	10

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in RCW 82.89.020, the lessee is responsible for payment to the extent the lessee has received the economic benefit. [2022 c 185 § 8.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.900 Applicability of general administrative provisions. To the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of this chapter. [2022 c 185 § 9.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

82.89.901 Effective date—2022 c 185. This act takes effect July 1, 2022. [2022 c 185 § 13.]

Chapter 82.90 RCW

TAX DEFERRALS FOR SOLAR CANOPIES

Sections

82.90.010	Findings—Intent.
82.90.020	Definitions.
82.90.030	Applications.
82.90.040	Tax deferral certificates.
82.90.050	Requirements for recipients—Meaningful construction.
82.90.060	Tax reduction—Rules.
82.90.070	Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership.
82.90.080	Conditions for lessors.
82.90.900	Effective date—2022 c 161.

82.90.010 Findings—Intent. (1) The legislature finds that while Washington state has significant solar resources and increasing electricity generation from solar installations, these are concentrated in rooftop installations and in utility-scale solar projects on rural lands that could otherwise be devoted to crop lands, grazing lands, or other productive uses. A recent study estimates that in the United States about 51 percent of utility-scale solar facilities are in deserts, 33 percent are on croplands, 10 percent are in grasslands and forests, and only 2.5 percent of solar power comes from urban areas.

(2) The legislature further finds that in urbanized areas the land devoted to transportation, both moving and parking vehicles, is substantial and becomes unavailable for additional uses. Surface parking lots that serve large commercial, industrial, and residential institutional developments present

(2022 Ed.)

an opportunity for solar power on parking lot canopies to gain added benefits for the use of this land. Solar canopies would significantly contribute to the state's goals of reducing greenhouse gas emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and powering and heating buildings. Additionally, solar canopies provide weather protection in summer and winter to both the vehicles under the canopies and people moving from their cars into the buildings served by the parking lot.

(3) The legislature further finds that the initial capital costs of installing solar generation on parking lot canopies will in most cases be fully amortized over time with the power generated and sold into the electricity system, but that initial capital costs may deter incorporation of installations into new projects. For these reasons, the legislature intends to provide for a deferral of state and local sales and use taxes for eligible costs of the construction of a solar canopy at qualifying commercial centers. [2022 c 161 § 1.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

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

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

(2) "Eligible area" means a qualifying commercial center.

(3) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.90.030 is received by the department, in an eligible area.

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

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

(ii) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080; or

(iii) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080.

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

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

(5) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

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

land clearing before excavation of the building site, without more, do not constitute "meaningful construction."

(7) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(8) "Person" has the meaning given in RCW 82.04.030.

(9) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(10) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

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

(12)(a) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

(b) "Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid. [2022 c 161 § 2.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

82.90.030 Applications. (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, anticipated nameplate capacity and use of the electricity produced by the solar canopy, and other information required by the department. The department must rule on the application within 60 days. The department must compile this information for use by the joint legislative audit and review committee in its evaluation of the tax preference under section 9, chapter 161, Laws of 2022.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032. [2022 c 161 § 3.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

82.90.040 Tax deferral certificates. The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project. [2022 c 161 § 4.]

Tax preference performance statement—2022 c 161: "This section is the tax preference performance statement for the sales and use tax deferral program created in sections 4 and 7, chapter 161, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preference created in this act as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to incentivize the construction of solar canopies in the state of Washington in order to reduce greenhouse gas emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and powering and heating buildings.

(3) Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the sales and use tax deferral created in this act by December 31, 2030. The review must specifically evaluate:

(a) The number of solar canopies constructed in the state subject to a sales and use tax deferral under this act;

(b) The average and total electric output of solar canopies subject to a sales and use tax deferral under this act;

(c) The total beneficiary savings from the tax preference created in this act;

(d) The estimated reduction in greenhouse gas emissions resulting from energy produced from solar canopies assuming an equivalent amount of energy would have otherwise been generated through the combustion of fossil fuels; and

(e) Any other metrics the committee finds relevant to the evaluation of the tax preference created in this act in meeting its public policy objective.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee shall use information collected, compiled, and provided by the department of revenue. The committee may also contact recipients of the sales and use tax deferral under this act to confirm details of solar canopies." [2022 c 161 § 9.]

Automatic tax preference expiration—Exception—2022 c 161: "The automatic expiration date for tax preferences in RCW 82.32.805 does not apply to this act." [2022 c 161 § 11.]

82.90.050 Requirements for recipients—Meaningful construction. (1) The recipient of a deferral certificate under RCW 82.90.040 must begin meaningful construction on an eligible investment project within one year of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within one year of receiving a deferral certificate, the deferral certificate issued under RCW 82.90.040 is invalid and taxes deferred under this chapter are due immediately.

(3) A recipient of a deferral certificate under RCW 82.90.040 must notify the department and update the information originally provided in the application if the solar canopy, at the time of completion, will produce an amount of electricity that is less than 85 percent of the nameplate capacity originally assumed.

(4) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534 for the year the solar canopy is certified as operationally complete and for the subsequent seven years. If the solar canopy ceases to be connected to the electrical grid, the annual tax performance report is no longer required beginning on the date the solar canopy was disconnected from the electrical grid. [2022 c 161 § 5.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

82.90.060 Tax reduction—Rules. (1) Except as otherwise provided in this chapter, the recipient of the deferral under this chapter must receive a reduction of the amount of state and local sales and use tax to be repaid under chapter 161, Laws of 2022 as follows:

(a) Fifty percent of the sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project includes procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history

of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the eligible investment project is being constructed. In the event that an eligible investment project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with one or more standards;

(b) Seventy-five percent of the sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project complies with (a) of this subsection and compensates workers at prevailing wage rates as determined by the department of labor and industries; or

(c) One hundred percent of the sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project is developed under a community workforce agreement or project labor agreement.

(2)(a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1) of this section as well as documentation requirements and a certification process. The certification process and timeline must be designed to prevent undue delay to project development; and

(ii) Set requirements for all good faith efforts under subsection (1)(a) and (b) of this section. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with the standards, and include: Proactive outreach to women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises; participating in community job fairs, conferences, and trade shows; and other measures.

(b) The standards for procurement from and contracts with women or minority-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the office of minority and women's business enterprises review to determine compliance with the plan.

(c) The labor standard for procurement from and contracts with veteran-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the department of veterans affairs to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the department of veterans affairs review to determine compliance with the plan.

(d) The department of labor and industries must consult with the office of minority and women's business enterprises, the department of veterans affairs, and the Washington apprenticeship and training council in setting standards and good faith efforts. [2022 c 161 § 6.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

(2022 Ed.)

82.90.070 Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership. (1) Except as otherwise provided in this chapter, the recipient must begin paying the deferred taxes in the second year after the date certified by the department as the date on which the eligible investment project has been operationally completed. The first payment of 12.5 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 12.5 percent of the deferred taxes due on December 31st for each of the following seven years.

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

(3) If the investment project is not operationally complete within two calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not connected to the electrical grid and producing solar energy at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1	100
2	100
3	87.5
4	75
5	62.5
6	50
7	37.5
8	25
9	12.5

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this chapter because the department has found that an investment project is not eligible for tax deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient.

(5) Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2022 c 161 § 7.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

82.90.080 Conditions for lessors. A lessor or owner of an eligible investment project is not eligible for a deferral under this chapter unless:

(1) The underlying ownership of the qualified solar canopy vests exclusively in the same person; or

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the

annual tax performance report required under RCW 82.63.020(2); and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the eligible investment project and the lessee. [2022 c 161 § 8.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

82.90.900 Effective date—2022 c 161. This act takes effect July 1, 2022. [2022 c 161 § 12.]

Chapter 82.92 RCW TAX DEFERRALS FOR UNDERDEVELOPED URBAN LAND REDEVELOPMENT

Sections

82.92.005	Findings.
82.92.007	Purpose.
82.92.010	Definitions.
82.92.020	Requirements for governing authorities.
82.92.030	Requirements for applicants.
82.92.040	Conditional certification.
82.92.050	Approval of applications—Appeals.
82.92.060	Application fee.
82.92.070	Certificate of occupancy—Process after issuance.
82.92.080	Annual report by conditional recipient—Annual tax performance report—Report by city.
82.92.090	Application to department.
82.92.100	Tax deferral certificates.
82.92.110	Discontinued compliance with program requirements—Payment of taxes, interest, and penalties.
82.92.120	Transfer of project ownership.

82.92.005 Findings. The legislature finds that:

(1) Many cities in Washington are actively planning for growth under the growth management act, chapter 36.70A RCW;

(2) The construction industry provides living wage jobs for families across Washington;

(3) In the current economic climate, the creation of additional affordable housing units is essential to the economic health of our cities and our state;

(4) It is critical that Washington state promote its cities and its property owners that will provide affordable housing;

(5) A meaningful, fair, and predictable economic incentive should be created to stimulate the redevelopment of underdeveloped property in targeted urban areas through a limited sales and use tax deferral program as provided by this chapter;

(6) This limited tax deferral will help the owners of underdeveloped property achieve the highest and best use of land and enable cities to more fully realize their planning goals; and

(7) Data regarding the number of additional affordable units created due to the limited tax deferral will be evaluated to determine if this tool could be used to increase affordable housing in other areas of the state. [2022 c 241 § 1.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.007 Purpose. It is the purpose of this chapter to encourage the redevelopment of underdeveloped land in tar-

geted urban areas, thereby increasing affordable housing, employment opportunities, and helping accomplish the other planning goals of Washington cities. The legislative authorities of cities to which this chapter applies may authorize a sales and use tax deferral for an investment project within the city if the legislative authority of the city finds that there are significant areas of underdeveloped land and a lack of affordable housing in areas proximate to the land. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid. [2022 c 241 § 2.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

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

(1) "Affordable homeownership housing" means housing intended for owner occupancy to low or moderate-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(2) "Affordable rental housing" means housing for very low or low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(3) "Applicant" means an owner of underdeveloped property.

(4) "City" means a city with a population of at least 135,000 and not more than 250,000 at the time the city initially establishes the program under this section.

(5) "Conditional recipient" means an owner of underdeveloped land granted a conditional certificate of program approval under this chapter, which includes any successor owner of the property.

(6) "County median price" means the most recently published quarterly data of median home prices by the Washington center for real estate research.

(7) "Eligible investment project" means an investment project that is located in a city and receiving a conditional certificate of program approval.

(8) "Fair market rent" means the estimates of 40th percentile gross rents for standard quality units within counties as published by the federal department of housing and urban development.

(9) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which a deferral may be granted under this chapter.

(10) "Household" means a single person, family, or unrelated persons living together.

(11)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral.

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

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

(12) "Investment project" means an investment in multi-family housing, including labor, services, and materials incorporated in the planning, installation, and construction of the project. "Investment project" includes investment in related facilities such as playgrounds and sidewalks as well as facilities used for business use for mixed-use development.

(13) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 50 percent but is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

(14) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 80 percent but is at or below 115 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

(15) "Multifamily housing" means a building or a group of buildings having two or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(16) "Owner" means the property owner of record.

(17) "Underdeveloped property" means land used as a surface parking lot for parking of motor vehicles off the street or highway, that is open to public use with or without charge, as of June 9, 2022.

(18) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development. [2022 c 241 § 3.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.020 Requirements for governing authorities.

(1) For the purpose of creating a sales and use tax deferral program under this chapter, the governing authority must adopt a resolution of intention to create a sales and use tax deferral program as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the creation of the tax deferral program and may include such other information pertaining to the creation of the deferral program as the governing authority determines to be appropriate to apprise the public of the action intended. However, the resolution must provide information pertaining to:

- (a) The application process;
- (b) The approval process;
- (c) The appeals process for applications denied approval; and
- (d) Additional requirements, conditions, and obligations that must be followed postapproval of an application.

(2022 Ed.)

(2) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than 30 days before the date of the hearing in a paper having a general circulation in the city. The notice must state the time, date, place, and purpose of the hearing.

(3) Following the hearing or a continuance of the hearing, the governing authority may authorize the creation of the program. [2022 c 241 § 4.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.030 Requirements for applicants. An owner of underdeveloped property seeking a sales and use tax deferral under this chapter on an investment project must complete the following procedures:

(1) The owner must apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested deferral including information indicated on the application form or in the guidelines;

(b) A description of the investment project and site plan, and other information requested;

(c) A statement of the expected number of affordable housing units to be created;

(d) A statement that the applicant is aware of the potential tax liability involved if the investment project ceases to be used for eligible uses under this chapter;

(e) A statement that the applicant is aware that the investment project must be completed within three years from the date of approval of the application;

(f) A statement that the applicant is aware that the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 consecutive months; and

(g) A statement that the applicant would not have built in this location but for the availability of the tax deferral under this chapter;

(2) The applicant must verify the application by oath or affirmation; and

(3) The application must be accompanied by the application fee, if any, required under this chapter. The duly authorized administrative official or committee of the city may permit the applicant to revise an application before final action by the duly authorized administrative official or committee of the city. [2022 c 241 § 5.]

Tax preference performance statement—2022 c 241: "(1) This section is the tax preference performance statement for the tax preference contained in chapter 241, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to expand affordable housing options for very low to moderate-income households, specifically in underdeveloped urban areas.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate the number of increased housing units on underdeveloped property. If a review finds that

the number of affordable housing units has not increased, then the legislature intends to repeal this tax preference.

(b) The review must be provided to the fiscal committees of the legislature by December 31, 2030.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including data collected by the department under section 10 of this act." [2022 c 241 § 15.]

82.92.040 Conditional certification. The duly authorized administrative official or committee of the city may approve the application and grant a conditional certificate of program approval if it finds that:

(1)(a) The investment project is set aside primarily for multifamily housing units and the applicant commits to renting or selling at least 50 percent of the units as affordable rental housing or affordable homeownership housing to very low, low, and moderate-income households. In a mixed use project, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units;

(b) At least 50 percent of the investment project set aside for multifamily housing units will be rented at a price at or below fair market rent for the county or sold at a price at or below county median price; and

(c) The applicant commits to any additional affordability and income eligibility conditions adopted by the local government under this chapter not otherwise inconsistent with this chapter;

(2) The investment project is, or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(3) The investment project will occur on land that constitutes underdeveloped property;

(4) The area where the investment project will occur is located within an area zoned for residential or mixed uses;

(5) The terms and conditions of the implementation of the development meets the requirements of this chapter and any requirements of the city that are not otherwise inconsistent with this chapter;

(6) The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW; and

(7) All other requirements of this chapter have been satisfied as well as any other requirements of the city that are not otherwise inconsistent with this chapter. [2022 c 241 § 6.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.050 Approval of applications—Appeals. (1) The duly authorized administrative official or committee of the city must approve or deny an application filed under this chapter within 90 days after receipt of the application.

(2) If the application is approved, the city must issue the applicant a conditional certificate of program approval. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the investment project as described in the application will comply with the required criteria of this chapter.

(3) If the application is denied by the city, the city must state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within 10 days of the denial.

(4) Upon denial by the city, an applicant may appeal the denial to the city's governing authority or a city official designated by the city to hear such appeals within 30 days after receipt of the denial. The appeal before the city's governing authority or designated city official must be based upon the record made before the city with the burden of proof on the applicant to show that there was no substantial evidence to support the city's decision. The decision of the city on the appeal is final. [2022 c 241 § 7.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.060 Application fee. The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority in administering the program under this chapter. The application fee must be paid at the time the application for program approval is filed. [2022 c 241 § 8.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.070 Certificate of occupancy—Process after issuance. (1) Within 30 days of the issuance of a certificate of occupancy for an eligible investment project, the conditional recipient must file with the city the following:

(a) A description of the work that has been completed and a statement that the eligible investment project qualifies the property for a sales and use tax deferral under this chapter;

(b) A statement of the new affordable housing to be offered as a result of the new construction; and

(c) A statement that the work has been completed within three years of the issuance of the conditional certificate of program approval.

(2) Within 30 days after receipt of the statements required under subsection (1) of this section, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing to be offered are consistent with the application and the contract approved by the city, and the investment project continues to qualify for a tax deferral under this chapter. The conditional recipient must notify the department within 30 days from receiving the city's determination to schedule an audit of the deferred taxes. The department must determine the amount of sales and use taxes qualifying for the deferral. If the department determines that purchases were not eligible for deferral it must assess interest, but not penalties, on the nonqualifying amounts.

(3) The city must notify the conditional recipient within 30 days that a tax deferral under this chapter is denied if the city determines that:

(a) The work was not completed within three years of the application date;

(b) The work was not constructed consistent with the application or other applicable requirements;

(c) The affordable housing units to be offered are not consistent with the application and criteria of this chapter; or

(d) The owner's property is otherwise not qualified for a sales and use tax deferral under this chapter.

(4) If the city finds that the work was not completed within the required time period due to circumstances beyond

the control of the conditional recipient and that the conditional recipient has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority may extend the deadline for completion of the work for a period not to exceed 24 consecutive months.

(5) The city's governing authority may enact an ordinance to provide a process for a conditional recipient to appeal a decision by the city that the conditional recipient is not entitled to a deferral of sales and use taxes. The conditional recipient may appeal a decision by the city to deny a deferral of sales and use taxes in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within 30 days of notification by the city to the conditional recipient.

(6) A city denying a conditional recipient of a sales and use tax deferral under subsection (3) of this section must notify the department and taxes deferred under this chapter are immediately due and payable, subject to any appeal by the conditional recipient. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. [2022 c 241 § 9.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.080 Annual report by conditional recipient—Annual tax performance report—Report by city. (1) Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for 10 years, the conditional recipient must file with a designated authorized representative of the city an annual report indicating the following:

- (a) A statement of the affordable housing units constructed on the property as of the anniversary date;
- (b) A certification by the conditional recipient that the property has not changed use;
- (c) A description of changes or improvements constructed after issuance of the certificate of occupancy; and
- (d) Any additional information requested by the city.

(2) The conditional recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department pursuant to RCW 82.32.534 beginning the year the certificate of occupancy is issued and each year thereafter for 10 years.

(3) A city that issues a certificate of program approval under this chapter must report annually by December 31st of each year, beginning in 2022, to the department of commerce. The report must include the following information:

- (a) The number of program approval certificates granted;
- (b) The total number and type of new buildings constructed;
- (c) The number of affordable housing units resulting from the new construction; and
- (d) The estimated value of the sales and use tax deferral for each investment project receiving a program approval and the total estimated value of sales and use tax deferrals granted. [2022 c 241 § 10.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

(2022 Ed.)

82.92.090 Application to department. (Expires July 1, 2032.) (1) A conditional recipient must submit an application to the department before initiation of the construction of the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application must be made to the department in a form and manner prescribed by the department. The application must include a copy of the conditional certificate of program approval issued by the city, estimated construction costs, time schedules for completion and operation, and any other information required by the department. The department must rule on the application within 60 days.

(2) The department must provide information to the conditional recipient regarding documentation that must be retained by the conditional recipient in order to substantiate the amount of sales and use tax actually deferred under this chapter.

(3) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(4) The application must include a waiver by the conditional recipient of the four-year limitation under RCW 82.32.100.

(5) This section expires July 1, 2032. [2022 c 241 § 11.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.100 Tax deferral certificates. (Expires July 1, 2032.) (1) After receiving the conditional certificate of program approval issued by the city and provided to the department by the applicant, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) The department must keep a running total of all estimated sales and use tax deferrals provided under this chapter during each fiscal biennium.

(3) The deferral certificate is valid during active construction of a qualified investment project and expires on the day the city issues a certificate of occupancy for the investment project for which a deferral certificate was issued.

(4) This section expires July 1, 2032. [2022 c 241 § 12.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.110 Discontinued compliance with program requirements—Payment of taxes, interest, and penalties.

(1) If a conditional recipient voluntarily opts to discontinue compliance with the requirements of this chapter, the recipient must notify the city and department within 60 days of the change in use or intended discontinuance.

(2) If, after the department has issued a sales and use tax deferral certificate and the conditional recipient has received a certificate of occupancy, the city finds that a portion of an investment project is changed or will be changed to disqualify the recipient for sales and use tax deferral eligibility under this chapter, the city must notify the department and all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of

deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

(3) This section does not apply after 10 years from the date of the certificate of occupancy. [2022 c 241 § 13.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

82.92.120 Transfer of project ownership. (1) Transfer of investment project ownership does not terminate the deferral. The deferral is transferred subject to the successor meeting the eligibility requirements of this chapter.

(2) The transferor of an eligible project must notify the city and the department of such transfer. The city must certify to the department that the successor meets the requirements of the deferral. The transferor must provide the information necessary for the department to transfer the deferral. If the transferor fails to notify the city and the department, all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. [2022 c 241 § 14.]

Tax preference performance statement—2022 c 241: See note following RCW 82.92.030.

Chapter 82.94 RCW

TAX DEFERRALS FOR MANUFACTURING AND RESEARCH AND DEVELOPMENT

Sections

82.94.005	Findings—Intent.
82.94.010	Definitions.
82.94.020	Applications.
82.94.030	Tax deferral certificates.
82.94.040	Requirements for recipients—Meaningful construction.
82.94.050	Annual tax preference performance report—Repayment of deferred taxes.
82.94.060	List of qualifying counties.
82.94.070	Conditions for lessors.
82.94.080	Applicability of general administrative provisions.
82.94.090	Applications, reports, and information subject to disclosure.
82.94.900	Effective date—2022 c 257.

82.94.005 Findings—Intent. (1) The legislature finds that there are counties in the state that face additional economic development challenges beyond the challenges faced by counties located in the central Puget Sound region. The legislature further finds that these regions do not experience the same degree of job growth and investment. The legislature further finds that, in some areas, increased economic development incentives are needed to help support economic growth and that a one-size-fits-all approach to economic development does not work for the diversity of the statewide economy. For these reasons, the legislature intends to establish a tax deferral program to be effective solely in certain targeted counties. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and generally spurring economic development in these counties of the state.

(2) The legislature also finds that chapter 257, Laws of 2022 is consistent with the Substitute House Bill No. 1170, the Washington BEST manufacturing act, enacted in 2021. The 2021 Washington BEST manufacturing act recognized that the state must retain and build on its leadership in the manufacturing and research and development sectors and

also recognized that a thriving manufacturing and research sector are complimentary and should be promoted in every region of the state. Therefore, the legislature further finds the sales and use tax deferral program for manufacturing and research and development in chapter 257, Laws of 2022 is a critical tool and strategy to help achieve the goals expressed in the Washington BEST manufacturing act of doubling the state's manufacturing employment base, the number of small businesses, and the number of women and minority-owned manufacturing businesses in the next 10 years. [2022 c 257 § 101.]

82.94.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Eligible area" means a qualifying county.

(4)(a) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.94.020 is received by the department, in an eligible area as defined in subsection (3) of this section.

(b) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects that have already received deferrals under this chapter.

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

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

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025.

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

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

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

(7) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) The activities performed by research and development laboratories and commercial testing laboratories; and

(b) The conditioning of vegetable seeds.

(8) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a

building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

(9) "Person" has the meaning given in RCW 82.04.030.

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

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

(12) "Qualifying county" means a county that has a population less than 650,000 at the time an application is submitted under RCW 82.94.020.

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

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed \$1,000,000. [2022 c 257 § 102.]

82.94.020 Applications. (Expires July 1, 2032.) (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires July 1, 2032. [2022 c 257 § 103.]

82.94.030 Tax deferral certificates. (Expires July 1, 2032.) (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium. The amount of state and local sales and use taxes eligible for deferral under this chapter is limited to \$400,000 per person.

(3) This section expires July 1, 2032. [2022 c 257 § 104.]

82.94.040 Requirements for recipients—Meaningful construction. (1) The recipient of a deferral certificate under RCW 82.94.030 must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the deferral certificate issued under RCW 82.94.030 is invalid and taxes deferred under this chapter are due immediately. [2022 c 257 § 105.]

82.94.050 Annual tax preference performance report—Repayment of deferred taxes. (1)(a) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534 during the period covered by the schedule under subsection (2) of this section. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.94.070, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(b) The joint legislative audit and review committee, as part of its tax preference review process under chapter 43.136 RCW, must use the information reported on the annual tax performance report required by this section to study the tax deferral program authorized under this chapter. The committee must report to the legislature by December 1, 2030. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as the committee selects.

(2)(a) Except as otherwise provided in this chapter, taxes deferred under this chapter need not be repaid.

(b) If the investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than a qualified manufacturing or research and development operation at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during

any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

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

(c) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.94.070, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) A recipient who must repay deferred taxes under this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this section because the department has found that an investment project is not eligible for tax deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding any other provision of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2022 c 257 § 106.]

82.94.060 List of qualifying counties. The department must establish a list of qualifying counties, effective July 1, 2022. The list of qualifying counties is effective for a 24-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be. [2022 c 257 § 107.]

82.94.070 Conditions for lessors. The lessor or owner of a qualified building is not eligible for a deferral unless:

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

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.94.050; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2022 c 257 § 108.]

82.94.080 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [2022 c 257 § 109.]

82.94.090 Applications, reports, and information subject to disclosure. Applications, reports, and any other information received by the department under this chapter, except applications not approved by the department, are not confidential and are subject to disclosure. [2022 c 257 § 110.]

82.94.900 Effective date—2022 c 257. This act takes effect July 1, 2022. [2022 c 257 § 206.]

Chapter 82.98 RCW CONSTRUCTION

Sections

82.98.010	Continuation of existing law.
82.98.020	Title, chapter, section headings not part of law.
82.98.030	Invalidity of part of title not to affect remainder.
82.98.035	Saving—1967 ex.s. c 149.
82.98.040	Repeals and saving.
82.98.050	Emergency—1961 c 15.

82.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 15 § 82.98.010.]

82.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 15 § 82.98.020.]

82.98.030 Invalidity of part of title not to affect remainder. If any chapter, section, subdivision of a section, paragraph, sentence, clause or word of this title for any reason shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of this title but shall be confined in its operation to the chapter, section, subdivision of a section, paragraph, sentence, clause or word of the title directly involved in the controversy in which such judgment shall have been rendered. If any tax imposed under this title shall be adjudged invalid as to any person, corporation, association or class of persons, corporations or associations included within the scope of the general language of this title such invalidity shall not affect the liability of any person, corporation, association or class of persons, corporations, or

associations as to which such tax has not been adjudged invalid. It is hereby expressly declared that had any chapter, section, subdivision of a section, paragraph, sentence, clause, word or any person, corporation, association or class of persons, corporations or associations as to which this title is declared invalid been eliminated from the title at the time the same was considered the title would have nevertheless been enacted with such portions eliminated. This section shall not apply to chapter 82.44 RCW. [1961 c 15 § 82.98.030.]

Additional notes found at www.leg.wa.gov

82.98.035 Saving—1967 ex.s. c 149. Nothing in chapter 149, Laws of 1967 ex. sess. shall be construed to affect any existing rights acquired or any existing liabilities incurred under the sections amended or repealed herein, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule or regulation promulgated thereunder, nor any administrative action taken thereunder. [1967 ex.s. c 149 § 63.]

82.98.040 Repeals and saving. See 1961 c 15 s 82.98.040.

82.98.050 Emergency—1961 c 15. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 15 § 82.98.050.]

