
SENATE BILL 5641

State of Washington

64th Legislature

2015 Regular Session

By Senators Braun and Hatfield

Read first time 01/27/15. Referred to Committee on Energy,
Environment & Telecommunications.

1 AN ACT Relating to taxation of businesses engaged in radio and
2 television broadcasting; amending RCW 82.04.280, 82.04.280,
3 82.04.462, and 82.04.2907; reenacting and amending RCW 82.32.790; and
4 providing a contingent effective date.

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

6 **Sec. 1.** RCW 82.04.280 and 2010 c 106 s 205 are each amended to
7 read as follows:

8 (1) Upon every person engaging within this state in the business
9 of: (a) Printing materials other than newspapers, and of publishing
10 periodicals or magazines; (b) building, repairing or improving any
11 street, place, road, highway, easement, right-of-way, mass public
12 transportation terminal or parking facility, bridge, tunnel, or
13 trestle which is owned by a municipal corporation or political
14 subdivision of the state or by the United States and which is used or
15 to be used, primarily for foot or vehicular traffic including mass
16 transportation vehicles of any kind and including any readjustment,
17 reconstruction or relocation of the facilities of any public, private
18 or cooperatively owned utility or railroad in the course of such
19 building, repairing or improving, the cost of which readjustment,
20 reconstruction, or relocation, is the responsibility of the public
21 authority whose street, place, road, highway, easement, right-of-way,

1 mass public transportation terminal or parking facility, bridge,
2 tunnel, or trestle is being built, repaired or improved; (c)
3 extracting for hire or processing for hire, except persons taxable as
4 extractors for hire or processors for hire under another section of
5 this chapter; (d) operating a cold storage warehouse or storage
6 warehouse, but not including the rental of cold storage lockers; (e)
7 representing and performing services for fire or casualty insurance
8 companies as an independent resident managing general agent licensed
9 under the provisions of chapter 48.17 RCW; (f) radio and television
10 broadcasting, but excluding revenues from network, national and
11 regional advertising computed as ((a standard deduction based on the
12 national average thereof as annually reported by the federal
13 communications commission, or in lieu thereof by itemization by the
14 individual broadcasting station, and excluding that portion of
15 revenue represented by the out-of-state audience computed as a ratio
16 to the station's total audience as measured by the 100 micro-volt
17 signal strength and delivery by wire, if any)) either: (i) A standard
18 deduction that the department must publish by rule by September 30,
19 2015, and by September 30th of every fifth year thereafter, based on
20 the national average thereof as reported by the United States census
21 bureau's economic census or other source of information; or (ii) by
22 reference to the broadcaster's books and records; and by including
23 revenues from local advertisers except to the extent such revenues
24 are attributable to the out-of-state audience computed either: (A) As
25 a ratio to the broadcaster's total audience as measured by the five
26 millivolt/meter signal strength contour for AM radio, the one
27 millivolt/meter or sixty dBu signal strength contour for FM radio,
28 and the twenty-eight dBu signal strength contour for television
29 channels two through six, the thirty-six dBu signal strength contour
30 for television channels seven through thirteen, and the forty-one dBu
31 signal strength contour for television channels fourteen through
32 sixty-nine delivery by wire, satellite, or any other means; or (B) by
33 any other reasonable means consistently used from year to year that
34 measures a broadcaster's out-of-state audience; (g) engaging in
35 activities which bring a person within the definition of consumer
36 contained in RCW 82.04.190(6); as to such persons, the amount of tax
37 on such business is equal to the gross income of the business
38 multiplied by the rate of 0.484 percent.

39 (2) For the purposes of this section, the following definitions
40 apply unless the context clearly requires otherwise.

1 (a) "Cold storage warehouse" means a storage warehouse used to
2 store fresh and/or frozen perishable fruits or vegetables, meat,
3 seafood, dairy products, or fowl, or any combination thereof, at a
4 desired temperature to maintain the quality of the product for
5 orderly marketing.

6 (b) "Storage warehouse" means a building or structure, or any
7 part thereof, in which goods, wares, or merchandise are received for
8 storage for compensation, except field warehouses, fruit warehouses,
9 fruit packing plants, warehouses licensed under chapter 22.09 RCW,
10 public garages storing automobiles, railroad freight sheds, docks and
11 wharves, and "self-storage" or "mini storage" facilities whereby
12 customers have direct access to individual storage areas by separate
13 entrance. "Storage warehouse" does not include a building or
14 structure, or that part of such building or structure, in which an
15 activity taxable under RCW 82.04.272 is conducted.

16 (c) "Periodical or magazine" means a printed publication, other
17 than a newspaper, issued regularly at stated intervals at least once
18 every three months, including any supplement or special edition of
19 the publication.

20 (d) "Broadcaster" means any company, as defined in RCW 82.04.030,
21 that is a radio or television station licensed by the federal
22 communications commission, a radio or television broadcast network, a
23 cable program network, or a company that distributes radio or
24 television programming by wire, satellite, or any other means. The
25 term "broadcaster" does not include a cable operating system or a
26 direct broadcast satellite system.

27 (e) "Radio and television broadcasting" includes all activities
28 conducted by a broadcaster that involve the production or
29 distribution of radio or television programming.

30 **Sec. 2.** RCW 82.04.280 and 2010 c 106 s 206 are each amended to
31 read as follows:

32 (1) Upon every person engaging within this state in the business
33 of: (a) Printing materials other than newspapers, and of publishing
34 periodicals or magazines; (b) building, repairing or improving any
35 street, place, road, highway, easement, right-of-way, mass public
36 transportation terminal or parking facility, bridge, tunnel, or
37 trestle which is owned by a municipal corporation or political
38 subdivision of the state or by the United States and which is used or
39 to be used, primarily for foot or vehicular traffic including mass

1 transportation vehicles of any kind and including any readjustment,
2 reconstruction or relocation of the facilities of any public, private
3 or cooperatively owned utility or railroad in the course of such
4 building, repairing or improving, the cost of which readjustment,
5 reconstruction, or relocation, is the responsibility of the public
6 authority whose street, place, road, highway, easement, right-of-way,
7 mass public transportation terminal or parking facility, bridge,
8 tunnel, or trestle is being built, repaired or improved; (c)
9 extracting for hire or processing for hire, except persons taxable as
10 extractors for hire or processors for hire under another section of
11 this chapter; (d) operating a cold storage warehouse or storage
12 warehouse, but not including the rental of cold storage lockers; (e)
13 representing and performing services for fire or casualty insurance
14 companies as an independent resident managing general agent licensed
15 under the provisions of chapter 48.17 RCW; (f) radio and television
16 broadcasting, but excluding revenues from network, national and
17 regional advertising computed as ((a standard deduction based on the
18 national average thereof as annually reported by the federal
19 communications commission, or in lieu thereof by itemization by the
20 individual broadcasting station, and excluding that portion of
21 revenue represented by the out-of-state audience computed as a ratio
22 to the station's total audience as measured by the 100 micro-volt
23 signal strength and delivery by wire, if any)) either: (i) A standard
24 deduction that the department must publish by rule by September 30,
25 2015, and by September 30th of every fifth year thereafter, based on
26 the national average thereof as reported by the United States census
27 bureau's economic census or other source of information; or (ii) by
28 reference to the broadcaster's books and records; and by including
29 revenues from local advertisers except to the extent such revenues
30 are attributable to the out-of-state audience computed either: (A) As
31 a ratio to the broadcaster's total audience as measured by the five
32 millivolt/meter signal strength contour for AM radio, the one
33 millivolt/meter or sixty dBu signal strength contour for FM radio,
34 and the twenty-eight dBu signal strength contour for television
35 channels two through six, the thirty-six dBu signal strength contour
36 for television channels seven through thirteen, and the forty-one dBu
37 signal strength contour for television channels fourteen through
38 sixty-nine delivery by wire, satellite, or any other means; or (B) by
39 any other reasonable means consistently used from year to year that
40 measures a broadcaster's out-of-state audience; (g) engaging in

1 activities which bring a person within the definition of consumer
2 contained in RCW 82.04.190(6); as to such persons, the amount of tax
3 on such business is equal to the gross income of the business
4 multiplied by the rate of 0.484 percent.

5 (2) For the purposes of this section, the following definitions
6 apply unless the context clearly requires otherwise.

7 (a) "Cold storage warehouse" means a storage warehouse used to
8 store fresh and/or frozen perishable fruits or vegetables, meat,
9 seafood, dairy products, or fowl, or any combination thereof, at a
10 desired temperature to maintain the quality of the product for
11 orderly marketing.

12 (b) "Storage warehouse" means a building or structure, or any
13 part thereof, in which goods, wares, or merchandise are received for
14 storage for compensation, except field warehouses, fruit warehouses,
15 fruit packing plants, warehouses licensed under chapter 22.09 RCW,
16 public garages storing automobiles, railroad freight sheds, docks and
17 wharves, and "self-storage" or "mini storage" facilities whereby
18 customers have direct access to individual storage areas by separate
19 entrance. "Storage warehouse" does not include a building or
20 structure, or that part of such building or structure, in which an
21 activity taxable under RCW 82.04.272 is conducted.

22 (c) "Periodical or magazine" means a printed publication, other
23 than a newspaper, issued regularly at stated intervals at least once
24 every three months, including any supplement or special edition of
25 the publication.

26 (d) "Broadcaster" means any company, as defined in RCW 82.04.030,
27 that is a radio or television station licensed by the federal
28 communications commission, a radio or television broadcast network, a
29 cable program network, or a company that distributes radio or
30 television programming by wire, satellite, or any other means. The
31 term "broadcaster" does not include a cable operating system or a
32 direct broadcast satellite system.

33 (e) "Radio and television broadcasting" includes all activities
34 conducted by a broadcaster that involve the production or
35 distribution of radio or television programming.

36 **Sec. 3.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to
37 read as follows:

38 (1) The apportionable income of a person within the scope of RCW
39 82.04.460(1) is apportioned to Washington by multiplying its

1 apportionable income by the receipts factor. Persons who are subject
2 to tax under more than one of the tax classifications enumerated in
3 RCW 82.04.460(4)(a) (i) through (x) must calculate a separate
4 receipts factor for each tax classification that the person is
5 taxable under.

6 (2) For purposes of subsection (1) of this section, the receipts
7 factor is a fraction and is calculated as provided in subsections (3)
8 and (4) of this section and, for financial institutions, as provided
9 in the rule adopted by the department under the authority of RCW
10 82.04.460(2).

11 (3)(a) The numerator of the receipts factor is the total gross
12 income of the business of the taxpayer attributable to this state
13 during the tax year from engaging in an apportionable activity. The
14 denominator of the receipts factor is the total gross income of the
15 business of the taxpayer from engaging in an apportionable activity
16 everywhere in the world during the tax year.

17 (b) Except as otherwise provided in this section, for purposes of
18 computing the receipts factor, gross income of the business generated
19 from each apportionable activity is attributable to the state:

20 (i) Where the customer received the benefit of the taxpayer's
21 service or, in the case of gross income from royalties, where the
22 customer used the taxpayer's intangible property. When a customer
23 receives the benefit of the taxpayer's services or uses the
24 taxpayer's intangible property in this and one or more other states
25 and the amount of gross income of the business that was received by
26 the taxpayer in return for the services received or intangible
27 property used by the customer in this state can be reasonably
28 determined by the taxpayer, such amount of gross income must be
29 attributed to this state.

30 (ii) If the customer received the benefit of the service or used
31 the intangible property in more than one state and if the taxpayer is
32 unable to attribute gross income of the business under the provisions
33 of (b)(i) of this subsection (3), gross income of the business must
34 be attributed to the state in which the benefit of the service was
35 primarily received or in which the intangible property was primarily
36 used.

37 (iii) If the taxpayer is unable to attribute gross income of the
38 business under the provisions of (b)(i) or (ii) of this subsection
39 (3), gross income of the business must be attributed to the state
40 from which the customer ordered the service or, in the case of

1 royalties, the office of the customer from which the royalty
2 agreement with the taxpayer was negotiated.

3 (iv) If the taxpayer is unable to attribute gross income of the
4 business under the provisions of (b)(i), (ii), or (iii) of this
5 subsection (3), gross income of the business must be attributed to
6 the state to which the billing statements or invoices are sent to the
7 customer by the taxpayer.

8 (v) If the taxpayer is unable to attribute gross income of the
9 business under the provisions of (b)(i), (ii), (iii), or (iv) of this
10 subsection (3), gross income of the business must be attributed to
11 the state from which the customer sends payment to the taxpayer.

12 (vi) If the taxpayer is unable to attribute gross income of the
13 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
14 this subsection (3), gross income of the business must be attributed
15 to the state where the customer is located as indicated by the
16 customer's address: (A) Shown in the taxpayer's business records
17 maintained in the regular course of business; or (B) obtained during
18 consummation of the sale or the negotiation of the contract for
19 services or for the use of the taxpayer's intangible property,
20 including any address of a customer's payment instrument when readily
21 available to the taxpayer and no other address is available.

22 (vii) If the taxpayer is unable to attribute gross income of the
23 business under the provisions of (b)(i), (ii), (iii), (iv), (v), or
24 (vi) of this subsection (3), gross income of the business must be
25 attributed to the commercial domicile of the taxpayer.

26 (viii) For purposes of this subsection (3)(b), "customer" means a
27 person or entity to whom the taxpayer makes a sale or renders
28 services or from whom the taxpayer otherwise receives gross income of
29 the business. "Customer" includes anyone who pays royalties or
30 charges in the nature of royalties for the use of the taxpayer's
31 intangible property.

32 (c) Gross income of the business from engaging in an
33 apportionable activity must be excluded from the denominator of the
34 receipts factor if, in respect to such activity, at least some of the
35 activity is performed in this state, and the gross income is
36 attributable under (b) of this subsection (3) to a state in which the
37 taxpayer is not taxable. For purposes of this subsection (3)(c), "not
38 taxable" means that the taxpayer is not subject to a business
39 activities tax by that state, except that a taxpayer is taxable in a
40 state in which it would be deemed to have a substantial nexus with

1 that state under the standards in RCW 82.04.067(1) regardless of
2 whether that state imposes such a tax. "Business activities tax"
3 means a tax measured by the amount of, or economic results of,
4 business activity conducted in a state. The term includes taxes
5 measured in whole or in part on net income or gross income or
6 receipts. "Business activities tax" does not include a sales tax, use
7 tax, or a similar transaction tax, imposed on the sale or acquisition
8 of goods or services, whether or not denominated a gross receipts tax
9 or a tax imposed on the privilege of doing business.

10 (d) This subsection (3) does not apply to financial institutions
11 with respect to apportionable income taxable under RCW 82.04.290.
12 Financial institutions must calculate the receipts factor as provided
13 in subsection (4) of this section and the rule adopted by the
14 department under the authority of RCW 82.04.460(2) with respect to
15 apportionable income taxable under RCW 82.04.290. Financial
16 institutions that are subject to tax under any other tax
17 classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and
18 (vii) through (x) must calculate a separate receipts factor, as
19 provided in this section, for each of the other tax classifications
20 that the financial institution is taxable under.

21 (e) Notwithstanding (b) of this subsection (3), for purposes of
22 computing the receipts factor gross income from royalties generated
23 from licensing or granting distribution or retransmission rights to
24 radio or television programming by broadcasters engaged in radio and
25 television broadcasting, as defined in RCW 82.04.280, is attributable
26 to Washington state only if the commercial domicile of the
27 broadcaster's customer that pays the royalties is within Washington
28 state.

29 (4) A taxpayer may calculate the receipts factor for the current
30 tax year based on the most recent calendar year for which information
31 is available for the full calendar year. If a taxpayer does not
32 calculate the receipts factor for the current tax year based on
33 previous calendar year information as authorized in this subsection,
34 the business must use current year information to calculate the
35 receipts factor for the current tax year. In either case, a taxpayer
36 must correct the reporting for the current tax year when complete
37 information is available to calculate the receipts factor for that
38 year, but not later than October 31st of the following tax year.
39 Interest will apply to any additional tax due on a corrected tax
40 return. Interest must be computed and assessed as provided in RCW

1 82.32.050 and accrues until the additional taxes are paid. Penalties
2 as provided in RCW 82.32.090 will apply to any such additional tax
3 due only if the current tax year reporting is not corrected and the
4 additional tax is not paid by October 31st of the following tax year.
5 Interest as provided in RCW 82.32.060 will apply to any tax paid in
6 excess of that properly due on a return as a result of a taxpayer
7 using previous calendar year data or incomplete current-year data to
8 calculate the receipts factor.

9 (5) Unless the context clearly requires otherwise, the
10 definitions in this subsection apply throughout this section.

11 (a) "Apportionable activities" and "apportionable income" have
12 the same meaning as in RCW 82.04.460.

13 (b) "State" means a state of the United States, the District of
14 Columbia, the Commonwealth of Puerto Rico, any territory or
15 possession of the United States, or any foreign country or political
16 subdivision of a foreign country.

17 **Sec. 4.** RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each
18 amended to read as follows:

19 (1) Upon every person engaging within this state in the business
20 of receiving income from royalties, the amount of tax with respect to
21 the business is equal to the gross income from royalties multiplied
22 by the rate of 0.484 percent.

23 (2) For the purposes of this section, "gross income from
24 royalties" means compensation for the use of intangible property,
25 including charges in the nature of royalties, regardless of where the
26 intangible property will be used. For purposes of this subsection,
27 "intangible property" includes copyrights, patents, licenses,
28 franchises, trademarks, trade names, and similar items. "Gross income
29 from royalties" also includes income from licensing or granting
30 distribution or retransmission rights to radio or television
31 programming by broadcasters engaged in radio and television
32 broadcasting as defined in RCW 82.04.280. "Gross income from
33 royalties" does not include compensation for any natural resource,
34 the licensing of prewritten computer software to the end user, or the
35 licensing of digital goods, digital codes, or digital automated
36 services to the end user as defined in RCW 82.04.190(11).

37 **Sec. 5.** RCW 82.32.790 and 2010 c 114 s 201 and 2010 c 106 s 401
38 are each reenacted and amended to read as follows:

1 (1)(a) Section 2, chapter ---, Laws of 2015 (section 2 of this
2 act), section 206, chapter 106, Laws of 2010, sections 104, 110, 117,
3 123, 125, 129, 131, and 150, chapter 114, Laws of 2010, section 3,
4 chapter 461, Laws of 2009, section 7, chapter 300, Laws of 2006, and
5 section 4, chapter 149, Laws of 2003 are contingent upon the siting
6 and commercial operation of a significant semiconductor microchip
7 fabrication facility in the state of Washington.

8 (b) For the purposes of this section:

9 (i) "Commercial operation" means the same as "commencement of
10 commercial production" as used in RCW 82.08.965.

11 (ii) "Semiconductor microchip fabrication" means "manufacturing
12 semiconductor microchips" as defined in RCW 82.04.426.

13 (iii) "Significant" means the combined investment of new
14 buildings and new machinery and equipment in the buildings, at the
15 commencement of commercial production, will be at least one billion
16 dollars.

17 (2) Chapter 149, Laws of 2003 takes effect the first day of the
18 month in which a contract for the construction of a significant
19 semiconductor fabrication facility is signed, as determined by the
20 director of the department of revenue.

21 (3)(a) The department of revenue must provide notice of the
22 effective date of section 2, chapter ---, Laws of 2015 (section 2 of
23 this act), section 206, chapter 106, Laws of 2010, sections 104, 110,
24 117, 123, 125, 129, 131, and 150, chapter 114, Laws of 2010(~~{,}~~)
25 section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of
26 2006, and section 4, chapter 149, Laws of 2003 to affected taxpayers,
27 the legislature, and others as deemed appropriate by the department.

28 (b) If, after making a determination that a contract has been
29 signed and chapter 149, Laws of 2003 is effective, the department
30 discovers that commencement of commercial production did not take
31 place within three years of the date the contract was signed, the
32 department must make a determination that chapter 149, Laws of 2003
33 is no longer effective, and all taxes that would have been otherwise
34 due are deemed deferred taxes and are immediately assessed and
35 payable from any person reporting tax under RCW 82.04.240(2) or
36 claiming an exemption or credit under section 2 or 5 through 10,
37 chapter 149, Laws of 2003. The department is not authorized to make a
38 second determination regarding the effective date of chapter 149,
39 Laws of 2003.

1 NEW SECTION. **Sec. 6.** If section 2 of this act takes effect,
2 section 1 of this act expires on the date section 2 of this act takes
3 effect.

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