
SENATE BILL 5856

State of Washington

65th Legislature

2017 Regular Session

By Senators Hobbs, Mullet, and Takko

1 AN ACT Relating to adopting retail sale nexus standards to
2 require sales tax collection by remote sellers in order to fund
3 safety net programs; amending RCW 82.04.066, 82.04.067, 82.04.220,
4 82.08.050, 82.08.052, 82.12.040, 82.32.762, and 82.32.045; adding new
5 sections to chapter 82.08 RCW; adding new sections to chapter 82.32
6 RCW; adding a new section to chapter 74.04 RCW; adding a new chapter
7 to Title 82 RCW; creating new sections; repealing RCW 82.04.424;
8 prescribing penalties; providing an effective date; and declaring an
9 emergency.

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

11 **Part I**
12 **Findings and Intent**

13 NEW SECTION. **Sec. 101.** (1) The legislature finds that states
14 fail to collect more than twenty-three billion dollars annually in
15 sales taxes from remote sales over the internet and through
16 catalogues. The legislature further finds that Washington and its
17 local governments will lose out on an estimated three hundred fifty-
18 three million dollars in sales and use taxes in fiscal year 2018 from
19 remote sales, reducing funds that would otherwise be available for

1 the public education system, health care services, infrastructure,
2 and other vital public services.

3 (2) The legislature recognizes that states may not impose sales
4 or use tax collection obligations on an out-of-state business unless
5 the business has a substantial nexus with the taxing state. The
6 legislature also recognizes that under the United States supreme
7 court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*,
8 386 U.S. 753 (1967), substantial nexus under the commerce clause
9 requires a physical presence by the seller in the taxing state.
10 Relying on the doctrine of stare decisis, the United States supreme
11 court reaffirmed the physical presence nexus standard twenty-five
12 years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

13 (3) The legislature further finds that the basis of the physical
14 presence nexus standard was primarily justified by the complexity and
15 burden on mail order sellers and other out-of-state sellers in
16 complying with the sales tax laws in numerous jurisdictions at the
17 state and local level all across the country. The legislature further
18 finds that the supreme court's concerns underlying the *Bellas Hess*
19 decision have been effectively addressed by advances in technology
20 and simplified tax laws. For example, Washington and most other
21 states with sales taxes allow or require electronic reporting and
22 payment of the tax. Also, several states, including Washington, offer
23 free online sales tax rate lookup tools. A number of private
24 companies offer automated sales tax compliance solutions. In
25 addition, sales tax laws have been simplified in many states,
26 including Washington, through participation in the streamlined sales
27 and use tax project and compliance with the streamlined sales and use
28 tax agreement.

29 (4) The legislature further finds that *Bellas Hess* was decided
30 one year before the first plans were developed for the computer
31 network that became the basis of the internet. The legislature
32 further finds that since *Quill* was decided e-commerce has grown
33 substantially, generating retail sales of over three hundred forty-
34 one billion dollars in 2015, which have been growing at a rate of
35 about fifteen percent for the last five years. The legislature
36 further finds that like their brick and mortar competitors, online
37 businesses receive benefits and opportunities provided by their
38 market states, such as transportation networks, infrastructure, laws
39 providing protection of business interests, access to the courts to
40 protect valuable rights, and a regulated marketplace. However, the

1 legislature finds that under the current physical presence nexus
2 standard, online only sellers have an unfair competitive advantage
3 over in state brick and mortar stores to the detriment of main street
4 retailers. Online only businesses have no geographical limitations to
5 their marketplace; no costs of maintaining local physical retail
6 stores, such as infrastructure costs, employee costs, and property
7 taxes; and may not have to collect sales tax on sales to customers in
8 states in which they do not have a physical presence, all of which
9 lead to their ability to price their goods at a lower cost to
10 consumers. The legislature further finds that even if the physical
11 presence nexus standard was once a wise rule of law, it is no longer
12 justifiable.

13 (5) The legislature further finds that the supreme court in its
14 *Quill* decision implicitly invited the United States congress to
15 resolve whether and to what extent states may impose a sales tax
16 collection obligation on remote sellers. The legislature further
17 finds that there is overwhelming support among the public, states,
18 and municipalities, and many national and local associations
19 representing brick and mortar businesses for federal legislation
20 requiring remote sellers to collect and remit retail sales tax. The
21 legislature further finds that despite such broad-based support,
22 congress has failed to enact such legislation.

23 (6) The legislature agrees with Justice Kennedy's concurring
24 opinion in the *Direct Marketing Association v. Brohl* decision (135 S.
25 Ct. 1124) that the court's *Quill* holding is "inflicting extreme harm
26 and unfairness on the States," and that "[t]here is a powerful case
27 to be made that a retailer doing extensive business within a State
28 has a sufficiently 'substantial nexus' to justify imposing some minor
29 tax-collection duty, even if that business is done through mail or
30 the Internet." Justice Kennedy stated that "it is unwise to delay any
31 longer a reconsideration of the Court's holding in *Quill*," and he
32 closed his opinion by inviting a direct challenge to *Quill* and *Bellas*
33 *Hess*, saying that "[t]he legal system should find an appropriate case
34 for this Court to reexamine *Quill* and *Bellas Hess*."

35 (7) The legislature finds that because Washington is unique in
36 that it relies so heavily on sales tax to fund education and other
37 vital state services, and because Washington has frequently been at
38 the forefront of advancing technology and tax policy, it is incumbent
39 upon this state to lead the way to a more fair and equitable modern
40 marketplace where online businesses and brick and mortar businesses

1 can compete based on quality of products and other nontax factors,
2 which benefits all consumers. The legislature recognizes that the
3 fast pace of technological change seen with the rapid growth of
4 electronic commerce puts pressure on states to update their tax codes
5 just as this state did (a) in 2007 in adopting Senate Bill No. 5089,
6 which enacted significant simplifications in sales and use
7 administration and brought Washington into full compliance with the
8 streamlined sales and use tax agreement, (b) in 2009 in adopting
9 Engrossed Substitute House Bill No. 2075 addressing the excise
10 taxation of digital products, and (c) in 2010 in adopting economic
11 nexus and market-based apportionment for business and occupation tax
12 purposes in Second Engrossed Substitute Senate Bill No. 6143. The
13 legislature finds that making such changes is not radical or to be
14 unexpected, but is a rational means to avoid an ever shrinking tax
15 base resulting from an outdated tax code that has not kept up with
16 significant changes in technology and the economy.

17 (8) The legislature finds that several states, including Alabama,
18 South Dakota, and Tennessee have taken measures to adopt an "economic
19 nexus" standard with respect to the collection of sales tax. The
20 legislature further finds that other states are considering adopting
21 similar rules or legislation.

22 (9) The legislature also finds that Colorado adopted a law
23 requiring out-of-state retailers that do not collect Colorado's sales
24 tax to report tax-related information to their Colorado customers and
25 the Colorado department of revenue. The legislature further finds
26 that in 2016 the United States court of appeals for the tenth circuit
27 upheld that law.

28 (10) Therefore, the legislature intends by this act to address
29 the significant harm and unfairness brought about by the physical
30 presence nexus rule by testing the boundaries of the rule. This act
31 also sets up a legal challenge to the physical presence nexus rule
32 that could potentially lead to the United States supreme court
33 reevaluating *Bellas Hess* and *Quill* or congress enacting legislation
34 authorizing and establishing the requirements for states to impose a
35 sales tax collection duty on remote sellers. To achieve these
36 objectives, part II of this act establishes clear statutory
37 guidelines for determining when sellers are required to collect
38 Washington's sales tax. These guidelines clarify the extent of the
39 traditional physical presence standard and also adopt an "economic
40 nexus" standard under which a remote seller would establish a

1 substantial nexus with this state solely by making a meaningful
2 amount of sales into this state. Part II of this act also extends the
3 economic nexus standard for the business and occupation tax imposed
4 on retail sales taxed under RCW 82.04.250(1) and 82.04.257(1). Part
5 III of this act adopts a sales and use tax notice and reporting law
6 based on the multistate tax commission's draft model sales and use
7 tax notice reporting statute, which is similar to Colorado's sales
8 and use tax notice reporting law.

9 (11) The legislature recognizes that the enactment of part II of
10 this act places remote sellers in a complicated position, precisely
11 because existing constitutional doctrine calls certain provisions of
12 part II of this act into question. Accordingly, the legislature
13 intends to clarify that the obligations created by this law on
14 sellers with a substantial nexus with this state under section
15 206(1)(b) of this act would be appropriately stayed by the courts
16 until the constitutionality of section 206(1)(b) of this act has been
17 clearly established by a binding judgment, including, for example, a
18 decision from the supreme court of the United States abrogating its
19 existing doctrine, or a final judgment applicable to a particular
20 taxpayer.

21 (12) The legislature finds that the declaratory judgment action
22 authorized in section 211 of this act is warranted by existing law,
23 by good faith arguments for the extension, modification, or reversal
24 of existing law, or the establishment of new law.

25 Part II

26 Nexus for Excise Tax Purposes

27 **Sec. 201.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each
28 amended to read as follows:

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

1 **Sec. 202.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

37 (c) The average value of property must be determined by averaging
38 the values at the beginning and ending of the (~~tax~~) applicable
39 calendar year; but the department may require the averaging of
40 monthly values during the (~~tax~~) applicable calendar year if

1 reasonably required to properly reflect the average value of the
2 taxpayer's property.

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

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

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

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

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

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

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

39 (3)(a) Payroll counting toward the thresholds in subsection
40 (1)(c)(ii) and (iv) of this section is the total amount paid by the

1 taxpayer for compensation in this state during the immediately
2 preceding tax year plus nonemployee compensation paid to
3 representative third parties in this state. Nonemployee compensation
4 paid to representative third parties includes the gross amount paid
5 to nonemployees who represent the taxpayer in interactions with the
6 taxpayer's clients and includes sales commissions.

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

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

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

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

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

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

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

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

1 reflect that cumulative percentage change in the consumer price
2 index. The adjusted thresholds must be rounded to the nearest one
3 thousand dollars. Any adjustment will apply to tax periods that begin
4 after the adjustment is made.

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

9 (6)(a)(i) Except as provided in (a)(iii) of this subsection (6),
10 subsections (1) through (5) of this section only apply with respect
11 to the taxes on persons engaged in apportionable activities as
12 defined in RCW 82.04.460 or making wholesale sales taxable under RCW
13 82.04.257(1) or 82.04.270.

14 (ii) Subject to the limitation in RCW 82.32.531, for purposes of
15 the taxes imposed under this chapter on ((any)) the business of
16 making sales at retail or any other activity not included in the
17 definition of apportionable activities in RCW 82.04.460, other than
18 the business of making wholesale sales taxed under RCW 82.04.257(1)
19 or 82.04.270, ((except as provided in RCW 82.32.531,)) a person is
20 deemed to have a substantial nexus with this state if the person has
21 a physical presence in this state during the tax year, which need
22 only be demonstrably 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. 203.** 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 a tax for the act or privilege of
15 engaging in business activities. The tax is measured by the
16 application of rates against value of products, gross proceeds of
17 sales, or gross income of the business, as the case may be.

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

28 (b) This subsection (2) does not apply to any person who also had
29 a substantial nexus with this state (i) during the immediately
30 preceding calendar year under RCW 82.04.067, or (ii) during the
31 current calendar year under RCW 82.04.067 (1) (a) or (b) or (6)
32 (a)(ii) or (c).

33 NEW SECTION. **Sec. 204.** RCW 82.04.424 (Exemptions—Certain in-
34 state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are
35 each repealed.

1 NEW SECTION. **Sec. 205.** A new section is added to chapter 82.08
2 RCW to be codified between RCW 82.08.050 and 82.08.052 to read as
3 follows:

4 A seller with a substantial nexus with this state must comply
5 with the provisions of this chapter.

6 NEW SECTION. **Sec. 206.** A new section is added to chapter 82.08
7 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as
8 follows:

9 (1) A seller has a substantial nexus with this state during a
10 calendar year for the purposes of collecting the taxes imposed under
11 this chapter if, during the current or immediately preceding calendar
12 year:

13 (a) The seller had its property or employees in this state for
14 the seller's business purposes; or

15 (b) The seller's receipts from retail sales in this state,
16 pursuant to RCW 82.04.067(4), meet either criterion in RCW
17 82.04.067(1)(c) (iii) or (iv), as adjusted under RCW 82.04.067(5).

18 (2) A seller also has a substantial nexus with this state during
19 a calendar year for the purposes of collecting the taxes imposed
20 under this chapter if the seller's total gross proceeds of sales at
21 retail sourced to this state under RCW 82.32.730 exceed ten thousand
22 dollars during the current or immediately preceding calendar year and
23 at any time during such current or immediately preceding calendar
24 year:

25 (a)(i) The seller offers its products for sale through one or
26 more marketplaces operated by any marketplace facilitator that has a
27 substantial nexus with this state; or

28 (ii) The seller or another person, as the case may be, including
29 an affiliated person, other than a common carrier acting solely as a
30 common carrier, engages in or performs any of the following
31 activities in this state, but not including the activities described
32 in RCW 82.08.052:

33 (A) Sells a similar line of products as the seller and does so
34 under the same business name as the seller or a similar business name
35 as the seller;

36 (B) Uses its employees, agents, representatives, or independent
37 contractors in this state to promote or facilitate sales by the
38 seller to purchasers in this state;

1 (C) Maintains, occupies, or uses an office, distribution
2 facility, warehouse, storage place, or similar place of business in
3 this state to facilitate the delivery or sale of tangible personal
4 property sold by the seller to the seller's purchasers in this state;

5 (D) Uses, with the seller's consent or knowledge, trademarks,
6 service marks, or trade names in this state that are the same or
7 substantially similar to those used by the seller;

8 (E) Delivers, installs, assembles, or performs maintenance or
9 repair services for the seller's purchasers in this state;

10 (F) Facilitates the sale of tangible personal property to
11 purchasers in this state by allowing the seller's purchasers in this
12 state to pick up or return tangible personal property sold by the
13 seller at an office, distribution facility, warehouse, storage place,
14 or any other place of business maintained by that person in this
15 state;

16 (G) Shares management, business systems, business practices, or
17 employees with the seller or, in the case of an affiliated person,
18 engages in intercompany transactions related to the activities
19 occurring with the seller to establish or maintain the seller's
20 market in this state; or

21 (H) Conducts any other activities in this state that are
22 significantly associated with the seller's ability to establish and
23 maintain a market in this state for the seller's sales of products to
24 purchasers in this state; or

25 (b)(i) The seller is under contract with a payment processor or
26 merchant bank, or accepts credit cards issued either by a financial
27 institution under a license from a credit card association or by an
28 entity that also authorizes purchases and settles with consumers and
29 merchants, if the payment processor, merchant bank, credit card
30 association, or credit card issuer has a substantial nexus with this
31 state for purposes of collecting the taxes imposed under this
32 chapter.

33 (ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose
34 the identity of payment processors, credit card associations, credit
35 card issuers described in (b)(i) of this subsection (2), and merchant
36 banks that have a substantial nexus with this state for purposes of
37 collecting the taxes imposed under this chapter.

38 (3)(a) For purposes of subsection (2)(a)(i) of this section, a
39 marketplace facilitator is deemed to have a substantial nexus with
40 this state during a calendar year if:

1 (i) The marketplace facilitator or any affiliated person
2 maintained a physical presence in this state during any portion of
3 the current or immediately preceding calendar year to engage in any
4 of the activities described in subsection (5)(a)(i) or (ii) of this
5 section; or

6 (ii) The marketplace facilitator generated more than ten thousand
7 dollars of gross proceeds of sales in the current or immediately
8 preceding calendar year from retail sales made through its physical
9 or electronic marketplace by sellers that are physically located in
10 this state. For purposes of this subsection (3)(a)(ii), a seller is
11 presumed to be physically located in this state if the address for
12 the seller maintained in the business records of the marketplace
13 facilitator is in this state.

14 (b) Pursuant to RCW 82.32.330(3)(u), the department may disclose
15 the identity of marketplace facilitators that have a substantial
16 nexus with this state for purposes of collecting the taxes imposed
17 under this chapter.

18 (4) For purposes of this section, persons are "affiliated
19 persons" with respect to each other where one of the persons has an
20 ownership interest of more than five percent, whether direct or
21 indirect, in the other, or where an ownership interest of more than
22 five percent, whether direct or indirect, is held in each of the
23 persons by another person or by a group of other persons who are
24 affiliated with respect to each other.

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

27 (a) "Marketplace facilitator" means a person that contracts with
28 sellers to facilitate, for consideration, the sale of the seller's
29 products through a physical or electronic marketplace operated by the
30 person, and engages, either directly or indirectly, through one or
31 more affiliated persons, in:

32 (i) Any of the following:

33 (A) Transmitting or otherwise communicating the offer or
34 acceptance between the buyer and seller;

35 (B) Owning or operating the infrastructure, electronic or
36 physical, or technology that brings buyers and sellers together;

37 (C) Providing a virtual currency that buyers are allowed or
38 required to use to purchase products from the seller; or

39 (D) Software development or research and development activities
40 related to any of the activities described in (a)(i)(A) through (C)

1 or (ii)(A) through (H) of this subsection (5), if such activities are
2 directly related to a physical or electronic marketplace operated by
3 the person or an affiliated person; and

4 (ii) Any of the following activities with respect to the seller's
5 products:

6 (A) Payment processing services;

7 (B) Fulfillment or storage services;

8 (C) Listing products for sale;

9 (D) Setting prices;

10 (E) Branding sales as those of the marketplace facilitator;

11 (F) Order taking;

12 (G) Advertising or promotion; or

13 (H) Providing customer service or accepting or assisting with
14 returns or exchanges.

15 (b) "Merchant bank" means a financial institution or any other
16 member of a credit card network that allows the seller to accept
17 credit card payments and is responsible for depositing transaction
18 proceeds into the seller's designated account.

19 (c) "Payment processor" means a person that contracts directly
20 with a seller to provide settlement for the seller's credit card,
21 debit card, or other payment transactions.

22 (d) "Product" means any property or service that is sold in a
23 sale at retail as defined in RCW 82.04.050.

24 (6) This section is subject to RCW 82.32.762.

25 NEW SECTION. **Sec. 207.** A new section is added to chapter 82.08
26 RCW to be codified between section 206 of this act and RCW 82.08.054
27 to read as follows:

28 (1) For purposes of this chapter, a marketplace facilitator is
29 deemed to be an agent of any marketplace seller making retail sales
30 through the marketplace facilitator's physical or electronic
31 marketplace. A marketplace facilitator with a substantial nexus with
32 this state must collect and remit to the department the taxes imposed
33 under this chapter on all taxable retail sales made through the
34 marketplace facilitator's marketplace and sourced to this state under
35 RCW 82.32.730, whether as principal or as the agent of a marketplace
36 seller.

37 (2) A marketplace facilitator is relieved of liability under this
38 chapter for failure to collect the correct amount of tax to the
39 extent that the marketplace facilitator can show to the department's

1 satisfaction that the error was due to incorrect information given to
2 the marketplace facilitator by the marketplace seller, unless the
3 marketplace facilitator and marketplace seller are affiliated
4 persons. Where the marketplace facilitator is relieved of liability
5 under this subsection (2), the marketplace seller is solely liable
6 for the amount of uncollected tax due.

7 (3)(a) A marketplace facilitator is relieved of liability under
8 this chapter for the failure to collect tax on taxable retail sales
9 to the extent that the marketplace facilitator can show to the
10 department's satisfaction that:

11 (i) The taxable retail sale was made through the marketplace
12 facilitator's marketplace;

13 (ii) The taxable retail sale was made solely as the agent of a
14 marketplace seller, and the marketplace facilitator and marketplace
15 seller are not affiliated persons; and

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

18 (b) Where the marketplace facilitator is relieved of liability
19 under this subsection (3), the marketplace seller is also relieved of
20 liability for the amount of uncollected tax due, subject to the
21 limitations in subsection (4) of this section.

22 (4) A marketplace seller with a substantial nexus with this state
23 is relieved of its obligation to collect the taxes imposed under this
24 chapter on all taxable retail sales through a marketplace operated by
25 a marketplace facilitator if the marketplace seller has obtained
26 documentation from the marketplace facilitator indicating that the
27 marketplace facilitator is registered with the department and will
28 collect all applicable taxes due under this chapter on all taxable
29 retail sales made on behalf of the marketplace seller through the
30 marketplace operated by the marketplace facilitator. The
31 documentation required by this subsection (4) must be provided in a
32 form and manner prescribed by or acceptable to the department. This
33 subsection (4) does not relieve a marketplace seller from liability
34 for uncollected taxes due under this chapter resulting from a
35 marketplace facilitator's failure to collect the proper amount of tax
36 due when the error was due to incorrect information given to the
37 marketplace facilitator by the marketplace seller.

38 (5) Nothing in this section affects the obligation of any
39 purchaser to remit sales or use tax as to any applicable taxable

1 transaction in which the seller or the seller's agent does not
2 collect and remit sales tax.

3 (6) For purposes of this section, the following definitions
4 apply:

5 (a) "Affiliated person" has the same meaning as in section 206 of
6 this act.

7 (b) "Marketplace facilitator" has the same meaning as in section
8 206 of this act.

9 (c) "Marketplace seller" means a seller that makes retail sales
10 through any physical or electronic marketplace operated by a
11 marketplace facilitator, regardless of whether the seller is required
12 to be registered with the department as provided in RCW 82.32.030.

13 (7) This section is subject to RCW 82.32.762.

14 **Sec. 208.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to
15 read as follows:

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

21 (b) Sellers, including marketplace facilitators as defined in
22 section 206 of this act, establishing a substantial nexus with this
23 state during the current calendar year based solely on the provisions
24 of section 206 (1)(b), (2), or (3)(a)(ii) of this act, and who did
25 not have a substantial nexus with this state during the immediately
26 preceding calendar year for purposes of collecting the taxes imposed
27 under this chapter, must begin collecting state and local sales taxes
28 on taxable retail sales sourced to this state beginning on the first
29 day of the calendar month that is at least thirty days from the date
30 that the person established a substantial nexus with this state.

31 (2) The tax required by this chapter, to be collected by the
32 seller, is deemed to be held in trust by the seller until paid to the
33 department. Any seller who appropriates or converts the tax collected
34 to the seller's own use or to any use other than the payment of the
35 tax to the extent that the money required to be collected is not
36 available for payment on the due date as prescribed in this chapter
37 is guilty of a gross misdemeanor.

38 (3) Except as otherwise provided in this section, if any seller
39 fails to collect the tax imposed in this chapter or, having collected

1 the tax, fails to pay it to the department in the manner prescribed
2 by this chapter, whether such failure is the result of the seller's
3 own acts or the result of acts or conditions beyond the seller's
4 control, the seller is, nevertheless, personally liable to the state
5 for the amount of the tax.

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

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

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

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

19 (b) Washington provides an exemption certificate that clearly and
20 affirmatively indicates that the claimed exemption is not available
21 in Washington. Graying out exemption reason types on a uniform form
22 and posting it on the department's web site is a clear and
23 affirmative indication that the grayed out exemptions are not
24 available.

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

31 (b) If the seller has not obtained an exemption certificate or
32 all relevant data elements required under the streamlined sales and
33 use tax agreement within the period allowed subsequent to the date of
34 sale, the seller may, within one hundred twenty days, or a longer
35 period as may be provided by rule by the department, subsequent to a
36 request for substantiation by the department, either prove that the
37 transaction was not subject to tax by other means or obtain a fully
38 completed exemption certificate from the purchaser, taken in good
39 faith.

1 (c) Sellers are relieved from personal liability for the amount
2 of tax if they obtain a blanket exemption certificate for a purchaser
3 with which the seller has a recurring business relationship. The
4 department may not request from a seller renewal of blanket exemption
5 certificates or updates of exemption certificate information or data
6 elements if there is a recurring business relationship between the
7 buyer and seller. For purposes of this subsection (7)(c), a
8 "recurring business relationship" means at least one sale transaction
9 within a period of twelve consecutive months.

10 (d) Sellers are relieved from personal liability for the amount
11 of tax if they obtain a copy of a direct pay permit issued under RCW
12 82.32.087.

13 (8) The amount of tax, until paid by the buyer to the seller or
14 to the department, constitutes a debt from the buyer to the seller.
15 Any seller who fails or refuses to collect the tax as required with
16 intent to violate the provisions of this chapter or to gain some
17 advantage or benefit, either direct or indirect, and any buyer who
18 refuses to pay any tax due under this chapter is guilty of a
19 misdemeanor.

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

34 (10) Where a buyer has failed to pay to the seller the tax
35 imposed by this chapter and the seller has not paid the amount of the
36 tax to the department, the department may, in its discretion, proceed
37 directly against the buyer for collection of the tax. If the
38 department proceeds directly against the buyer for collection of the
39 tax as authorized in this subsection, the department may add a
40 penalty of ten percent of the unpaid tax to the amount of the tax due

1 for failure of the buyer to pay the tax to the seller, regardless of
2 when the tax may be collected by the department. In addition to the
3 penalty authorized in this subsection, all of the provisions of
4 chapter 82.32 RCW, including those relative to interest and
5 penalties, apply. For the sole purpose of applying the various
6 provisions of chapter 82.32 RCW, the twenty-fifth day of the month
7 following the tax period in which the purchase was made will be
8 considered as the due date of the tax.

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

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

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

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

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

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

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

28 ~~(13) For purposes of this section:)) The definitions in this~~
29 ~~subsection apply throughout this section unless the context clearly~~
30 ~~requires otherwise.~~

31 (a) "Exemption certificate" means documentation furnished by a
32 buyer to a seller to claim an exemption from sales tax. An exemption
33 certificate includes a reseller permit or other documentation
34 authorized in RCW 82.04.470 furnished by a buyer to a seller to
35 substantiate a wholesale sale; and

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

38 **Sec. 209.** RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each
39 amended to read as follows:

1 (1) For purposes of this chapter, a remote seller is presumed to
2 have a substantial nexus with this state and is obligated to collect
3 retail sales tax during the current calendar year if the remote
4 seller enters into an agreement with a resident of this state under
5 which the resident, for a commission or other consideration, directly
6 or indirectly refers potential customers, whether by a link on an
7 internet web site or otherwise, to the remote seller, if the
8 cumulative gross receipts from sales by the remote seller to
9 Washington customers (~~(in this state)~~) who are referred to the remote
10 seller by all residents with this type of an agreement with the
11 remote seller exceed ten thousand dollars during the current or
12 immediately preceding calendar year. This presumption may be rebutted
13 by proof that the resident with whom the remote seller has an
14 agreement did not engage in any solicitation in this state on behalf
15 of the remote seller that would satisfy the nexus requirement of the
16 United States Constitution during the calendar year in question.
17 Proof may be shown by (a) establishing, in a manner acceptable to the
18 department, that (i) each in-state person with whom the remote seller
19 has an agreement is prohibited from engaging in any solicitation
20 activities in this state that refer potential customers to the remote
21 seller, and (ii) such in-state person or persons have complied with
22 that prohibition; or (b) any other means as may be approved by the
23 department.

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

26 (a) "Remote seller" means a seller that makes retail sales in
27 this state through one or more agreements described in subsection (1)
28 of this section, and the seller's other physical presence in this
29 state, if any, is not sufficient to establish a retail sales or use
30 tax collection obligation under the commerce clause of the United
31 States Constitution.

32 (b) "Washington customer" means a purchaser of goods or services
33 that are received in this state by the purchaser or the purchaser's
34 donee. "Washington customer" also means a purchaser that provides a
35 seller with an address in this state during the consummation of the
36 sale, if the location where the goods or services are received by the
37 purchaser or the purchaser's donee is not known.

38 (3) (~~Nothing in this section may be construed to affect in any~~
39 ~~way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).~~

40 (~~4~~)) This section is subject to RCW 82.32.762.

1 **Sec. 210.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to
2 read as follows:

3 (1) Every person who (~~maintains in this state a place of~~
4 ~~business or a stock of goods, or engages in business activities~~
5 ~~within this state,~~) has a substantial nexus with this state based on
6 RCW 82.08.052 or section 206 of this act must obtain from the
7 department a certificate of registration, and must, at the time of
8 making sales of tangible personal property, digital goods, digital
9 codes, digital automated services, extended warranties, or sales of
10 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
11 or (6)(~~(b)~~) (c), or making transfers of either possession or title,
12 or both, of tangible personal property for use in this state, collect
13 from the purchasers or transferees the tax imposed under this
14 chapter. The tax to be collected under this section must be in an
15 amount equal to the purchase price multiplied by the rate in effect
16 for the retail sales tax under RCW 82.08.020. (~~For the purposes of~~
17 ~~this chapter, the phrase "maintains in this state a place of~~
18 ~~business" includes the solicitation of sales and/or taking of orders~~
19 ~~by sales agents or traveling representatives. For the purposes of~~
20 ~~this chapter, "engages in business activity within this state"~~
21 ~~includes every activity which is sufficient under the Constitution of~~
22 ~~the United States for this state to require collection of tax under~~
23 ~~this chapter. The department must in rules specify activities which~~
24 ~~constitute engaging in business activity within this state, and must~~
25 ~~keep the rules current with future court interpretations of the~~
26 ~~Constitution of the United States.~~)

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

37 (3) The tax required to be collected by this chapter is deemed to
38 be held in trust by the retailer until paid to the department, and
39 any retailer who appropriates or converts the tax collected to the
40 retailer's own use or to any use other than the payment of the tax

1 provided herein to the extent that the money required to be collected
2 is not available for payment on the due date as prescribed is guilty
3 of a misdemeanor. In case any seller fails to collect the tax herein
4 imposed or having collected the tax, fails to pay the same to the
5 department in the manner prescribed, whether such failure is the
6 result of the seller's own acts or the result of acts or conditions
7 beyond the seller's control, the seller is nevertheless personally
8 liable to the state for the amount of such tax, unless the seller has
9 taken from the buyer a copy of a direct pay permit issued under RCW
10 82.32.087.

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

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

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

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

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

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

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

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

34 ~~(7))~~ 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 person would have been obligated to
37 collect retail sales tax on the sale absent a specific exemption
38 provided in chapter 82.08 RCW, and there is no corresponding use tax
39 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may

1 be construed as relieving purchasers from liability for reporting and
2 remitting the tax due under this chapter directly to the department.

3 ~~((+8))~~ (6) Notwithstanding subsections (1) through (4) of this
4 section, any person making sales is not obligated to collect the tax
5 imposed by this chapter if the state is prohibited under the
6 Constitution or laws of the United States from requiring the person
7 to collect the tax imposed by this chapter.

8 ~~((+9))~~ (7) Notwithstanding subsections (1) through (4) of this
9 section, any licensed dealer facilitating a firearm sale or transfer
10 between two unlicensed persons by conducting background checks under
11 chapter 9.41 RCW is not obligated to collect the tax imposed by this
12 chapter.

13 NEW SECTION. **Sec. 211.** A new section is added to chapter 82.32
14 RCW to read as follows:

15 (1) Notwithstanding any other provision of law, and whether or
16 not the department initiates an audit or other tax collection
17 procedure, the department may bring a declaratory judgment action
18 under chapter 7.24 RCW, regardless of any other remedy available to
19 the department, against any person the department believes has a
20 substantial nexus with this state under section 206(1)(b) of this act
21 to establish that the obligation to remit sales tax is applicable and
22 valid under state and federal law.

23 (2) The filing of the declaratory judgment action by the
24 department as authorized in this section prohibits the department,
25 during the pendency of the action and any subsequent appeal, from
26 enforcing the tax collection obligations of chapter 82.08 RCW against
27 any remote seller who does not affirmatively consent or otherwise
28 remit sales tax to the department on a voluntary basis. The
29 prohibition in this subsection does not apply if there is a previous
30 judgment from a court establishing the validity of the tax collection
31 obligations of chapter 82.08 RCW with respect to the particular
32 taxpayer.

33 (3) Notwithstanding any other provisions of state law, attorneys'
34 fees may not be awarded to any party in any action brought pursuant
35 to this section or any appeal from any action brought pursuant to
36 this section.

37 (4) For purposes of this section, "remote seller" means any
38 seller that makes retail sales in this state but does not have a
39 physical presence in this state.

1 NEW SECTION. **Sec. 212.** A new section is added to chapter 82.32
2 RCW to read as follows:

3 (1) A taxpayer that, for the purposes of the tax collection
4 obligations in chapter 82.08 RCW, has a substantial nexus with this
5 state solely under the provisions of section 206(1)(b) of this act
6 and is complying with the requirements of chapter 82.08 RCW,
7 voluntarily or otherwise, may only seek a recovery of sales taxes,
8 penalties, or interest from the department by following the recovery
9 procedures established under RCW 82.32.060. However, no claim may be
10 granted on the basis that the taxpayer lacked a physical presence in
11 the state and complied with the tax collection provisions of chapter
12 82.08 RCW voluntarily while covered by the prohibition on enforcement
13 provided in section 211 of this act.

14 (2) Neither the state nor any seller who remits sales tax
15 voluntarily or otherwise under this act is liable to a purchaser who
16 claims that the sales tax has been over collected because a provision
17 of this act is later deemed unlawful.

18 (3) Nothing in this act affects the obligation of any purchaser
19 from this state to remit sales or use tax as to any applicable
20 taxable transaction in which the seller does not collect and remit
21 sales tax.

22 **Sec. 213.** RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each
23 amended to read as follows:

24 (1) If the department determines that a change, taking effect
25 after (~~September 1, 2015~~) the effective date of this section, in
26 the streamlined sales and use tax agreement or federal law creates a
27 conflict with any provision of RCW 82.08.052, section 206 of this
28 act, or section 207 of this act, such conflicting provision or
29 provisions of RCW 82.08.052, section 206 of this act, or section 207
30 of this act, including any related provisions that would not function
31 as originally intended, have no further force and effect as of the
32 date the change in the streamlined sales and use tax agreement or
33 federal law becomes effective.

34 (2) For purposes of this section:

35 (a) A change in federal law conflicts with RCW 82.08.052, section
36 206 of this act, or section 207 of this act if the change clearly
37 allows states to impose greater sales and use tax collection
38 obligations on remote sellers than provided for, or clearly prevents
39 states from imposing sales and use tax collection obligations on

1 remote sellers to the extent provided for, under RCW 82.08.052,
2 section 206 of this act, or section 207 of this act.

3 (b) A change in the streamlined sales and use tax agreement
4 conflicts with RCW 82.08.052, section 206 of this act, or section 207
5 of this act if one or more provisions of RCW 82.08.052, section 206
6 of this act, or section 207 of this act causes this state to be found
7 out of compliance with the streamlined sales and use tax agreement by
8 its governing board.

9 (3) If the department makes a determination under this section
10 that a change in federal law or the streamlined sales and use tax
11 agreement conflicts with one or more provisions of RCW 82.08.052,
12 section 206 of this act, or section 207 of this act, the department:

13 (a) May adopt rules in accordance with chapter 34.05 RCW that are
14 consistent with the streamlined sales and use tax agreement and that
15 impose sales and use tax collection obligations on remote sellers to
16 the fullest extent allowed under state and federal law; and

17 (b) Must include information on its web site informing taxpayers
18 and the public (i) of the provision or provisions of RCW 82.08.052,
19 section 206 of this act, or section 207 of this act that will have no
20 further force and effect, (ii) when such change will become
21 effective, and (iii) about how to participate in any rule making
22 conducted by the department in accordance with (a) of this subsection
23 (3).

24 (4) For purposes of this section, "remote seller" has the same
25 meaning as in RCW 82.08.052.

26 Part III

27 Sales and Use Tax Notice and Reporting Requirements

28 NEW SECTION. **Sec. 301.** The definitions in this section apply
29 throughout this chapter unless the context clearly requires
30 otherwise.

31 (1) "Consumer" has the same meaning as in chapters 82.04, 82.08,
32 and 82.12 RCW.

33 (2) "Department" has the same meaning as in RCW 82.02.010.

34 (3) "Product" has the same meaning as in RCW 82.32.023.

35 (4) "Purchaser" means any consumer who purchases or leases a
36 product sourced to this state under RCW 82.32.730.

37 (5) "Retail sale" has the same meaning as in RCW 82.04.050.

38 (6) "Sale" has the same meaning as in RCW 82.04.040.

1 (7) "Seller" has the same meaning as in RCW 82.08.010, and
2 includes a marketplace facilitator as defined in section 206 of this
3 act.

4 NEW SECTION. **Sec. 302.** (1) Except as otherwise provided in
5 subsection (5) of this section, a seller who does not collect the tax
6 imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
7 must comply with the notice and reporting requirements of this
8 section. For taxable retail sales made through a marketplace
9 facilitator or other agent, the marketplace facilitator or other
10 agent must comply with the notice and reporting requirements of this
11 section, and the principal is not subject to the notice and reporting
12 requirements of this section with respect to those sales.

13 (2) A seller subject to the notice and reporting requirements of
14 this section must provide a notice to each consumer at the time of
15 each taxable retail sale.

16 (a) The notice under this subsection (2) must include the
17 following information:

18 (i) A statement that neither sales nor use tax is being collected
19 or remitted upon the sale;

20 (ii) A statement that the consumer may be required to remit sales
21 or use tax directly to the department; and

22 (iii) Instructions for obtaining additional information from the
23 department regarding whether and how to remit the sales or use tax to
24 the department.

25 (b) The notice under this subsection (2) must be prominently
26 displayed on all invoices and order forms, including, where
27 applicable, electronic and catalogue invoices and order forms, and
28 upon each sales receipt or similar document provided to the
29 purchaser, whether in paper or electronic form. No indication may be
30 made that sales or use tax is not imposed upon the transaction,
31 unless:

32 (i) Such indication is followed immediately with the notice
33 required by this subsection (2); or

34 (ii) The transaction with respect to which the indication is
35 given is exempt from sales and use tax pursuant to law.

36 (3) A seller subject to the notice and reporting requirements of
37 this section must, no later than January 31st of each year, provide a
38 report to each consumer for whom the seller was required to provide a
39 notice under subsection (2) of this section.

1 (a) The report under this subsection (3) must include:

2 (i) A statement that the seller did not collect sales or use tax

3 on the consumer's transactions with the seller and that the consumer

4 may be required to remit such tax directly to the department;

5 (ii) A list, by date, generally indicating the type of product

6 purchased or leased during the immediately preceding calendar year by

7 the consumer from the seller sourced to this state under RCW

8 82.32.730 and the price of each product;

9 (iii) Instructions for obtaining additional information from the

10 department regarding whether and how to remit the sales or use tax to

11 the department;

12 (iv) A statement that the seller is required to submit a report

13 to the department pursuant to subsection (4) of this section stating

14 the total dollar amount of the consumer's purchases from the seller;

15 and

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

17 (b) The report required under this subsection (3) must be sent to

18 the consumer's billing address, or if unknown, the consumer's

19 shipping address, in an envelope marked prominently with words

20 indicating important tax information is enclosed. If no billing or

21 shipping address is known, the report must be sent electronically to

22 the consumer's last known email address with a subject heading

23 indicating important tax information is enclosed.

24 (4) A seller subject to the notice and reporting requirements of

25 this section must, no later than January 31st of each year, file a

26 report with the department.

27 (a) The report under this subsection (4) must include, with

28 respect to each consumer to whom the seller is required to provide a

29 report under subsection (3) of this section by January 31st of the

30 current calendar year:

31 (i) The consumer's name;

32 (ii) The billing address and, if different, the last known

33 mailing address;

34 (iii) The shipping address for each product sold or leased to

35 such consumer for delivery to a location in this state during the

36 immediately preceding calendar year; and

37 (iv) The total dollar amount of all such purchases by such

38 consumer.

39 (b) The report under this subsection (4) must be filed

40 electronically in a form and manner required by the department.

1 (5) The following exemptions to the notice and reporting
2 requirements of this section apply:

3 (a) A seller who made less than two hundred thousand dollars in
4 total worldwide gross retail sales during the immediately preceding
5 calendar year is not required to file reports under subsections (3)
6 and (4) of this section in the current calendar year.

7 (b) A seller who made less than one hundred thousand dollars in
8 total worldwide gross retail sales during the immediately preceding
9 calendar year is not required to provide notice under subsection (2)
10 of this section with respect to retail sales made in the current
11 calendar year.

12 (c) A seller who made less than one hundred thousand dollars in
13 total gross retail sales sourced to this state under RCW 82.32.730
14 during the immediately preceding calendar year is not required to
15 file reports under subsections (3) and (4) of this section in the
16 current calendar year.

17 (d) A seller who made less than fifty thousand dollars in total
18 gross retail sales sourced to this state under RCW 82.32.730 during
19 the immediately preceding calendar year is not required to provide
20 notice under subsection (2) of this section with respect to retail
21 sales made in the current calendar year.

22 (e) A seller who is registered with the department to collect and
23 remit sales and use tax, and who makes a reasonable effort to comply
24 with the requirements of RCW 82.08.050 and 82.12.040, is not required
25 to provide notice or file reports under this section.

26 NEW SECTION. **Sec. 303.** (1) The following penalties apply to any
27 seller who fails to provide notices and reports as required by
28 section 302 of this act:

29 (a) The department must assess a penalty against any seller who
30 fails to provide notice as required by section 302(2) of this act, in
31 addition to any other applicable penalties, in the amount of five
32 dollars for each such failure.

33 (b) The department must assess a penalty against any seller who
34 fails to provide a report as required by section 302(3) of this act,
35 in addition to any other applicable penalty, in the amount of ten
36 dollars for each such failure.

37 (c) The department must assess a penalty against any seller who
38 fails to file a report as required by section 302(4) of this act, in
39 addition to any other applicable penalty, equal to ten dollars times

1 the number of such consumers that should have been included on such
2 report.

3 (2) When assessing a penalty under this section, the department
4 may use any reasonable sampling or estimation technique where
5 necessary or appropriate to determine the number of failures in any
6 calendar year.

7 (3) Interest accrues on the amount of the total penalty that has
8 been assessed under this section until the total penalty amount is
9 paid in full. Interest imposed under this section must be computed
10 and assessed as provided in RCW 82.32.050 as if the penalty imposed
11 under this subsection were a tax liability.

12 (4) The department must notify a seller by mail, or
13 electronically as provided in RCW 82.32.135, of the amount of any
14 penalty and interest due under this section. Amounts due under this
15 section must be paid in full within thirty days from the date of the
16 notice, or within such further time as the department may provide in
17 its sole discretion.

18 (5)(a)(i) A seller is entitled to a conditional waiver of
19 penalties and interest imposed under this section if the seller
20 enters into a written agreement with the department committing to
21 fully comply with all notice and reporting requirements of this
22 chapter beginning by a date acceptable to the department.

23 (ii) The department may grant a waiver of penalties and interest
24 under this subsection (5)(a) for penalties and interest assessed for
25 a seller's failure to comply with the notice and reporting
26 requirements for one or more violations.

27 (iii) The department may not grant more than one request by a
28 seller for a waiver of penalties and interest under this subsection
29 (5)(a).

30 (iv) The department must reassess penalties and interest
31 conditionally waived under this subsection (5)(a) if the department
32 finds that, after the date that the seller agreed to fully comply
33 with the notice and reporting requirements of this chapter, the
34 seller failed to:

35 (A) Provide notice under section 302(2) of this act to at least
36 ninety-five percent of the consumers entitled to such notice in any
37 given calendar year or portion of the initial calendar year in which
38 the agreement required under this subsection was in effect if the
39 agreement was in effect for less than the entire calendar year;

1 (B) Timely provide the reports required under section 302(3) of
2 this act to all consumers who received notice from the seller under
3 section 302(2) of this act during any calendar year, unless the
4 department finds that any such failure was due to circumstances
5 beyond the seller's control; or

6 (C) Timely provide the reports required under section 302(4) of
7 this act during any calendar year, unless the department finds that
8 any such failure was due to circumstances beyond the seller's
9 control.

10 (v) The department may not reassess penalties and interest
11 conditionally waived under this subsection (5)(a) more than four
12 calendar years following the calendar year in which the department
13 granted the conditional waiver under this subsection (5)(a).

14 (vi) The provisions of subsection (4) of this section apply to
15 penalties and interest reassessed under this subsection (5)(a). The
16 department may add additional interest on penalties reassessed under
17 this subsection (5)(a) only if the total amount of penalties
18 reassessed under this subsection (5)(a) is not paid in full by the
19 date due. Additional interest authorized under this subsection
20 (5)(a)(vi) applies beginning on the day immediately following the day
21 that the reassessed penalties were due and accrues until the total
22 amount of reassessed penalties are paid in full.

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

27 (c) A request for a waiver of penalties and interest under this
28 subsection must be received by the department in writing and before
29 the penalties and interest for which a waiver is requested are due
30 pursuant to subsection (4) of this section. The department must deny
31 any request for a waiver of penalties and interest that does not
32 fully comply with the provisions of this subsection (5)(c).

33 NEW SECTION. **Sec. 304.** Chapter 82.32 RCW applies to the
34 administration of this chapter.

35 NEW SECTION. **Sec. 305.** (1) Except as otherwise provided in this
36 section, taxes imposed under chapter 82.08 or 82.12 RCW on a taxable
37 retail sale and payable by a consumer directly to the department are
38 due, on returns prescribed by the department, by March 1st of the

1 calendar year immediately following the calendar year in which the
2 taxable retail sale occurred.

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

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

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

10 NEW SECTION. **Sec. 306.** Nothing in this chapter relieves sellers
11 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
12 responsibilities imposed under those chapters. Nor does anything in
13 this chapter prevent the department from administering and enforcing
14 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
15 any seller or consumer who is subject to such taxes.

16 **Sec. 307.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each
17 amended to read as follows:

18 (1) Except as otherwise provided in this chapter or chapter
19 82.--- RCW (the new chapter created in section 504 of this act),
20 payments of the taxes imposed under chapters 82.04, 82.08, 82.12,
21 82.14, and 82.16 RCW, along with reports and returns on forms
22 prescribed by the department, are due monthly within twenty-five days
23 after the end of the month in which the taxable activities occur.

24 (2) The department of revenue may relieve any taxpayer or class
25 of taxpayers from the obligation of remitting monthly and may require
26 the return to cover other longer reporting periods, but in no event
27 may returns be filed for a period greater than one year. For these
28 taxpayers, tax payments are due on or before the last day of the
29 month next succeeding the end of the period covered by the return.

30 (3) The department of revenue may also require verified annual
31 returns from any taxpayer, setting forth such additional information
32 as it may deem necessary to correctly determine tax liability.

33 (4) Notwithstanding subsections (1) and (2) of this section, the
34 department may relieve any person of the requirement to file returns
35 if the following conditions are met:

36 (a) The person's value of products, gross proceeds of sales, or
37 gross income of the business, from all business activities taxable
38 under chapter 82.04 RCW, is less than:

1 (i) Twenty-eight thousand dollars per year; or
2 (ii) Forty-six thousand six hundred sixty-seven dollars per year
3 for persons generating at least fifty percent of their taxable amount
4 from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and
5 82.04.285;

6 (b) The person's gross income of the business from all activities
7 taxable under chapter 82.16 RCW is less than twenty-four thousand
8 dollars per year; and

9 (c) The person is not required to collect or pay to the
10 department of revenue any other tax or fee which the department is
11 authorized to collect.

12 **Part IV**

13 **Revenues to Fund Housing and Public Assistance Programs**

14 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
15 RCW to read as follows:

16 (1) By December 15th and June 15th of each year, the department
17 must estimate the increase in state general fund revenue from the
18 taxes collected as a result of parts II and III of this act and
19 notify the treasurer of the increase.

20 (2) By the last workday of the second and fourth calendar
21 quarters, the state treasurer must transfer the amount specified in
22 subsection (1) of this section as follows:

23 (a) Twelve percent must be deposited into the home security fund
24 account and used solely for housing assistance programs pursuant to
25 chapter 43.185C RCW;

26 (b) Thirty-eight percent must be deposited into the Washington
27 housing trust fund account and used solely for construction of low-
28 income housing pursuant to chapter 43.185 RCW; and

29 (c) Fifty percent must be deposited into the human services
30 safety net account created in section 402 of this act.

31 NEW SECTION. **Sec. 402.** A new section is added to chapter 74.04
32 RCW to read as follows:

33 The human services safety net account is created in the state
34 treasury. All receipts from section 401(2)(c) of this act must be
35 deposited into the account. Moneys in the account may be spent only
36 after appropriation. Expenditures from the account may only be used
37 for the Washington WorkFirst temporary assistance for needy families

1 program established under chapter 74.08A RCW; the aged, blind, or
2 disabled assistance program established under chapter 74.62 RCW; and
3 the pregnant women assistance program established under chapter 74.62
4 RCW.

5 **Part V**
6 **Miscellaneous**

7 NEW SECTION. **Sec. 501.** If any provision of this act or its
8 application to any person or circumstance is held invalid:

9 (1) The remainder of the act or the application of the provision
10 to other persons or circumstances is not affected; and

11 (2) If the department of revenue is prevented from enforcing
12 chapters 82.04, 82.08, and 82.12 RCW against persons without a
13 physical presence in this state, the department of revenue must
14 impose such provisions to the fullest extent allowed under the
15 Constitution and laws of the United States.

16 NEW SECTION. **Sec. 502.** The tax collection, reporting, and
17 payment obligations imposed by this act apply prospectively only.

18 NEW SECTION. **Sec. 503.** For purposes of determining whether a
19 person engaged in the business of making sales at retail has a
20 substantial nexus with this state under the provisions of RCW
21 82.04.067(6)(a)(iii) or section 206 (1)(b), (2), or (3)(a)(ii) of
22 this act for taxable periods beginning on the effective date of this
23 section through December 31, 2017, the person's gross proceeds of
24 sales are based on the entire 2017 calendar year.

25 NEW SECTION. **Sec. 504.** Sections 301 through 306 of this act
26 constitute a new chapter in Title 82 RCW.

27 NEW SECTION. **Sec. 505.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of
29 the state government and its existing public institutions, and takes
30 effect July 1, 2017.

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