
ENGROSSED HOUSE BILL 2163

State of Washington

65th Legislature

2017 Regular Session

By Representative Ormsby

1 AN ACT Relating to revenue; amending RCW 82.08.0293, 82.12.0293,
2 82.12.0263, 82.08.050, 82.12.040, 82.12.040, 82.04.066, 82.04.067,
3 82.04.220, 82.14.495, and 82.14.500; adding new sections to chapter
4 82.08 RCW; adding new sections to chapter 82.12 RCW; adding new
5 sections to chapter 82.32 RCW; adding a new chapter to Title 82 RCW;
6 creating new sections; repealing RCW 82.04.424, 82.14.495, and
7 82.14.500; repealing 2017 3rd sp.s. c ... s 403 (uncodified);
8 prescribing penalties; providing effective dates; providing an
9 expiration date; and declaring an emergency.

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

11 **Part I**

12 **Eliminating or Narrowing Tax Preferences**

13 **Subpart A**

14 **Eliminating the Sales and Use Tax Exemption for Bottled Water**

15 **Sec. 101.** RCW 82.08.0293 and 2014 c 140 s 22 are each amended to
16 read as follows:

17 (1) The tax levied by RCW 82.08.020 does not apply to sales of
18 food and food ingredients. "Food and food ingredients" means
19 substances, whether in liquid, concentrated, solid, frozen, dried, or

1 dehydrated form, that are sold for ingestion or chewing by humans and
2 are consumed for their taste or nutritional value. "Food and food
3 ingredients" does not include:

4 (a) "Alcoholic beverages," which means beverages that are
5 suitable for human consumption and contain one-half of one percent or
6 more of alcohol by volume;

7 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
8 tobacco, or any other item that contains tobacco; and

9 (c) Marijuana, useable marijuana, or marijuana-infused products.

10 (2) The exemption of "food and food ingredients" provided for in
11 subsection (1) of this section does not apply to prepared food, soft
12 drinks, bottled water, or dietary supplements. (~~For purposes of this~~
13 ~~subsection, the following definitions apply:~~) The definitions in
14 this subsection apply throughout this section unless the context
15 clearly requires otherwise.

16 (a) "Bottled water" means water that is placed in a safety sealed
17 container or package for human consumption. Bottled water is calorie
18 free and does not contain sweeteners or other additives except that
19 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
20 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
21 (vi) preservatives; and (vii) only those flavors, extracts, or
22 essences derived from a spice or fruit. "Bottled water" includes
23 water that is delivered to the buyer in a reusable container that is
24 not sold with the water.

25 (b) "Dietary supplement" means any product, other than tobacco,
26 intended to supplement the diet that:

27 (i) Contains one or more of the following dietary ingredients:

28 (A) A vitamin;

29 (B) A mineral;

30 (C) An herb or other botanical;

31 (D) An amino acid;

32 (E) A dietary substance for use by humans to supplement the diet
33 by increasing the total dietary intake; or

34 (F) A concentrate, metabolite, constituent, extract, or
35 combination of any ingredient described in this subsection;

36 (ii) Is intended for ingestion in tablet, capsule, powder,
37 softgel, gelcap, or liquid form, or if not intended for ingestion in
38 such form, is not represented as conventional food and is not
39 represented for use as a sole item of a meal or of the diet; and

1 (iii) Is required to be labeled as a dietary supplement,
2 identifiable by the "supplement facts" box found on the label as
3 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
4 as of January 1, 2003.

5 ~~((b))~~ (c)(i) "Prepared food" means:

6 (A) Food sold in a heated state or heated by the seller;

7 (B) Food sold with eating utensils provided by the seller,
8 including plates, knives, forks, spoons, glasses, cups, napkins, or
9 straws. A plate does not include a container or packaging used to
10 transport the food; or

11 (C) Two or more food ingredients mixed or combined by the seller
12 for sale as a single item, except:

13 (I) Food that is only cut, repackaged, or pasteurized by the
14 seller; or

15 (II) Raw eggs, fish, meat, poultry, and foods containing these
16 raw animal foods requiring cooking by the consumer as recommended by
17 the federal food and drug administration in chapter 3, part 401.11 of
18 The Food Code, published by the food and drug administration, as
19 amended or renumbered as of January 1, 2003, so as to prevent
20 foodborne illness.

21 (ii) "Prepared food" does not include the following food or food
22 ingredients, if the food or food ingredients are sold without eating
23 utensils provided by the seller:

24 (A) Food sold by a seller whose proper primary North American
25 industry classification system (NAICS) classification is
26 manufacturing in sector 311, except subsector 3118 (bakeries), as
27 provided in the "North American industry classification system—United
28 States, 2002";

29 (B) Food sold in an unheated state by weight or volume as a
30 single item; or

31 (C) Bakery items. The term "bakery items" includes bread, rolls,
32 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
33 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

34 ~~((e))~~ (d) "Soft drinks" means nonalcoholic beverages that
35 contain natural or artificial sweeteners. Soft drinks do not include
36 beverages that contain: Milk or milk products; soy, rice, or similar
37 milk substitutes; or greater than fifty percent of vegetable or fruit
38 juice by volume.

39 (3) Notwithstanding anything in this section to the contrary, the
40 exemption of "food and food ingredients" provided in this section

1 applies to food and food ingredients that are furnished, prepared, or
2 served as meals:

3 (a) Under a state administered nutrition program for the aged as
4 provided for in the older Americans act (P.L. 95-478 Title III) and
5 RCW 74.38.040(6);

6 (b) That are provided to senior citizens, individuals with
7 disabilities, or low-income persons by a not-for-profit organization
8 organized under chapter 24.03 or 24.12 RCW; or

9 (c) That are provided to residents, sixty-two years of age or
10 older, of a qualified low-income senior housing facility by the
11 lessor or operator of the facility. The sale of a meal that is billed
12 to both spouses of a marital community or both domestic partners of a
13 domestic partnership meets the age requirement in this subsection
14 (3)(c) if at least one of the spouses or domestic partners is at
15 least sixty-two years of age. For purposes of this subsection,
16 "qualified low-income senior housing facility" means a facility:

17 (i) That meets the definition of a qualified low-income housing
18 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
19 as existing on August 1, 2009;

20 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;
21 and

22 (iii) For which the lessor or operator has at any time been
23 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
24 of the federal internal revenue code.

25 (4)(a) Subsection (1) of this section notwithstanding, the retail
26 sale of food and food ingredients is subject to sales tax under RCW
27 82.08.020 if the food and food ingredients are sold through a vending
28 machine. Except as provided in (b) of this subsection, the selling
29 price of food and food ingredients sold through a vending machine for
30 purposes of RCW 82.08.020 is fifty-seven percent of the gross
31 receipts.

32 (b) For soft drinks, bottled water, and hot prepared food and
33 food ingredients, other than food and food ingredients which are
34 heated after they have been dispensed from the vending machine, the
35 selling price is the total gross receipts of such sales divided by
36 the sum of one plus the sales tax rate expressed as a decimal.

37 (c) For tax collected under this subsection (4), the requirements
38 that the tax be collected from the buyer and that the amount of tax
39 be stated as a separate item are waived.

1 **Sec. 102.** RCW 82.12.0293 and 2011 c 2 s 303 are each amended to
2 read as follows:

3 (1) The provisions of this chapter do not apply in respect to the
4 use of food and food ingredients for human consumption. "Food and
5 food ingredients" has the same meaning as in RCW 82.08.0293.

6 (2) The exemption of "food and food ingredients" provided for in
7 subsection (1) of this section does not apply to prepared food, soft
8 drinks, bottled water, or dietary supplements. "Prepared food," "soft
9 drinks," "bottled water," and "dietary supplements" have the same
10 meanings as in RCW 82.08.0293.

11 (3) Notwithstanding anything in this section to the contrary, the
12 exemption of "food and food ingredients" provided in this section
13 applies to food and food ingredients which are furnished, prepared,
14 or served as meals:

15 (a) Under a state administered nutrition program for the aged as
16 provided for in the older Americans act (P.L. 95-478 Title III) and
17 RCW 74.38.040(6);

18 (b) Which are provided to senior citizens, individuals with
19 disabilities, or low-income persons by a not-for-profit organization
20 organized under chapter 24.03 or 24.12 RCW; or

21 (c) That are provided to residents, sixty-two years of age or
22 older, of a qualified low-income senior housing facility by the
23 lessor or operator of the facility. The sale of a meal that is billed
24 to both spouses of a marital community or both domestic partners of a
25 domestic partnership meets the age requirement in this subsection
26 (3)(c) if at least one of the spouses or domestic partners is at
27 least sixty-two years of age. For purposes of this subsection,
28 "qualified low-income senior housing facility" has the same meaning
29 as in RCW 82.08.0293.

30 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.08
31 RCW to read as follows:

32 (1) Subject to the conditions in this section, the tax levied by
33 RCW 82.08.020 does not apply to sales of bottled water dispensed or
34 to be dispensed to patients pursuant to a prescription for use in the
35 cure, mitigation, treatment, or prevention of disease or medical
36 condition.

37 (2) For purposes of this section, "prescription" means an order,
38 formula, or recipe issued in any form of oral, written, electronic,

1 or other means of transmission by a duly licensed practitioner
2 authorized by the laws of this state to prescribe.

3 (3) Except for sales of bottled water delivered to the buyer in a
4 reusable container that is not sold with the water, sellers must
5 collect tax on sales subject to this exemption. Any buyer that has
6 paid at least twenty-five dollars in state and local sales taxes on
7 purchases of bottled water subject to this exemption may apply for a
8 refund of the taxes directly from the department in a form and manner
9 prescribed by the department. The department must deny any refund
10 application if the amount of the refund requested is less than
11 twenty-five dollars. No refund may be made for taxes paid more than
12 four years after the end of the calendar year in which the tax was
13 paid to the seller.

14 (4) With respect to sales of bottled water delivered to the buyer
15 in a reusable container that is not sold with the water, buyers
16 claiming the exemption provided in this section must provide the
17 seller with an exemption certificate in a form and manner prescribed
18 by the department. The seller must retain a copy of the certificate
19 for the seller's files.

20 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.12
21 RCW to read as follows:

22 (1) The provisions of this chapter do not apply in respect to the
23 use of bottled water dispensed or to be dispensed to patients
24 pursuant to a prescription for use in the cure, mitigation,
25 treatment, or prevention of disease or medical condition.

26 (2) For the purposes of this section, "prescription" has the same
27 meaning as provided in section 103 of this act.

28 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.08
29 RCW to read as follows:

30 (1)(a) Subject to the conditions in this section, the tax levied
31 by RCW 82.08.020 does not apply to sales of bottled water to persons
32 whose primary source of drinking water is unsafe.

33 (b) For purposes of this subsection and section 106 of this act,
34 a person's primary source of drinking water is unsafe if:

35 (i) The public water system providing the drinking water has
36 issued a public notification that the drinking water may pose a
37 health risk, and the notification is still in effect on the date that
38 the bottled water was purchased;

1 (ii) Test results on the person's drinking water, which are no
2 more than twelve months old, from a laboratory certified to perform
3 drinking water testing show that the person's drinking water does not
4 meet safe drinking water standards applicable to public water
5 systems; or

6 (iii) The person otherwise establishes, to the department's
7 satisfaction, that the person's drinking water does not meet safe
8 drinking water standards applicable to public water systems.

9 (2) Except for sales of bottled water delivered to the buyer in a
10 reusable container that is not sold with the water, sellers must
11 collect tax on sales subject to this exemption. Any buyer that has
12 paid at least twenty-five dollars in state and local sales taxes on
13 purchases of bottled water subject to this exemption may apply for a
14 refund of the taxes directly from the department in a form and manner
15 prescribed by the department. The department must deny any refund
16 application if the amount of the refund requested is less than
17 twenty-five dollars. No refund may be made for taxes paid more than
18 four years after the end of the calendar year in which the tax was
19 paid to the seller.

20 (3)(a) With respect to sales of bottled water delivered to the
21 buyer in a reusable container that is not sold with the water, buyers
22 claiming the exemption provided in this section must provide the
23 seller with an exemption certificate in a form and manner prescribed
24 by the department. The seller must retain a copy of the certificate
25 for the seller's files.

26 (b) The department may waive the requirement for an exemption
27 certificate in the event of disaster or similar circumstance.

28 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.12
29 RCW to read as follows:

30 The provisions of this chapter do not apply in respect to the use
31 of bottled water by persons whose primary source of drinking water is
32 unsafe as provided in section 105 of this act.

33 **Subpart B**

34 **Narrowing a Use Tax Exemption for Self-Produced Fuel**

35 **Sec. 107.** RCW 82.12.0263 and 1980 c 37 s 62 are each amended to
36 read as follows:

1 The provisions of this chapter (~~shall~~) do not apply in respect
2 to the use of biomass fuel by the extractor or manufacturer thereof
3 when used directly in the operation of the particular extractive
4 operation or manufacturing plant which produced or manufactured the
5 same. For purposes of this section, "biomass fuel" means wood waste
6 and other wood residuals, including forest derived biomass, but does
7 not include firewood or wood pellets. "Biomass fuel" also includes
8 partially organic by-products of pulp, paper, and wood manufacturing
9 processes.

10 NEW SECTION. Sec. 108. A new section is added to chapter 82.12
11 RCW to read as follows:

12 (1) The value of the article used with respect to refinery fuel
13 gas under this chapter is the most recent monthly United States
14 natural gas wellhead price, as published by the federal energy
15 information administration.

16 (2) In lieu of the use tax rate provided in RCW 82.12.020,
17 refinery fuel gas is subject to a rate of 3.852 percent.

18 (3) The use of fuel by the extractor or manufacturer thereof when
19 used directly in the operation of the particular extractive operation
20 or manufacturing plant that produced or manufactured the same is not
21 subject to local use tax.

22 NEW SECTION. Sec. 109. Sections 107 through 109 of this act
23 apply with respect to fuel, other than biomass fuel, consumed within
24 this state on or after the effective date of this section, regardless
25 of whether such fuel was produced or manufactured before the
26 effective date of this section. For purposes of this section,
27 "consumed" means the use of fuel resulting in the release of usable
28 energy.

29 **Part II**
30 **Remote Sellers, Referrers, and Marketplace Facilitators**
31

32 NEW SECTION. Sec. 201. (1) The legislature finds that states
33 fail to collect more than twenty-three billion dollars annually in
34 sales taxes from remote sales over the internet and through catalogs.
35 The legislature further finds that Washington and its local
36 governments will lose out on an estimated three hundred fifty-three

1 million dollars in sales and use taxes in fiscal year 2018 from
2 remote sales, reducing funds that would otherwise be available for
3 the public education system, health care services, infrastructure,
4 and other vital public services.

5 (2) The legislature finds that Colorado adopted a law requiring
6 out-of-state retailers that do not collect Colorado's sales tax to
7 report tax-related information to their Colorado customers and the
8 Colorado department of revenue. The legislature further finds that in
9 2016 the United States court of appeals for the tenth circuit upheld
10 that law.

11 (3) The legislature intends by this act to address the
12 significant harm and unfairness brought about by the physical
13 presence nexus rule. To achieve this objective, this act adopts a new
14 program. Under the new program, remote sellers meeting a specified
15 threshold of gross receipts from retail sales into this state would
16 have the option to either collect retail sales or use tax on taxable
17 retail sales into this state or comply with certain sales and use tax
18 notice and reporting provisions. This option is also available to
19 other persons such as marketplace facilitators for facilitated sales
20 on behalf of third-party remote sellers. The sales and use tax notice
21 and reporting provisions in this act are similar to the multistate
22 tax commission's draft model sales and use tax notice and reporting
23 statute and Colorado's sales and use tax notice and reporting law.

24 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.08
25 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as
26 follows:

27 (1)(a)(i) Except as provided in (a)(ii) of this subsection,
28 beginning January 1, 2018, and for any calendar year thereafter,
29 remote sellers, referrers, and marketplace facilitators meeting the
30 criteria in subsection (2) of this section or that have a physical
31 presence in this state, must elect to either collect and remit retail
32 sales or use tax on all taxable retail sales into this state pursuant
33 to this chapter and chapters 82.12 and 82.32 RCW or comply with
34 section 205 of this act.

35 (ii) Until January 1, 2020, the requirement under (a)(i) of this
36 subsection (1) to collect and remit tax or comply with section 205 of
37 this act does not apply with respect to the retail sale of digital
38 products and digital codes, other than (A) specified digital products
39 and digital games and (B) digital codes used to redeem specified

1 digital products and digital games, by a marketplace seller through a
2 marketplace facilitator or directly resulting from a referral.

3 (b) For marketplace facilitators, the election provided in (a) of
4 this subsection (1) applies only with respect to:

5 (i) Retail sales through the marketplace facilitator's
6 marketplace by or on behalf of marketplace sellers who do not have a
7 physical presence in this state; and

8 (ii) A marketplace facilitator's own retail sales, if the
9 marketplace facilitator does not have a physical presence in this
10 state.

11 (c)(i) For referrers, the election provided in (a) of this
12 subsection (1) applies only with respect to:

13 (A) Retail sales directly resulting from a referral of the
14 purchaser to a marketplace seller who does not have a physical
15 presence in this state; and

16 (B) A referrer's own retail sales, if the referrer does not have
17 a physical presence in this state.

18 (ii) A referrer may make different elections with respect to
19 retail sales described in (c)(i)(A) and (B) of this subsection.

20 (d) An election under (a) of this subsection (1) to collect
21 retail sales or use tax is binding on the remote seller, referrer, or
22 marketplace facilitator until January 1st of the calendar year that
23 is at least twelve consecutive months after the remote seller,
24 referrer, or marketplace facilitator began collecting retail sales or
25 use tax under such election. A remote seller, referrer, or
26 marketplace facilitator who has made an election under this
27 subsection to collect retail sales or use tax may change its election
28 and comply with section 205 of this act by providing written notice
29 to the department in a form and manner required by the department.
30 Such an election change may take effect only on the first day of the
31 calendar year that is at least thirty days following the date that
32 the department received written notice from the remote seller,
33 referrer, or marketplace facilitator of its change in election.

34 (e)(i) Remote sellers, referrers, and marketplace facilitators
35 complying with section 205 of this act may change their election
36 under this subsection (1) at any time by collecting and remitting
37 retail sales or use taxes under this chapter or chapter 82.12 RCW on
38 taxable retail sales sourced to this state. Such an election is
39 binding as provided in (d) of this subsection (1).

1 (ii) Remote sellers, referrers, and marketplace facilitators
2 electing for the first time to collect retail sales or use tax must
3 begin collecting state and local retail sales or use taxes on taxable
4 retail sales sourced to this state beginning on the first day of the
5 calendar month that is at least thirty days from the date that the
6 remote seller, referrer, or marketplace facilitator met either
7 threshold described in subsection (2) of this section.

8 (f) If the department discovers that any remote seller, referrer,
9 or marketplace facilitator required to make an election under this
10 subsection (1) is not registered with the department and collecting
11 retail sales or use tax, the remote seller, referrer, or marketplace
12 facilitator is conclusively presumed to have elected to comply with
13 the notice and reporting requirements of section 205 of this act.

14 (2)(a) A remote seller is subject to subsection (1) of this
15 section if, during the current or immediately preceding calendar
16 year, its gross receipts from retail sales sourced to this state
17 under RCW 82.32.730 are at least ten thousand dollars.

18 (b) A marketplace facilitator is subject to subsection (1) of
19 this section if, during the current or immediately preceding calendar
20 year, the gross receipts from retail sales sourced to this state
21 under RCW 82.32.730 by the marketplace facilitator, whether in its
22 own name or as an agent of a marketplace seller, total at least ten
23 thousand dollars.

24 (c) A referrer is subject to subsection (1) of this section if,
25 during the current or immediately preceding calendar year, the gross
26 income of the business received from the referrer's referral services
27 apportioned to Washington under RCW 82.04.462, whether or not subject
28 to tax under chapter 82.04 RCW, and from retail sales sourced to this
29 state under RCW 82.32.730, if any, is at least two hundred sixty-
30 seven thousand dollars.

31 (3) This section is subject to the provisions of section 214 of
32 this act.

33 (4) For the purposes of this section, "marketplace facilitator,"
34 "referral," "referrer," and "remote seller" have the same meaning as
35 provided in section 204 of this act.

36 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.08
37 RCW to be codified between section 202 of this act and RCW 82.08.054
38 to read as follows:

1 (1)(a) For purposes of this chapter and chapter 82.12 RCW, a
2 marketplace facilitator or referrer is deemed to be an agent of any
3 marketplace seller making retail sales through the marketplace
4 facilitator's physical or electronic marketplace or directly
5 resulting from a referral of the purchaser by the referrer.

6 (b) In addition to other applicable recordkeeping requirements,
7 the department may require a marketplace facilitator or referrer to
8 provide or make available to the department any information the
9 department determines is reasonably necessary to enforce the
10 provisions of this chapter and chapter 82.--- RCW (the new chapter
11 created in section 501 of this act). Such information may include
12 documentation of sales made by marketplace sellers through the
13 marketplace facilitator's physical or electronic marketplace or
14 directly resulting from a referral by the referrer. The department
15 may prescribe by rule the form and manner for providing this
16 information.

17 (2) A marketplace facilitator or referrer is relieved of
18 liability under this chapter and chapter 82.12 RCW for failure to
19 collect the correct amount of tax to the extent that the marketplace
20 facilitator or referrer can show to the department's satisfaction
21 that the error was due to incorrect information given to the
22 marketplace facilitator or referrer by the marketplace seller, unless
23 the marketplace facilitator, or referrer, and marketplace seller are
24 affiliated persons. Where the marketplace facilitator or referrer is
25 relieved of liability under this subsection (2), the marketplace
26 seller is solely liable for the amount of uncollected tax due.

27 (3)(a) Subject to the limits in (b) and (c) of this subsection
28 (3), a marketplace facilitator or referrer is relieved of liability
29 under this chapter and chapter 82.12 RCW for the failure to collect
30 tax on taxable retail sales to the extent that the marketplace
31 facilitator or referrer can show to the department's satisfaction
32 that:

33 (i) The taxable retail sale was made through the marketplace
34 facilitator's marketplace or directly resulting from a referral of
35 the purchaser by the referrer;

36 (ii) The taxable retail sale was made solely as the agent of a
37 marketplace seller, and the marketplace facilitator, or referrer, and
38 marketplace seller are not affiliated persons; and

39 (iii) The failure to collect sales tax was not due to an error in
40 sourcing the sale under RCW 82.32.730.

1 (b) Liability relief for a marketplace facilitator under (a) of
2 this subsection (3) for a calendar year is limited as follows:

3 (i) For calendar year 2018, the liability relief may not exceed
4 ten percent of the total tax due under this chapter and chapter 82.12
5 RCW on taxable retail sales by the marketplace facilitator as agent
6 of a marketplace seller and sourced to this state under RCW 82.32.730
7 during the same calendar year.

8 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
9 liability relief may not exceed five percent of the total tax due
10 under this chapter and chapter 82.12 RCW on taxable retail sales by
11 the marketplace facilitator as agent of a marketplace seller and
12 sourced to this state under RCW 82.32.730 during the same calendar
13 year.

14 (iii) Beginning in calendar year 2024, the liability relief may
15 not exceed three percent of the total tax due under this chapter and
16 chapter 82.12 RCW on taxable retail sales by the marketplace
17 facilitator as agent of a marketplace seller and sourced to this
18 state under RCW 82.32.730 during the same calendar year.

19 (c) Liability relief for a referrer under (a) of this subsection
20 (3) for a calendar year is limited as follows:

21 (i) For calendar year 2018, the liability relief may not exceed
22 ten percent of the total tax due under this chapter and chapter 82.12
23 RCW on taxable retail sales directly resulting from a referral of the
24 purchaser to the marketplace seller by the referrer and sourced to
25 this state under RCW 82.32.730 during the same calendar year.

26 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
27 liability relief may not exceed five percent of the total tax due
28 under this chapter and chapter 82.12 RCW on taxable retail sales
29 directly resulting from a referral of the purchaser to the
30 marketplace seller by the referrer and sourced to this state under
31 RCW 82.32.730 during the same calendar year.

32 (iii) Beginning in calendar year 2024, the liability relief may
33 not exceed three percent of the total tax due under this chapter and
34 chapter 82.12 RCW on taxable retail sales directly resulting from a
35 referral of the purchaser to the marketplace seller by the referrer
36 and sourced to this state under RCW 82.32.730 during the same
37 calendar year.

38 (d) Where the marketplace facilitator or referrer is relieved of
39 liability under this subsection (3), the marketplace seller is also

1 relieved of liability for the amount of uncollected tax due, subject
2 to the limitations in subsection (4) of this section.

3 (e) The department may by rule determine the manner in which a
4 taxpayer may claim the liability relief provided under this
5 subsection.

6 (4) Except as otherwise provided in this section, a marketplace
7 seller obligated or electing to collect the taxes imposed under this
8 chapter and chapter 82.12 RCW is not required to collect such taxes
9 on all taxable retail sales through a marketplace operated by a
10 marketplace facilitator or directly resulting from a referral of the
11 purchaser to the marketplace seller by the referrer if the
12 marketplace seller has obtained documentation from the marketplace
13 facilitator or referrer indicating that the marketplace facilitator
14 or referrer is registered with the department and will collect all
15 applicable taxes due under this chapter and chapter 82.12 RCW on all
16 taxable retail sales made on behalf of the marketplace seller through
17 the marketplace operated by the marketplace facilitator or taxable
18 retail sales directly resulting from a referral of the purchaser to
19 the marketplace seller by the referrer. The documentation required by
20 this subsection (4) must be provided in a form and manner prescribed
21 by or acceptable to the department. This subsection (4) does not
22 relieve a marketplace seller from liability for uncollected taxes due
23 under this chapter or chapter 82.12 RCW resulting from a marketplace
24 facilitator's or referrer's failure to collect the proper amount of
25 tax due when the error was due to incorrect information given to the
26 marketplace facilitator or referrer by the marketplace seller.

27 (5) Except as otherwise provided in this section, a marketplace
28 seller that is also a remote seller subject to section 202(1) of this
29 act is relieved of its obligation to collect sales or use taxes
30 imposed under section 202 of this act with respect to all taxable
31 retail sales through a marketplace operated by a marketplace
32 facilitator that provides the marketplace seller with written
33 confirmation that the marketplace facilitator has elected to comply
34 with the notice and reporting requirements of section 205 of this act
35 in lieu of collecting sales and use taxes.

36 (6) Notwithstanding subsections (4) and (5) of this section, a
37 marketplace seller is not relieved of the obligation to collect taxes
38 imposed under this chapter and chapter 82.12 RCW or comply with
39 section 202 of this act with respect to retail sales of digital
40 products and digital codes, other than (a) specified digital products

1 and digital games and (b) digital codes used to redeem specified
2 digital products and digital games, until January 1, 2020.

3 (7) No class action may be brought against a marketplace
4 facilitator or referrer in any court of this state on behalf of
5 purchasers arising from or in any way related to an overpayment of
6 sales or use tax collected by the marketplace facilitator or
7 referrer, regardless of whether that claim is characterized as a tax
8 refund claim. Nothing in this subsection affects a purchaser's right
9 to seek a refund from the department as provided under chapter 82.32
10 RCW.

11 (8) Nothing in this section affects the obligation of any
12 purchaser to remit sales or use tax as to any applicable taxable
13 transaction in which the seller or the seller's agent does not
14 collect and remit sales tax.

15 (9) This section is subject to the provisions of section 214 of
16 this act.

17 (10) The definitions in section 204 of this act apply to this
18 section.

19 NEW SECTION. **Sec. 204.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires
21 otherwise.

22 (1) "Affiliated person" means a person that, with respect to
23 another person:

24 (a) Has an ownership interest of more than five percent, whether
25 direct or indirect, in the other person; or

26 (b) Is related to the other person because a third person, or
27 group of third persons who are affiliated persons with respect to
28 each other, holds an ownership interest of more than five percent,
29 whether direct or indirect, in the related persons.

30 (2) "Consumer" has the same meaning as provided in chapters
31 82.04, 82.08, and 82.12 RCW.

32 (3) "Marketplace facilitator" means a person that contracts with
33 sellers to facilitate for consideration, regardless of whether
34 deducted as fees from the transaction, the sale of the seller's
35 products through a physical or electronic marketplace operated by the
36 person, and engages:

37 (a) Directly or indirectly, through one or more affiliated
38 persons in any of the following:

1 (i) Transmitting or otherwise communicating the offer or
2 acceptance between the buyer and seller;

3 (ii) Owning or operating the infrastructure, electronic or
4 physical, or technology that brings buyers and sellers together;

5 (iii) Providing a virtual currency that buyers are allowed or
6 required to use to purchase products from the seller; or

7 (iv) Software development or research and development activities
8 related to any of the activities described in (b) of this subsection
9 (3), if such activities are directly related to a physical or
10 electronic marketplace operated by the person or an affiliated
11 person; and

12 (b) In any of the following activities with respect to the
13 seller's products:

14 (i) Payment processing services;

15 (ii) Fulfillment or storage services;

16 (iii) Listing products for sale;

17 (iv) Setting prices;

18 (v) Branding sales as those of the marketplace facilitator;

19 (vi) Order taking;

20 (vii) Advertising or promotion; or

21 (viii) Providing customer service or accepting or assisting with
22 returns or exchanges.

23 (4) "Marketplace seller" means a seller that makes retail sales
24 through any physical or electronic marketplaces operated by a
25 marketplace facilitator or directly resulting from a referral by a
26 referrer, regardless of whether the seller is required to be
27 registered with the department as provided in RCW 82.32.030.

28 (5) "Platform" means an electronic or physical medium, including
29 a web site or catalog, operated by a referrer.

30 (6) "Product" has the same meaning as provided in RCW 82.32.023.

31 (7) "Purchaser" means any consumer who purchases or leases a
32 product sourced to this state under RCW 82.32.730.

33 (8) "Referral" means the transfer by a referrer of a potential
34 customer to a marketplace seller who advertises or lists products for
35 sale on the referrer's platform.

36 (9)(a) "Referrer" means a person, other than a person engaging in
37 the business of printing a newspaper or publishing a newspaper as
38 defined in RCW 82.04.214, who contracts or otherwise agrees with a
39 seller to list or advertise for sale one or more items in any medium,
40 including a web site or catalog; receives a commission, fee, or other

1 consideration from the seller for the listing or advertisement;
2 transfers, via telephone, internet link, or other means, a purchaser
3 to a seller or an affiliated person to complete the sale; and does
4 not collect receipts from the purchasers for the transaction.

5 (b) "Referrer" does not include a person that:

6 (i) Provides internet advertising services; and

7 (ii) Does not ever provide either the marketplace seller's
8 shipping terms or advertise whether a marketplace seller charges
9 sales tax.

10 (10) "Remote seller" means any seller, other than a marketplace
11 facilitator or referrer, who does not have a physical presence in
12 this state and makes retail sales to purchasers.

13 (11) "Retail sale" and "sale" have the same meaning as provided
14 in chapter 82.04 RCW.

15 (12) "Seller" has the same meaning as in RCW 82.08.010 and
16 includes marketplace facilitators, whether making sales in their own
17 right or on behalf of marketplace sellers, and referrers.

18 NEW SECTION. **Sec. 205.** (1) Except as otherwise provided in
19 subsection (5) of this section, a seller that does not collect the
20 tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
21 must comply with the applicable notice and reporting requirements of
22 this section. For taxable retail sales made through a marketplace
23 facilitator, or other agent, the marketplace facilitator, or other
24 agent must comply with the notice and reporting requirements of this
25 section, and the principal is not subject to the notice and reporting
26 requirements of this section with respect to those sales. If the
27 referrer makes an election to comply with the applicable notice and
28 reporting requirements of this section, marketplace sellers to whom a
29 referral is made by the referrer remain subject to the applicable
30 notice and reporting requirements under this section for their sales
31 unless the marketplace sellers collect the tax imposed under chapter
32 82.08 or 82.12 RCW on taxable retail sales sourced to this state
33 under RCW 82.32.730.

34 (2)(a) A seller, other than a referrer acting in its capacity as
35 a referrer, subject to the notice and reporting requirements of this
36 section must:

37 (i) Post a conspicuous notice on its marketplace, platform, web
38 site, catalog, or any other similar medium that informs Washington
39 purchasers that:

1 (A) Sales or use tax is due on certain purchases;
2 (B) Washington requires the purchaser to file a use tax return;
3 and
4 (C) The notice is provided under the requirements of this
5 section; and
6 (ii) Provide a notice to each consumer at the time of each retail
7 sale. The notice under this subsection (2)(a)(ii) must include the
8 following information:
9 (A) A statement that neither sales nor use tax is being collected
10 or remitted upon the sale;
11 (B) A statement that the consumer may be required to remit sales
12 or use tax directly to the department; and
13 (C) Instructions for obtaining additional information from the
14 department regarding whether and how to remit the sales or use tax to
15 the department.
16 (b) The notice under (a)(ii) of this subsection (2) must be
17 prominently displayed on all invoices and order forms including,
18 where applicable, electronic and catalog invoices and order forms,
19 and upon each sales receipt or similar document provided to the
20 purchaser, whether in paper or electronic form. No indication may be
21 made that sales or use tax is not imposed upon the transaction,
22 unless:
23 (i) Such indication is followed immediately with the notice
24 required by (a)(ii) of this subsection (2); or
25 (ii) The transaction with respect to which the indication is
26 given is exempt from sales and use tax pursuant to law.
27 (3) A referrer subject to the notice and reporting requirements
28 of this section must:
29 (a) Post a conspicuous notice on its platform that informs
30 Washington purchasers:
31 (i) That sales or use tax is due on certain purchases;
32 (ii) That the seller may or may not collect and remit retail
33 sales tax on a purchase;
34 (iii) That Washington requires the purchaser to file a use tax
35 return if retail sales tax is not assessed at the time of a taxable
36 sale by the seller;
37 (iv) That the notice is provided under the requirements of this
38 section;

1 (v) Of the instructions for obtaining additional information from
2 the department regarding whether and how to remit the sales or use
3 tax to the department; and

4 (vi) That if the seller to whom the purchaser is referred does
5 not collect retail sales tax on a subsequent purchase by the
6 purchaser, the seller may be required to provide information to the
7 purchaser and the department about the purchaser's potential sales or
8 use tax liability.

9 (b) The notice under (a) of this subsection (3) must be
10 prominently displayed on the platform and may include pop-up boxes or
11 notification by other means that appear when the referrer transfers a
12 purchaser to a marketplace seller or an affiliated person to complete
13 the sale.

14 (4)(a) A seller, other than a referrer acting in its capacity as
15 a referrer, subject to the notice and reporting requirements of
16 subsection (2) of this section must, no later than February 28th of
17 each year, provide a report to each consumer for whom the seller was
18 required to provide a notice under subsection (2)(a)(ii) of this
19 section.

20 (b) The report under this subsection (4) must include:

21 (i) A statement that the seller did not collect sales or use tax
22 on the consumer's transactions with the seller and that the consumer
23 may be required to remit such tax directly to the department;

24 (ii) A list, by date, generally indicating the type of product
25 purchased or leased during the immediately preceding calendar year by
26 the consumer from the seller, sourced to this state under RCW
27 82.32.730, and the price of each product;

28 (iii) Instructions for obtaining additional information from the
29 department regarding whether and how to remit the sales or use tax to
30 the department;

31 (iv) A statement that the seller is required to submit a report
32 to the department pursuant to subsection (6) of this section stating
33 the total dollar amount of the consumer's purchases from the seller;
34 and

35 (v) Any information as the department may reasonably require.

36 (c)(i) The report required under this subsection (4) must be sent
37 to the consumer's billing address or, if unknown, the consumer's
38 shipping address, by first-class mail, in an envelope marked
39 prominently with words indicating important tax information is
40 enclosed.

1 (ii) If no billing or shipping address is known, the report must
2 be sent electronically to the consumer's last known email address
3 with a subject heading indicating important tax information is
4 enclosed.

5 (5)(a) A referrer subject to the notice requirements under
6 subsection (3) of this section must, no later than February 28th of
7 each year, provide notice to each marketplace seller to whom the
8 referrer transferred a potential purchaser located in Washington
9 during the previous calendar year.

10 (b) The notice under this subsection (5) must include:

11 (i) A statement that Washington imposes a sales or use tax on
12 retail sales;

13 (ii) A statement that a seller, meeting the threshold in section
14 202(2) of this act, is required to either collect and remit retail
15 sales or use tax on all taxable retail sales sourced to this state
16 under RCW 82.32.730 or to comply with this section; and

17 (iii) Instructions for obtaining additional information from the
18 department.

19 (c) By February 28th of each year, a referrer required to provide
20 the notice under this subsection must provide the department with:

21 (i) A list of sellers who received the referrer's notice under
22 this subsection. The information must be provided electronically in a
23 form and manner required by the department.

24 (ii) An affidavit signed under penalty of perjury from an officer
25 of the referrer affirming that the referrer made reasonable efforts
26 to comply with the applicable sales and use tax notice and reporting
27 requirements of this section.

28 (6)(a) A seller, other than a referrer acting in its capacity as
29 a referrer, subject to the notice and reporting requirements of this
30 section must, no later than February 28th of each year, file a report
31 with the department.

32 (b) The report under this subsection (6) must include, with
33 respect to each consumer to whom the seller is required to provide a
34 report under subsection (4) of this section by February 28th of the
35 current calendar year:

36 (i) The consumer's name;

37 (ii) The billing address and, if different, the last known
38 mailing address;

1 (iii) The shipping address for each product sold or leased to
2 such consumer for delivery to a location in this state during the
3 immediately preceding calendar year; and

4 (iv) The total dollar amount of all such purchases by such
5 consumer.

6 (c) The report under this subsection (6) must also include an
7 affidavit signed under penalty of perjury from an officer of the
8 seller affirming that the seller made reasonable efforts to comply
9 with the applicable sales and use tax notice and reporting
10 requirements in this section.

11 (d) Except for the affidavit, the report under this subsection
12 (6) must be filed electronically in a form and manner required by the
13 department.

14 (7) A seller who is registered with the department to collect and
15 remit retail sales and use tax, and who makes a reasonable effort to
16 comply with the requirements of RCW 82.08.050 and 82.12.040, is not
17 required to provide notice or file reports under this section.

18 (8) Every seller subject to this chapter must keep and preserve,
19 for a period of five years, suitable records as may be necessary for
20 the department to verify the seller's compliance with this chapter.
21 All of the seller's books, records, and invoices must be open for
22 examination at any reasonable time by the department. The department
23 may require the attendance of any officer of the seller or any
24 employee of the seller having knowledge pertinent to the department's
25 investigation of the seller's compliance with this chapter, at a time
26 and place fixed in a subpoena issued under RCW 82.32.117, and may
27 take the person's testimony under oath.

28 (9) In exercising discretion in enforcing the provisions of this
29 chapter, the department may take into consideration available
30 resources, whether the anticipated benefits from any potential
31 enforcement activities are likely to exceed the department's expected
32 enforcement costs, and any other factors the department deems
33 appropriate.

34 NEW SECTION. **Sec. 206.** (1)(a) The department must assess a
35 penalty against any seller, other than a referrer acting in its
36 capacity as a referrer, that fails to provide notice to consumers
37 pursuant to section 205(2)(a) of this act, in addition to any other
38 applicable penalties, in the amount of twenty thousand dollars. The
39 department may assess the penalty under this subsection only once per

1 calendar year, regardless of the number of notices a seller fails to
2 provide pursuant to section 205(2)(a) of this act during the calendar
3 year. The department may apply this penalty at any time during a
4 calendar year and no more frequently than annually.

5 (b) The department must assess a penalty against any referrer
6 that fails to provide notice to consumers pursuant to section 205(3)
7 of this act, in addition to any other applicable penalties, in the
8 amount of twenty thousand dollars. The department may apply this
9 penalty at any time during a calendar year and no more frequently
10 than annually.

11 (2)(a) The department must assess a penalty against a seller who
12 fails to provide a report as required by section 205 (4) or (5) of
13 this act, in addition to any other applicable penalties, as follows:

14 (i) Five thousand dollars if the gross receipts of the seller and
15 through the seller's marketplace from retail sales sourced to this
16 state under RCW 82.32.730 are less than fifty thousand dollars for
17 the calendar year for which the report was required to be made;

18 (ii) Ten thousand dollars if the gross receipts of the seller and
19 through the seller's marketplace from retail sales sourced to this
20 state under RCW 82.32.730 are at least fifty thousand dollars but
21 less than one hundred fifty thousand dollars;

22 (iii) Fifty thousand dollars if the gross receipts of the seller
23 and through the seller's marketplace from retail sales sourced to
24 this state under RCW 82.32.730 are at least one hundred fifty
25 thousand dollars but less than three hundred thousand dollars; or

26 (iv) If the gross receipts of the seller and through the seller's
27 marketplace from retail sales sourced to this state under RCW
28 82.32.730 are three hundred thousand dollars or greater, one hundred
29 thousand dollars plus twenty thousand dollars for every fifty
30 thousand dollars in gross receipts over three hundred thousand
31 dollars.

32 (b) The department must assess a penalty against a referrer who
33 fails to provide the notice and list required by section 205(5) of
34 this act, in addition to any other applicable penalties. The
35 department may assess the penalty under this subsection only once per
36 calendar year, regardless of the number of failures to comply with
37 section 205(5) of this act during the calendar year. The amount of
38 the penalties assessed are as follows:

39 (i) Fifty thousand dollars if the gross income of the referrer is
40 at least two hundred sixty-seven thousand dollars but less than three

1 hundred thousand dollars of the gross income of the business received
2 from the referrer's referral services apportioned to Washington under
3 RCW 82.04.460, whether or not subject to tax under chapter 82.04 RCW,
4 for the calendar year for which the notice and list was required to
5 be made; or

6 (ii) If the gross income of the referrer is three hundred
7 thousand dollars or greater, one hundred thousand dollars plus twenty
8 thousand dollars for every fifty thousand dollars in gross income
9 over three hundred thousand dollars of the gross income of the
10 business received from the referrer's referral services apportioned
11 to Washington under RCW 82.04.460, whether or not subject to tax
12 under chapter 82.04 RCW, for the calendar year for which the notice
13 and list was required to be made.

14 (3) The department must assess a penalty against any seller,
15 other than a referrer acting in its capacity as a referrer, who fails
16 to provide a report to the department as required by section 205(6)
17 of this act, in addition to any other applicable penalties, in the
18 amount of twenty-five dollars multiplied by the number of consumers
19 that should have been included on such report, but not less than
20 twenty thousand dollars for any calendar year.

21 (4) The penalties imposed under subsections (1) through (3) of
22 this section are cumulative.

23 (5) No penalty may be imposed by the department under subsections
24 (1) through (4) of this section more than four years after the close
25 of the calendar year in which the notice or report giving rise to the
26 penalty was required to have been provided. This subsection (5) does
27 not apply to penalties reassessed under subsection (9) of this
28 section.

29 (6) When assessing a penalty under this section, the department
30 may use any reasonable estimation technique where necessary or
31 appropriate to determine the amount of any penalty.

32 (7) Interest accrues on the amount of the total penalty that has
33 been assessed under this section until the total penalty amount is
34 paid in full. Interest imposed under this section must be computed
35 and assessed as provided in RCW 82.32.050 as if the penalty imposed
36 under this subsection was a tax liability.

37 (8) The department must notify a seller by mail, or
38 electronically as provided in RCW 82.32.135, of the amount of any
39 penalty and interest due under this section. Amounts due under this
40 section must be paid in full within thirty days from the date of the

1 notice, or within such further time as the department may provide in
2 its sole discretion.

3 (9)(a)(i) A seller is entitled to a conditional waiver of
4 penalties and interest imposed under this section if the seller
5 enters into a written agreement with the department electing to
6 collect retail sales or use tax or fully comply with all applicable
7 notice and reporting requirements of this chapter, beginning by a
8 date acceptable to the department. An election to collect retail
9 sales or use tax must be for a period of at least twelve consecutive
10 months and is subject to the provisions of section 202(1)(d) of this
11 act.

12 (ii) The department may grant a waiver of penalties and interest
13 under this subsection (9)(a) for penalties and interest assessed for
14 a seller's failure to comply with the notice and reporting
15 requirements for one or more violations.

16 (iii) The department may not grant more than one request by a
17 seller for a waiver of penalties and interest under this subsection
18 (9)(a).

19 (iv) The department must reassess penalties and interest
20 conditionally waived under this subsection (9)(a) if the department
21 finds that, after the date that the seller agreed to fully comply
22 with the applicable notice and reporting requirements of this
23 chapter, the seller failed to:

24 (A) Provide notice under section 205(2)(a)(ii) of this act to at
25 least ninety percent of the consumers entitled to such notice in any
26 given calendar year or portion of the initial calendar year in which
27 the agreement required under this subsection was in effect if the
28 agreement was in effect for less than the entire calendar year;

29 (B) Timely provide the reports required under section 205(4) of
30 this act to all consumers who received notice from the seller under
31 section 205(2)(a)(ii) of this act during any calendar year, unless
32 the department finds that any such failure was due to circumstances
33 beyond the seller's control;

34 (C) Timely provide the reports required under section 205(6) of
35 this act during any calendar year, unless the department finds that
36 any such failure was due to circumstances beyond the seller's
37 control; or

38 (D) With respect to referrers, timely provide the notice required
39 under section 205(3) of this act and the notice and list required
40 under section 205(5) of this act during any calendar year, unless the

1 department finds that any such failure was due to circumstances
2 beyond the referrer's control.

3 (v) The department must reassess penalties and interest
4 conditionally waived under this subsection (9)(a) if the department
5 finds that, after the date that the seller elected to collect retail
6 sales or use tax, the seller failed to register with the department
7 and make a reasonable effort to comply with the requirements of RCW
8 82.08.050 and 82.12.040.

9 (vi) The department may not reassess penalties and interest
10 conditionally waived under this subsection (9)(a) more than four
11 calendar years following the calendar year in which the department
12 granted the conditional waiver under this subsection (9)(a).

13 (vii) The provisions of subsection (8) of this section apply to
14 penalties and interest reassessed under this subsection (9)(a). The
15 department may add additional interest on penalties reassessed under
16 this subsection (9)(a) only if the total amount of penalties
17 reassessed under this subsection (9)(a) is not paid in full by the
18 date due.

19 (b) The department must waive penalties and interest imposed
20 under this section if the department determines that the failure of
21 the seller to fully comply with the notice or reporting requirements
22 was due to circumstances beyond the seller's control.

23 (c) The department may waive penalties imposed under this section
24 if the department determines that the failure of the seller to fully
25 comply with the notice or reporting requirements was due to
26 reasonable cause and not willful neglect. In determining whether
27 reasonable cause exists, the department will consider, among other
28 relevant factors, whether: (i) The failure was due to willful or
29 reckless disregard of the seller's notice or reporting obligations;
30 (ii) the seller made subsequent efforts to avoid future
31 noncompliance; and (iii) the magnitude of the noncompliance was
32 significant in terms of dollars and time when accounting for the
33 seller's size and volume of transactions. On appeal, a court or the
34 board of tax appeals must give great deference to the department's
35 penalty waiver decision under this subsection (9)(c) and affirm the
36 department's decision, unless the taxpayer can show by clear, cogent,
37 and convincing evidence that the department's decision lacked any
38 reasonable basis.

39 (d) A request for a waiver of penalties and interest under this
40 subsection must be received by the department in writing and before

1 the penalties and interest for which a waiver is requested are due
2 pursuant to subsection (8) of this section. The department must deny
3 any request for a waiver of penalties and interest that does not
4 fully comply with the provisions of this subsection (9)(d).

5 NEW SECTION. **Sec. 207.** Chapter 82.32 RCW applies to the
6 administration of this chapter.

7 NEW SECTION. **Sec. 208.** Nothing in this chapter relieves sellers
8 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
9 responsibilities imposed under those chapters. Nor does anything in
10 this chapter prevent the department from administering and enforcing
11 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
12 any seller or consumer who is subject to such taxes.

13 NEW SECTION. **Sec. 209.** A new section is added to chapter 82.32
14 RCW to be codified between RCW 82.32.045 and 82.32.050 to read as
15 follows:

16 (1) Except as otherwise provided in this section, taxes imposed
17 under chapter 82.08 or 82.12 RCW and payable by a consumer directly
18 to the department are due, on returns prescribed by the department,
19 by the earlier of April 1st of the calendar year immediately
20 following the calendar year in which the sale or use occurred or
21 within thirty days of the date of a notice from the department that
22 tax may be due.

23 (2) This section does not apply to the reporting and payment of
24 taxes imposed under chapters 82.08 and 82.12 RCW:

25 (a) On the retail sale or use of motor vehicles, vessels, or
26 aircraft; or

27 (b) By consumers who are engaged in business, unless the
28 department has relieved the consumer of the requirement to file
29 returns pursuant to RCW 82.32.045(4).

30 NEW SECTION. **Sec. 210.** A new section is added to chapter 82.32
31 RCW to read as follows:

32 (1) A remote seller, referrer, or marketplace facilitator that is
33 subject to section 202 of this act and is complying with the
34 requirements of chapters 82.08 and 82.12 RCW may only seek a recovery
35 of retail sales and use taxes, penalties, or interest from the
36 department by following the recovery procedures established under RCW

1 82.32.060. However, no claim may be granted on the basis that the
2 taxpayer lacked a physical presence in this state and complied with
3 the tax collection provisions of chapters 82.08 and 82.12 RCW
4 voluntarily.

5 (2) Neither the state nor any seller who elects under section 202
6 of this act to collect and remit retail sales or use tax is liable to
7 a purchaser who claims that the retail sales or use tax has been
8 over-collected because a provision of chapter . . . , Laws of 2017 3rd
9 sp. sess. (this act) is later deemed unlawful.

10 (3) Nothing in chapter . . . , Laws of 2017 3rd sp. sess. (this
11 act) affects the obligation of any purchaser from this state to remit
12 retail sales or use tax as to any applicable taxable transaction in
13 which the seller does not collect and remit retail sales or use tax.

14 **Sec. 211.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to
15 read as follows:

16 (1) The tax imposed in this chapter must be paid by the buyer to
17 the seller. Each seller must collect from the buyer the full amount
18 of the tax payable in respect to each taxable sale in accordance with
19 the schedule of collections adopted by the department under the
20 provisions of RCW 82.08.060.

21 (2) The tax required by this chapter, to be collected by the
22 seller, is deemed to be held in trust by the seller until paid to the
23 department. Any seller who appropriates or converts the tax collected
24 to the seller's own use or to any use other than the payment of the
25 tax to the extent that the money required to be collected is not
26 available for payment on the due date as prescribed in this chapter
27 is guilty of a gross misdemeanor.

28 (3) Except as otherwise provided in this section, if any seller
29 fails to collect the tax imposed in this chapter or, having collected
30 the tax, fails to pay it to the department in the manner prescribed
31 by this chapter, whether such failure is the result of the seller's
32 own acts or the result of acts or conditions beyond the seller's
33 control, the seller is, nevertheless, personally liable to the state
34 for the amount of the tax.

35 (4) Sellers are not relieved from personal liability for the
36 amount of the tax unless they maintain proper records of exempt or
37 nontaxable transactions and provide them to the department when
38 requested.

1 (5) Sellers are not relieved from personal liability for the
2 amount of tax if they fraudulently fail to collect the tax or if they
3 solicit purchasers to participate in an unlawful claim of exemption.

4 (6) Sellers are not relieved from personal liability for the
5 amount of tax if they accept an exemption certificate from a
6 purchaser claiming an entity-based exemption if:

7 (a) The subject of the transaction sought to be covered by the
8 exemption certificate is actually received by the purchaser at a
9 location operated by the seller in Washington; and

10 (b) Washington provides an exemption certificate that clearly and
11 affirmatively indicates that the claimed exemption is not available
12 in Washington. Graying out exemption reason types on a uniform form
13 and posting it on the department's web site is a clear and
14 affirmative indication that the grayed out exemptions are not
15 available.

16 (7)(a) Sellers are relieved from personal liability for the
17 amount of tax if they obtain a fully completed exemption certificate
18 or capture the relevant data elements required under the streamlined
19 sales and use tax agreement within ninety days, or a longer period as
20 may be provided by rule by the department, subsequent to the date of
21 sale.

22 (b) If the seller has not obtained an exemption certificate or
23 all relevant data elements required under the streamlined sales and
24 use tax agreement within the period allowed subsequent to the date of
25 sale, the seller may, within one hundred twenty days, or a longer
26 period as may be provided by rule by the department, subsequent to a
27 request for substantiation by the department, either prove that the
28 transaction was not subject to tax by other means or obtain a fully
29 completed exemption certificate from the purchaser, taken in good
30 faith.

31 (c) Sellers are relieved from personal liability for the amount
32 of tax if they obtain a blanket exemption certificate for a purchaser
33 with which the seller has a recurring business relationship. The
34 department may not request from a seller renewal of blanket exemption
35 certificates or updates of exemption certificate information or data
36 elements if there is a recurring business relationship between the
37 buyer and seller. For purposes of this subsection (7)(c), a
38 "recurring business relationship" means at least one sale transaction
39 within a period of twelve consecutive months.

1 (d) Sellers are relieved from personal liability for the amount
2 of tax if they obtain a copy of a direct pay permit issued under RCW
3 82.32.087.

4 (8) The amount of tax, until paid by the buyer to the seller or
5 to the department, constitutes a debt from the buyer to the seller.
6 Any seller who fails or refuses to collect the tax as required with
7 intent to violate the provisions of this chapter or to gain some
8 advantage or benefit, either direct or indirect, and any buyer who
9 refuses to pay any tax due under this chapter is guilty of a
10 misdemeanor.

11 (9) Except as otherwise provided in this subsection, the tax
12 required by this chapter to be collected by the seller must be stated
13 separately from the selling price in any sales invoice or other
14 instrument of sale. On all retail sales through vending machines, the
15 tax need not be stated separately from the selling price or collected
16 separately from the buyer. Except as otherwise provided in this
17 subsection, for purposes of determining the tax due from the buyer to
18 the seller and from the seller to the department it must be
19 conclusively presumed that the selling price quoted in any price
20 list, sales document, contract or other agreement between the parties
21 does not include the tax imposed by this chapter. But if the seller
22 advertises the price as including the tax or that the seller is
23 paying the tax, the advertised price may not be considered the
24 selling price.

25 (10) Where a buyer has failed to pay to the seller the tax
26 imposed by this chapter and the seller has not paid the amount of the
27 tax to the department, the department may, in its discretion, proceed
28 directly against the buyer for collection of the tax. If the
29 department proceeds directly against the buyer for collection of the
30 tax as authorized in this subsection, the department may add a
31 penalty of ten percent of the unpaid tax to the amount of the tax due
32 for failure of the buyer to pay the tax to the seller, regardless of
33 when the tax may be collected by the department. In addition to the
34 penalty authorized in this subsection, all of the provisions of
35 chapter 82.32 RCW, including those relative to interest and
36 penalties, apply. For the sole purpose of applying the various
37 provisions of chapter 82.32 RCW, the twenty-fifth day of the month
38 following the tax period in which the purchase was made will be
39 considered as the due date of the tax.

1 ~~((Notwithstanding subsections (1) through (10) of this~~
2 ~~section, any person making sales is not obligated to collect the tax~~
3 ~~imposed by this chapter if:~~

4 ~~(a) The person's activities in this state, whether conducted~~
5 ~~directly or through another person, are limited to:~~

6 ~~(i) The storage, dissemination, or display of advertising;~~

7 ~~(ii) The taking of orders; or~~

8 ~~(iii) The processing of payments; and~~

9 ~~(b) The activities are conducted electronically via a web site on~~
10 ~~a server or other computer equipment located in Washington that is~~
11 ~~not owned or operated by the person making sales into this state nor~~
12 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
13 ~~the same meaning as provided in RCW 82.04.424.~~

14 ~~(12) Subsection (11) of this section expires when: (a) The United~~
15 ~~States congress grants individual states the authority to impose~~
16 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
17 ~~determined by a court of competent jurisdiction, in a judgment not~~
18 ~~subject to review, that a state can impose sales and use tax~~
19 ~~collection duties on remote sellers.~~

20 ~~(13) For purposes of this section:)) The definitions in this~~
21 ~~subsection apply throughout this section unless the context clearly~~
22 ~~requires otherwise.~~

23 (a) "Exemption certificate" means documentation furnished by a
24 buyer to a seller to claim an exemption from sales tax. An exemption
25 certificate includes a reseller permit or other documentation
26 authorized in RCW 82.04.470 furnished by a buyer to a seller to
27 substantiate a wholesale sale(~~(; and)~~).

28 (b) "Seller" includes a certified service provider, as defined in
29 RCW 82.32.020, acting as agent for the seller.

30 **Sec. 212.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to
31 read as follows:

32 (1) Every person who ~~((maintains in this state a place of~~
33 ~~business or a stock of goods, or engages in business activities~~
34 ~~within this state)) is subject to a collection obligation under~~
35 ~~chapter 82.08 RCW, except a person making a valid election to comply~~
36 ~~with the notice and reporting provisions of section 205 of this act,~~
37 ~~must obtain from the department a certificate of registration, and~~
38 ~~must, at the time of making sales of tangible personal property,~~
39 ~~digital goods, digital codes, digital automated services, extended~~

1 warranties, or sales of any service defined as a retail sale in RCW
2 82.04.050 (2) (a) or (g) or (6)((+b+)) (c), or making transfers of
3 either possession or title, or both, of tangible personal property
4 for use in this state, collect from the purchasers or transferees the
5 tax imposed under this chapter. The tax to be collected under this
6 section must be in an amount equal to the purchase price multiplied
7 by the rate in effect for the retail sales tax under RCW 82.08.020.
8 (~~For the purposes of this chapter, the phrase "maintains in this~~
9 ~~state a place of business" includes the solicitation of sales and/or~~
10 ~~taking of orders by sales agents or traveling representatives. For~~
11 ~~the purposes of this chapter, "engages in business activity within~~
12 ~~this state" includes every activity which is sufficient under the~~
13 ~~Constitution of the United States for this state to require~~
14 ~~collection of tax under this chapter. The department must in rules~~
15 ~~specify activities which constitute engaging in business activity~~
16 ~~within this state, and must keep the rules current with future court~~
17 ~~interpretations of the Constitution of the United States.)~~)

18 (2) Every person who engages in this state in the business of
19 acting as an independent selling agent for persons who do not hold a
20 valid certificate of registration, and who receives compensation by
21 reason of sales of tangible personal property, digital goods, digital
22 codes, digital automated services, extended warranties, or sales of
23 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
24 or (6)((+b+)) (c), of his or her principals for use in this state,
25 must, at the time such sales are made, collect from the purchasers
26 the tax imposed on the purchase price under this chapter, and for
27 that purpose is deemed a retailer as defined in this chapter.

28 (3) The tax required to be collected by this chapter is deemed to
29 be held in trust by the retailer until paid to the department, and
30 any retailer who appropriates or converts the tax collected to the
31 retailer's own use or to any use other than the payment of the tax
32 provided herein to the extent that the money required to be collected
33 is not available for payment on the due date as prescribed is guilty
34 of a misdemeanor. In case any seller fails to collect the tax herein
35 imposed or having collected the tax, fails to pay the same to the
36 department in the manner prescribed, whether such failure is the
37 result of the seller's own acts or the result of acts or conditions
38 beyond the seller's control, the seller is nevertheless personally
39 liable to the state for the amount of such tax, unless the seller has

1 taken from the buyer a copy of a direct pay permit issued under RCW
2 82.32.087.

3 (4) Any retailer who refunds, remits, or rebates to a purchaser,
4 or transferee, either directly or indirectly, and by whatever means,
5 all or any part of the tax levied by this chapter is guilty of a
6 misdemeanor.

7 ~~((Notwithstanding subsections (1) through (4) of this
8 section, any person making sales is not obligated to collect the tax
9 imposed by this chapter if:~~

10 ~~(a) The person's activities in this state, whether conducted
11 directly or through another person, are limited to:~~

12 ~~(i) The storage, dissemination, or display of advertising;~~

13 ~~(ii) The taking of orders; or~~

14 ~~(iii) The processing of payments; and~~

15 ~~(b) The activities are conducted electronically via a web site on
16 a server or other computer equipment located in Washington that is
17 not owned or operated by the person making sales into this state nor
18 owned or operated by an affiliated person. "Affiliated persons" has
19 the same meaning as provided in RCW 82.04.424.~~

20 ~~(6) Subsection (5) of this section expires when: (a) The United
21 States congress grants individual states the authority to impose
22 sales and use tax collection duties on remote sellers; or (b) it is
23 determined by a court of competent jurisdiction, in a judgment not
24 subject to review, that a state can impose sales and use tax
25 collection duties on remote sellers.~~

26 ~~(7))~~ Notwithstanding subsections (1) through (4) of this
27 section, any person making sales is not obligated to collect the tax
28 imposed by this chapter if the person would have been obligated to
29 collect retail sales tax on the sale absent a specific exemption
30 provided in chapter 82.08 RCW, and there is no corresponding use tax
31 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may
32 be construed as relieving purchasers from liability for reporting and
33 remitting the tax due under this chapter directly to the department.

34 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this
35 section, any person making sales is not obligated to collect the tax
36 imposed by this chapter if the state is prohibited under the
37 Constitution or laws of the United States from requiring the person
38 to collect the tax imposed by this chapter.

39 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this
40 section, any licensed dealer facilitating a firearm sale or transfer

1 between two unlicensed persons by conducting background checks under
2 chapter 9.41 RCW is not obligated to collect the tax imposed by this
3 chapter.

4 **Sec. 213.** RCW 82.12.040 and 2017 c 323 s 525 are each amended to
5 read as follows:

6 (1) Every person who (~~maintains in this state a place of~~
7 ~~business or a stock of goods, or engages in business activities~~
8 ~~within this state~~) is subject to a collection obligation under
9 chapter 82.08 RCW, except a person making a valid election to comply
10 with the notice and reporting provisions of section 205 of this act,
11 must obtain from the department a certificate of registration, and
12 must, at the time of making sales of tangible personal property,
13 digital goods, digital codes, digital automated services, extended
14 warranties, or sales of any service defined as a retail sale in RCW
15 82.04.050 (2) (a) or (g) or (6)(c), or making transfers of either
16 possession or title, or both, of tangible personal property for use
17 in this state, collect from the purchasers or transferees the tax
18 imposed under this chapter. The tax to be collected under this
19 section must be in an amount equal to the purchase price multiplied
20 by the rate in effect for the retail sales tax under RCW 82.08.020.
21 (~~For the purposes of this chapter, the phrase "maintains in this~~
22 ~~state a place of business" includes the solicitation of sales and/or~~
23 ~~taking of orders by sales agents or traveling representatives. For~~
24 ~~the purposes of this chapter, "engages in business activity within~~
25 ~~this state" includes every activity which is sufficient under the~~
26 ~~Constitution of the United States for this state to require~~
27 ~~collection of tax under this chapter. The department must in rules~~
28 ~~specify activities which constitute engaging in business activity~~
29 ~~within this state, and must keep the rules current with future court~~
30 ~~interpretations of the Constitution of the United States.~~)

31 (2) Every person who engages in this state in the business of
32 acting as an independent selling agent for persons who do not hold a
33 valid certificate of registration, and who receives compensation by
34 reason of sales of tangible personal property, digital goods, digital
35 codes, digital automated services, extended warranties, or sales of
36 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
37 or (6)(c), of his or her principals for use in this state, must, at
38 the time such sales are made, collect from the purchasers the tax

1 imposed on the purchase price under this chapter, and for that
2 purpose is deemed a retailer as defined in this chapter.

3 (3) The tax required to be collected by this chapter is deemed to
4 be held in trust by the retailer until paid to the department, and
5 any retailer who appropriates or converts the tax collected to the
6 retailer's own use or to any use other than the payment of the tax
7 provided herein to the extent that the money required to be collected
8 is not available for payment on the due date as prescribed is guilty
9 of a misdemeanor. In case any seller fails to collect the tax herein
10 imposed or having collected the tax, fails to pay the same to the
11 department in the manner prescribed, whether such failure is the
12 result of the seller's own acts or the result of acts or conditions
13 beyond the seller's control, the seller is nevertheless personally
14 liable to the state for the amount of such tax, unless the seller has
15 taken from the buyer a copy of a direct pay permit issued under RCW
16 82.32.087.

17 (4) Any retailer who refunds, remits, or rebates to a purchaser,
18 or transferee, either directly or indirectly, and by whatever means,
19 all or any part of the tax levied by this chapter is guilty of a
20 misdemeanor.

21 ~~(5) ((Notwithstanding subsections (1) through (4) of this~~
22 ~~section, any person making sales is not obligated to collect the tax~~
23 ~~imposed by this chapter if:~~

24 ~~(a) The person's activities in this state, whether conducted~~
25 ~~directly or through another person, are limited to:~~

26 ~~(i) The storage, dissemination, or display of advertising;~~

27 ~~(ii) The taking of orders; or~~

28 ~~(iii) The processing of payments; and~~

29 ~~(b) The activities are conducted electronically via a web site on~~
30 ~~a server or other computer equipment located in Washington that is~~
31 ~~not owned or operated by the person making sales into this state nor~~
32 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
33 ~~the same meaning as provided in RCW 82.04.424.~~

34 ~~(6) Subsection (5) of this section expires when: (a) The United~~
35 ~~States congress grants individual states the authority to impose~~
36 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
37 ~~determined by a court of competent jurisdiction, in a judgment not~~
38 ~~subject to review, that a state can impose sales and use tax~~
39 ~~collection duties on remote sellers.~~

1 ~~(7)~~) Notwithstanding subsections (1) through (4) of this
2 section, any person making sales is not obligated to collect the tax
3 imposed by this chapter if the person would have been obligated to
4 collect retail sales tax on the sale absent a specific exemption
5 provided in chapter 82.08 RCW, and there is no corresponding use tax
6 exemption in this chapter. Nothing in this subsection (~~(7)~~) (5) may
7 be construed as relieving purchasers from liability for reporting and
8 remitting the tax due under this chapter directly to the department.

9 ~~(8)~~) (6) Notwithstanding subsections (1) through (4) of this
10 section, any person making sales is not obligated to collect the tax
11 imposed by this chapter if the state is prohibited under the
12 Constitution or laws of the United States from requiring the person
13 to collect the tax imposed by this chapter.

14 ~~(9)~~) (7) Notwithstanding subsections (1) through (4) of this
15 section, any licensed dealer facilitating a firearm sale or transfer
16 between two unlicensed persons by conducting background checks under
17 chapter 9.41 RCW is not obligated to collect the tax imposed by this
18 chapter.

19 NEW SECTION. **Sec. 214.** A new section is added to chapter 82.32
20 RCW to read as follows:

21 (1) If the department determines that a change, taking effect
22 after the effective date of this section, in the streamlined sales
23 and use tax agreement or federal law creates a conflict with any
24 provision of section 202 or 203 of this act, such conflicting
25 provision or provisions of section 202 or 203 of this act, including
26 any related provisions that would not function as originally
27 intended, have no further force and effect as of the date the change
28 in the streamlined sales and use tax agreement or federal law becomes
29 effective.

30 (2) For purposes of this section:

31 (a) A change in federal law conflicts with section 202 or 203 of
32 this act if the change clearly allows states to impose greater sales
33 and use tax collection obligations on remote sellers, referrers, or
34 marketplace facilitators than provided for, or clearly prevents
35 states from imposing sales and use tax collection obligations on
36 remote sellers, referrers, or marketplace facilitators to the extent
37 provided for, under section 202 or 203 of this act.

38 (b) A change in the streamlined sales and use tax agreement
39 conflicts with section 202 or 203 of this act if one or more

1 provisions of section 202 or 203 of this act causes this state to be
2 found out of compliance with the streamlined sales and use tax
3 agreement by its governing board.

4 (3) If the department makes a determination under this section
5 that a change in federal law or the streamlined sales and use tax
6 agreement conflicts with one or more provisions of section 202 or 203
7 of this act, the department:

8 (a) May adopt rules in accordance with chapter 34.05 RCW that are
9 consistent with the streamlined sales and use tax agreement and that
10 impose sales and use tax collection obligations on remote sellers,
11 referrers, or marketplace facilitators to the fullest extent allowed
12 under state and federal law; and

13 (b) Must include information on its web site informing taxpayers
14 and the public (i) of the provision or provisions of section 202 or
15 203 of this act that will have no further force and effect, (ii) when
16 such change will become effective, and (iii) about how to participate
17 in any rule making conducted by the department in accordance with (a)
18 of this subsection (3).

19 (4) For purposes of this section, "remote seller," "referrer,"
20 and "marketplace facilitator" have the same meaning as provided in
21 section 204 of this act.

22 Part III

23 Nexus for Excise Tax Purposes

24 **Sec. 301.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each
25 amended to read as follows:

26 "Engaging within this state" and "engaging within the state,"
27 when used in connection with any apportionable activity as defined in
28 RCW 82.04.460 or (~~wholesale sales~~) selling activity taxable under
29 RCW 82.04.250(1), 82.04.257(1), or 82.04.270, means that a person
30 generates gross income of the business from sources within this
31 state, such as customers or intangible property located in this
32 state, regardless of whether the person is physically present in this
33 state.

34 **Sec. 302.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to
35 read as follows:

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

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

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

7 (c) A nonresident individual or a business entity that is
8 organized or commercially domiciled outside this state, and (~~in the~~
9 ~~immediately preceding tax year~~) the person had:

10 (i) More than ~~fifty-three~~ thousand dollars of property in this
11 state;

12 (ii) More than ~~fifty-three~~ thousand dollars of payroll in this
13 state;

14 (iii) More than two hundred (~~fifty~~) sixty-seven thousand
15 dollars of receipts from this state; or

16 (iv) At least twenty-five percent of the person's total property,
17 total payroll, or total receipts in this state.

18 (2)(a) Property counting toward the thresholds in subsection
19 (1)(c)(i) and (iv) of this section is the average value of the
20 taxpayer's property, including intangible property, owned or rented
21 and used in this state during the current or immediately preceding
22 (~~tax~~) calendar year.

23 (b)(i) Property owned by the taxpayer, other than loans and
24 credit card receivables owned by the taxpayer, is valued at its
25 original cost basis. Loans and credit card receivables owned by the
26 taxpayer are valued at their outstanding principal balance, without
27 regard to any reserve for bad debts. However, if a loan or credit
28 card receivable is charged off in whole or in part for federal income
29 tax purposes, the portion of the loan or credit card receivable
30 charged off is deducted from the outstanding principal balance.

31 (ii) Property rented by the taxpayer is valued at eight times the
32 net annual rental rate. For purposes of this subsection, "net annual
33 rental rate" means the annual rental rate paid by the taxpayer less
34 any annual rental rate received by the taxpayer from subrentals.

35 (c) The average value of property must be determined by averaging
36 the values at the beginning and ending of the (~~tax~~) applicable
37 calendar year; but the department may require the averaging of
38 monthly values during the (~~tax~~) applicable calendar year if
39 reasonably required to properly reflect the average value of the
40 taxpayer's property.

1 (d)(i) For purposes of this subsection (2), loans and credit card
2 receivables are deemed owned and used in this state as follows:

3 (A) Loans secured by real property, personal property, or both
4 real and personal property are deemed owned and used in the state if
5 the real property or personal property securing the loan is located
6 within this state. If the property securing the loan is located both
7 within this state and one or more other states, the loan is deemed
8 owned and used in this state if more than fifty percent of the fair
9 market value of the real or personal property is located within this
10 state. If more than fifty percent of the fair market value of the
11 real or personal property is not located within any one state, then
12 the loan is deemed owned and used in this state if the borrower is
13 located in this state. The determination of whether the real or
14 personal property securing a loan is located within this state must
15 be made, as of the time the original agreement was made, and any and
16 all subsequent substitutions of collateral must be disregarded.

17 (B) Loans not secured by real or personal property are deemed
18 owned and used in this state if the borrower is located in this
19 state.

20 (C) Credit card receivables are deemed owned and used in this
21 state if the billing address of the cardholder is in this state.

22 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
23 subsection (2), the definitions in the multistate tax commission's
24 recommended formula for the apportionment and allocation of net
25 income of financial institutions as existing on June 1, 2010, or such
26 subsequent date as may be provided by the department by rule,
27 consistent with the purposes of this section, apply to this section.

28 (B) "Credit card" means a card or device existing for the purpose
29 of obtaining money, property, labor, or services on credit.

30 (e) Notwithstanding anything else to the contrary in this
31 subsection, property counting toward the thresholds in subsection
32 (1)(c)(i) and (iv) of this section does not include a person's
33 ownership of, or rights in, computer software as defined in RCW
34 82.04.215, including computer software used in providing a digital
35 automated service; master copies of software; and digital goods and
36 digital codes residing on servers located in this state.

37 (3)(a) Payroll counting toward the thresholds in subsection
38 (1)(c)(ii) and (iv) of this section is the total amount paid by the
39 taxpayer for compensation in this state during the current or
40 immediately preceding (~~tax~~) calendar year plus nonemployee

1 compensation paid to representative third parties in this state.
2 Nonemployee compensation paid to representative third parties
3 includes the gross amount paid to nonemployees who represent the
4 taxpayer in interactions with the taxpayer's clients and includes
5 sales commissions.

6 (b) Employee compensation is paid in this state if the
7 compensation is properly reportable to this state for unemployment
8 compensation tax purposes, regardless of whether the compensation was
9 actually reported to this state.

10 (c) Nonemployee compensation is paid in this state if the service
11 performed by the representative third party occurs entirely or
12 primarily within this state.

13 (d) For purposes of this subsection, "compensation" means wages,
14 salaries, commissions, and any other form of remuneration paid to
15 employees or nonemployees and defined as gross income under 26 U.S.C.
16 Sec. 61 of the federal internal revenue code of 1986, as existing on
17 June 1, 2010.

18 (4) Receipts counting toward the thresholds in subsection
19 (1)(c)(iii) and (iv) of this section are:

20 (a) Those amounts included in the numerator of the receipts
21 factor under RCW 82.04.462;

22 (b) For financial institutions, those amounts included in the
23 numerator of the receipts factor under the rule adopted by the
24 department as authorized in RCW 82.04.460(2); and

25 (c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or
26 82.04.270 (~~((with respect to wholesale sales))~~), the gross proceeds of
27 sales taxable under those statutory provisions and sourced to this
28 state in accordance with RCW 82.32.730.

29 (5)(a) Each December, the department must review the cumulative
30 percentage change in the consumer price index. The department must
31 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
32 section if the consumer price index has changed by five percent or
33 more since the later of June 1, 2010, or the date that the thresholds
34 were last adjusted under this subsection. For purposes of determining
35 the cumulative percentage change in the consumer price index, the
36 department must compare the consumer price index available as of
37 December 1st of the current year with the consumer price index as of
38 the later of June 1, 2010, or the date that the thresholds were last
39 adjusted under this subsection. The thresholds must be adjusted to
40 reflect that cumulative percentage change in the consumer price

1 index. The adjusted thresholds must be rounded to the nearest one
2 thousand dollars. Any adjustment will apply to tax periods that begin
3 after the adjustment is made.

4 (b) As used in this subsection, "consumer price index" means the
5 consumer price index for all urban consumers (CPI-U) available from
6 the bureau of labor statistics of the United States department of
7 labor.

8 (6)(a)(i) Except as provided in (a)(iii) of this subsection (6),
9 subsections (1) through (5) of this section only apply with respect
10 to the taxes on persons engaged in apportionable activities as
11 defined in RCW 82.04.460 or making wholesale sales taxable under RCW
12 82.04.257(1) or 82.04.270.

13 (ii) Subject to the limitation in RCW 82.32.531, for purposes of
14 the taxes imposed under this chapter on ((any)) the business of
15 making sales at retail or any other activity not included in the
16 definition of apportionable activities in RCW 82.04.460, other than
17 the business of making wholesale sales taxed under RCW 82.04.257(1)
18 or 82.04.270, ((except as provided in RCW 82.32.531,)) a person is
19 deemed to have a substantial nexus with this state if the person has
20 a physical presence in this state during the ((tax)) current or
21 immediately preceding calendar year, which need only be demonstrably
22 more than a slightest presence.

23 (iii) For purposes of the taxes imposed under this chapter on the
24 business of making sales at retail taxable under RCW 82.04.250(1) or
25 82.04.257(1), a person is also deemed to have a substantial nexus
26 with this state if the person's receipts from this state, pursuant to
27 subsection (4)(c) of this section, meet either criterion in
28 subsection (1)(c)(iii) or (iv) of this section, as adjusted under
29 subsection (5) of this section.

30 (b) For purposes of this subsection, a person is physically
31 present in this state if the person has property or employees in this
32 state.

33 (c)(i) A person is also physically present in this state for the
34 purposes of this subsection if the person, either directly or through
35 an agent or other representative, engages in activities in this state
36 that are significantly associated with the person's ability to
37 establish or maintain a market for its products in this state.

38 (ii) A remote seller as defined in RCW 82.08.052 is presumed to
39 be engaged in activities in this state that are significantly
40 associated with the remote seller's ability to establish or maintain

1 a market for its products in this state if the remote seller is
2 presumed to have a substantial nexus with this state under RCW
3 82.08.052. The presumption in this subsection (6)(c)(ii) may be
4 rebutted as provided in RCW 82.08.052. To the extent that the
5 presumption in RCW 82.08.052 is no longer operative pursuant to RCW
6 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer
7 operative. (~~Nothing in this section may be construed to affect in~~
8 ~~any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow~~
9 ~~the scope of the terms "agent" or "other representative" in this~~
10 ~~subsection (6)(c).)~~)

11 **Sec. 303.** RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each
12 amended to read as follows:

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

19 (2)(a) A person who has a substantial nexus with this state in
20 (~~any tax year under the provisions of RCW 82.04.067 will be deemed~~
21 ~~to have a substantial nexus with this state for the following tax~~
22 ~~year)) the current calendar year under the provisions of RCW
23 82.04.067, based solely on the person's property, payroll, or
24 receipts in this state during the current calendar year, is subject
25 to the tax imposed under this chapter for the current calendar year
26 only on business activity occurring on and after the date that the
27 person established a substantial nexus with this state in the current
28 calendar year.~~

29 (b) This subsection (2) does not apply to any person who also had
30 a substantial nexus with this state during:

31 (i) The immediately preceding calendar year under RCW 82.04.067;
32 or

33 (ii) The current calendar year under RCW 82.04.067 (1)(a) or (b)
34 or (6)(a)(ii) or (c).

35 NEW SECTION. **Sec. 304.** RCW 82.04.424 (Exemptions—Certain in-
36 state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are
37 each repealed.

1 Part IV

2 Eliminate Streamlined Sales Tax Mitigation to Local Governments

3 Sec. 401. RCW 82.14.495 and 2010 1st sp.s. c 37 s 952 are each
4 amended to read as follows:

5 (1) The streamlined sales and use tax mitigation account is
6 created in the state treasury. Through July 1, 2019, the state
7 treasurer (~~shall~~) must transfer into the account from the general
8 fund amounts as directed in RCW 82.14.500. Expenditures from the
9 account may be used only for the purpose of mitigating the negative
10 fiscal impacts to local taxing jurisdictions as a result of RCW
11 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW
12 82.14.020. (~~During the 2009-2011 fiscal biennium, the legislature
13 may transfer from the streamlined sales and use tax mitigation
14 account to the state general fund such amounts as reflect the excess
15 fund balance of the account.~~)

16 (2) Beginning July 1, 2008, through September 30, 2019, the state
17 treasurer, as directed by the department, (~~shall~~) must distribute
18 the funds in the streamlined sales and use tax mitigation account to
19 local taxing jurisdictions in accordance with RCW 82.14.500.

20 (3) The definitions in this subsection apply throughout this
21 section and RCW 82.14.390 and 82.14.500 unless the context clearly
22 requires otherwise.

23 (a) "Agreement" means the same as in RCW 82.32.020.

24 (b) "Local taxing jurisdiction" means through June 30, 2017,
25 counties, cities, transportation authorities under RCW 82.14.045,
26 public facilities districts under chapters 36.100 and 35.57 RCW,
27 public transportation benefit areas under RCW 82.14.440, and regional
28 transit authorities under chapter 81.112 RCW, that impose a sales and
29 use tax. Beginning July 1, 2017, "local taxing jurisdiction" means
30 cities, counties, and public facilities districts under chapters
31 36.100 and 35.57 RCW.

32 (c) "Loss" or "losses" means the local sales and use tax revenue
33 reduction to a local taxing jurisdiction resulting from the sourcing
34 provisions in RCW 82.14.490 and the chapter 6, Laws of 2007
35 amendments to RCW 82.14.020.

36 (d) "Marketplace facilitator/remote seller revenue" means the
37 local sales and use tax revenue gain, including taxes voluntarily
38 remitted and taxes collected from consumers, to each local taxing

1 jurisdiction from part II of this act as estimated by the department
2 in RCW 82.14.500(6).

3 (e) "Net loss" or "net losses" means a loss offset by any
4 voluntary compliance revenue and marketplace facilitator/remote
5 seller revenue.

6 ~~((e))~~ (f) "Voluntary compliance revenue" means the local sales
7 tax revenue gain to each local taxing jurisdiction reported to the
8 department from persons registering through the central registration
9 system authorized under the agreement.

10 ~~((f))~~ (g) "Working day" has the same meaning as in RCW
11 82.45.180.

12 **Sec. 402.** RCW 82.14.500 and 2011 1st sp.s. c 50 s 974 are each
13 amended to read as follows:

14 ~~(1)((a))~~ In order to mitigate local sales tax revenue net
15 losses as a result of the sourcing provisions of the streamlined
16 sales and use tax agreement under this title, the state treasurer, on
17 July 1, 2011, and each July 1st thereafter through July 1, 2019, must
18 transfer into the streamlined sales and use tax mitigation account
19 from the general fund the sum required to mitigate actual net losses
20 as determined under this section.

21 ~~((b) During the 2011-2013 fiscal biennium, the amount that would~~
22 ~~otherwise be transferred under (a) of this subsection must be reduced~~
23 ~~by 3.4 percent.))~~

24 (2) Beginning July 1, 2008, and continuing until the department
25 determines annual losses under subsection (3) of this section, the
26 department must determine the amount of local sales tax net loss each
27 local taxing jurisdiction experiences as a result of the sourcing
28 provisions of the streamlined sales and use tax agreement under this
29 title each calendar quarter. The department must determine losses by
30 analyzing and comparing data from tax return information and tax
31 collections for each local taxing jurisdiction before and after July
32 1, 2008, on a calendar quarter basis. The department's analysis may
33 be revised and supplemented in consultation with the oversight
34 committee as provided in subsection (4) of this section. To determine
35 net losses, the department must reduce losses by the amount of
36 voluntary compliance revenue for the calendar quarter analyzed.
37 Beginning December 31, 2008, distributions must be made quarterly
38 from the streamlined sales and use tax mitigation account by the
39 state treasurer, as directed by the department, to each local taxing

1 jurisdiction, other than public facilities districts for losses in
2 respect to taxes imposed under the authority of RCW 82.14.390, in an
3 amount representing its net losses for the previous calendar quarter.
4 Distributions must be made on the last working day of each calendar
5 quarter and must cease when distributions under subsection (3) of
6 this section begin.

7 (3)(a) By December 31, 2009, or such later date the department in
8 consultation with the oversight committee determines that sufficient
9 data is available, the department must determine each local taxing
10 jurisdiction's annual loss. The department must determine annual
11 losses by comparing at least twelve months of data from tax return
12 information and tax collections for each local taxing jurisdiction
13 before and after July 1, 2008. The department is not required to
14 determine annual losses on a recurring basis, but may make any
15 adjustments to annual losses as it deems proper as a result of the
16 annual reviews provided in (b) of this subsection. Beginning the
17 calendar quarter in which the department determines annual losses,
18 and each calendar quarter thereafter through September 30, 2019,
19 distributions must be made from the streamlined sales and use tax
20 mitigation account by the state treasurer on the last working day of
21 the calendar quarter, as directed by the department, to each local
22 taxing jurisdiction, other than public facilities districts for
23 losses in respect to taxes imposed under the authority of RCW
24 82.14.390, in an amount representing one-fourth of the jurisdiction's
25 annual loss reduced by voluntary compliance revenue reported during
26 the previous calendar quarter and marketplace facilitator/remote
27 seller revenue reported during the previous calendar quarter.

28 (b) The department's analysis of annual losses must be reviewed
29 by December 1st of each year and may be revised and supplemented in
30 consultation with the oversight committee as provided in subsection
31 (4) of this section.

32 (4) The department must convene an oversight committee to assist
33 in the determination of losses. The committee includes one
34 representative of one city whose revenues are increased, one
35 representative of one city whose revenues are reduced, one
36 representative of one county whose revenues are increased, one
37 representative of one county whose revenues are decreased, one
38 representative of one transportation authority under RCW 82.14.045
39 whose revenues are increased, and one representative of one
40 transportation authority under RCW 82.14.045 whose revenues are

1 reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007
2 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight
3 committee must meet quarterly with the department to review and
4 provide additional input and direction on the department's analyses
5 of losses. Local taxing jurisdictions may also present to the
6 oversight committee additional information to improve the
7 department's analyses of the jurisdiction's loss. Beginning January
8 1, 2010, the oversight committee must meet at least annually with the
9 department by December 1st.

10 (5) The rule-making provisions of chapter 34.05 RCW do not apply
11 to this section.

12 (6)(a) As a result of part II of this act, local sales and use
13 tax revenue is anticipated to increase due to additional tax
14 remittance by marketplace facilitators, remote sellers, and
15 consumers. This additional revenue will further mitigate the losses
16 that resulted from the sourcing provisions of the streamlined sales
17 and use tax agreement under this title and should be reflected in
18 mitigation payments to negatively impacted local jurisdictions.

19 (b) Beginning January 1, 2018, and continuing through September
20 30, 2019, the department must determine the increased sales and use
21 tax revenue each local taxing jurisdiction experiences from
22 marketplace facilitator/remote seller revenue as a result of sections
23 201 through 213 of this act each calendar quarter. The department
24 must convene the mitigation advisory committee before January 1,
25 2018, to receive input on the determination of marketplace
26 facilitator/remote seller revenue. Beginning with distributions made
27 after March 31, 2018, distributions from the streamlined sales and
28 use tax mitigation account by the state treasurer, as directed by the
29 department, to each local taxing jurisdiction, must be reduced by the
30 amount of its marketplace facilitator/remote seller revenue reported
31 during the previous calendar quarter. No later than December 1, 2019,
32 the department will determine the total marketplace facilitator/
33 remote seller revenue for each local taxing jurisdiction for
34 reporting periods beginning January 1, 2018, through reporting
35 periods ending June 30, 2019. If the total distribution made from the
36 streamlined sales and use tax mitigation account to a local taxing
37 jurisdiction was not fully reduced by its total amount of marketplace
38 facilitator/remote seller revenue for reporting periods beginning
39 January 1, 2018, through reporting periods ending June 30, 2019, the
40 department must reduce the local taxing jurisdiction's distribution

1 of local sales and use tax under RCW 82.14.060 by the excess amount
2 received.

3 NEW SECTION. Sec. 403. (1)(a) Monthly, the state treasurer must
4 distribute from the local sales and use tax account to the counties,
5 cities, transportation authorities, public facilities districts, and
6 transportation benefit districts the amount of tax collected on
7 behalf of each taxing authority, less:

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

9 (ii) The amount of any refunds of local sales and use taxes
10 exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565,
11 82.08.025661, or 82.12.025661, which must be made without
12 appropriation; and

13 (iii) The deduction required under RCW 82.14.500.

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

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

21 NEW SECTION. Sec. 404. The following acts or parts of acts, as
22 now existing or hereafter amended, are each repealed, effective
23 October 1, 2019:

24 (1) RCW 82.14.495 (Streamlined sales and use tax mitigation
25 account—Creation) and 2017 3rd sp.s. c . . . s 401 (section 401 of
26 this act), 2010 1st sp.s. c 37 s 952, 2009 c 4 s 907, & 2007 c 6 s
27 902;

28 (2) RCW 82.14.500 (Streamlined sales and use tax mitigation
29 account—Funding—Determination of losses) and 2017 3rd sp.s. c . . .
30 s 402 (section 402 of this act), 2011 1st sp.s. c 50 s 974, & 2007 c
31 6 s 903; and

32 (3) 2017 3rd sp.s. c . . . s 403 (uncodified) (section 403 of
33 this act).

34 **Part V**
35 **Miscellaneous Provisions**

1 NEW SECTION. **Sec. 501.** Sections 204 through 208 of this act
2 constitute a new chapter in Title 82 RCW.

3 NEW SECTION. **Sec. 502.** This act does not affect any existing
4 right acquired or liability or obligation incurred under the sections
5 amended or repealed or under any rule or order adopted under those
6 sections, nor does it affect any proceeding instituted under those
7 sections.

8 NEW SECTION. **Sec. 503.** (1) If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 (2) If the department of revenue is prevented from enforcing
13 chapter 82.08 or 82.12 RCW against persons without a physical
14 presence in this state because any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 department of revenue must impose such provisions to the fullest
17 extent allowed under the Constitution and laws of the United States.

18 NEW SECTION. **Sec. 504.** The tax collection, reporting, and
19 payment obligations imposed by this act apply prospectively only.

20 NEW SECTION. **Sec. 505.** (1) Except as otherwise provided in this
21 section, this act is necessary for the immediate preservation of the
22 public peace, health, or safety, or support of the state government
23 and its existing public institutions, and takes effect immediately.

24 (2) Part I of this act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect August 1, 2017.

28 (3) Section 213 of this act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect July 23, 2017.

32 (4) Part III of this act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of
34 the state government and its existing public institutions, and takes
35 effect July 1, 2017.

1 NEW SECTION. **Sec. 506.** Section 212 of this act expires July 23,
2 2017.

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