

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6138

64th Legislature
2015 3rd Special Session

Passed by the Senate June 30, 2015
Yeas 35 Nays 10

President of the Senate

Passed by the House June 30, 2015
Yeas 60 Nays 38

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6138** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 intangible property will be used. For purposes of this subsection,
2 "intangible property" includes copyrights, patents, licenses,
3 franchises, trademarks, trade names, and similar items. "Gross income
4 from royalties" does not include compensation for any natural
5 resource, the licensing of prewritten computer software to the end
6 user, or the licensing of digital goods, digital codes, or digital
7 automated services to the end user as defined in RCW 82.04.190(11).

8 **Part II**

9 **Nexus**

10 NEW SECTION. **Sec. 201.** (1) The commerce clause of the United
11 States Constitution as currently interpreted by the United States
12 supreme court prohibits states from imposing sales or use tax
13 collection obligations on out-of-state businesses unless the business
14 has a substantial nexus with the taxing state.

15 (2) The legislature recognizes that under the United States
16 supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298
17 (1992), a substantial nexus for sales and use tax collection purposes
18 requires that the taxpayer have a physical presence in the taxing
19 state.

20 (3) The legislature further recognizes that the requisite
21 physical presence can be established directly through a taxpayer's
22 own activities in the taxing state, or indirectly, through
23 independent contractors, agents, or other representatives who act on
24 behalf of the taxpayer in the taxing state.

25 (4) However, the legislature finds that because the United States
26 supreme court has not clearly defined the circumstances under which a
27 physical presence is sufficient to establish a substantial nexus for
28 tax purposes, frequent conflicts have arisen throughout the country
29 among state taxing authorities, taxpayers, tax practitioners, and
30 courts.

31 (5) Therefore, the legislature intends to provide more clarity
32 for out-of-state sellers that compensate Washington residents for
33 referring customers to the out-of-state seller by providing clear
34 statutory guidelines for determining when these out-of-state sellers
35 are required to collect Washington's retail sales tax.

1 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.08
2 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as
3 follows:

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

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

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

33 (4) This section is subject to section 205 of this act.

34 **Sec. 203.** RCW 82.04.066 and 2010 1st sp.s. c 23 s 103 are each
35 amended to read as follows:

36 "Engaging within this state" and "engaging within the state,"
37 when used in connection with any apportionable activity as defined in
38 RCW 82.04.460 or wholesale sales taxable under RCW 82.04.257(1) or
39 82.04.270, means that a person generates gross income of the business

1 from sources within this state, such as customers or intangible
2 property located in this state, regardless of whether the person is
3 physically present in this state.

4 **Sec. 204.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each
5 amended to read as follows:

6 (1) A person engaging in business is deemed to have substantial
7 nexus with this state if the person is:

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

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

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

14 (i) More than fifty thousand dollars of property in this state;

15 (ii) More than fifty thousand dollars of payroll in this state;

16 (iii) More than two hundred fifty thousand dollars of receipts
17 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 immediately preceding tax year.

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

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

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

1 year if reasonably required to properly reflect the average value of
2 the 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((~~r~~)) are deemed owned and used in the
7 state if the real property or personal property securing the loan is
8 located within this state. If the property securing the loan is
9 located both within this state and one or more other states, the loan
10 is deemed owned and used in this state if more than fifty percent of
11 the fair market value of the real or personal property is located
12 within this state. If more than fifty percent of the fair market
13 value of the real or personal property is not located within any one
14 state, then the loan is deemed owned and used in this state if the
15 borrower is located in this state. The determination of whether the
16 real or personal property securing a loan is located within this
17 state must be made, as of the time the original agreement was made,
18 and any and all subsequent substitutions of collateral must be
19 disregarded.

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

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

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

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

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

1 (3)(a) Payroll counting toward the thresholds in subsection
2 (1)(c)(ii) and (iv) of this section is the total amount paid by the
3 taxpayer for compensation in this state during the immediately
4 preceding tax year plus nonemployee compensation paid to
5 representative third parties in this state. Nonemployee compensation
6 paid to representative third parties includes the gross amount paid
7 to nonemployees who represent the taxpayer in interactions with the
8 taxpayer's clients and includes sales commissions.

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

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

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

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

23 (a) Those amounts included in the numerator of the receipts
24 factor under RCW 82.04.462 ((and 7));

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

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

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

1 the later of June 1, 2010, or the date that the thresholds were last
2 adjusted under this subsection. The thresholds must be adjusted to
3 reflect that cumulative percentage change in the consumer price
4 index. The adjusted thresholds must be rounded to the nearest one
5 thousand dollars. Any adjustment will apply to tax periods that begin
6 after the adjustment is made.

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

11 (6)(a) Subsections (1) through (5) of this section only apply
12 with respect to the taxes (~~imposed under this chapter~~) on persons
13 engaged in apportionable activities as defined in RCW 82.04.460 or
14 making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.
15 For purposes of the taxes imposed under this chapter on any activity
16 not included in the definition of apportionable activities in RCW
17 82.04.460, other than the business of making wholesale sales taxed
18 under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a
19 substantial nexus with this state if the person has a physical
20 presence in this state during the tax year, which need only be
21 demonstrably more than a slightest presence.

22 (b) For purposes of this subsection, a person is physically
23 present in this state if the person has property or employees in this
24 state.

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

30 (ii) A remote seller as defined in section 202 of this act is
31 presumed to be engaged in activities in this state that are
32 significantly associated with the remote seller's ability to
33 establish or maintain a market for its products in this state if the
34 remote seller is presumed to have a substantial nexus with this state
35 under section 202 of this act. The presumption in this subsection
36 (6)(c)(ii) may be rebutted as provided in section 202 of this act. To
37 the extent that the presumption in section 202 of this act is no
38 longer operative pursuant to section 205 of this act, the presumption
39 in this subsection (6)(c)(ii) is no longer operative. Nothing in this
40 section may be construed to affect in any way RCW 82.04.424,

1 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms
2 "agent" or "other representative" in this subsection (6)(c).

3 NEW SECTION. **Sec. 205.** A new section is added to chapter 82.32
4 RCW to read as follows:

5 (1) If the department determines that a change, taking effect
6 after the effective date of this section, in the streamlined sales
7 and use tax agreement or federal law creates a conflict with any
8 provision of section 202 of this act, such conflicting provision or
9 provisions of section 202 of this act, including any related
10 provisions that would not function as originally intended, have no
11 further force and effect as of the date the change in the streamlined
12 sales and use tax agreement or federal law becomes effective.

13 (2) For purposes of this section:

14 (a) A change in federal law conflicts with section 202 of this
15 act if the change clearly allows states to impose greater sales and
16 use tax collection obligations on remote sellers than provided for,
17 or clearly prevents states from imposing sales and use tax collection
18 obligations on remote sellers to the extent provided for, under
19 section 202 of this act.

20 (b) A change in the streamlined sales and use tax agreement
21 conflicts with section 202 of this act if one or more provisions of
22 section 202 of this act causes this state to be found out of
23 compliance with the streamlined sales and use tax agreement by its
24 governing board.

25 (3) If the department makes a determination under this section
26 that a change in federal law or the streamlined sales and use tax
27 agreement conflicts with one or more provisions of section 202 of
28 this act, the department:

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

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

1 (4) For purposes of this section, "remote seller" has the same
2 meaning as in section 202 of this act.

3 **Sec. 206.** RCW 82.04.424 and 2003 c 76 s 2 are each amended to
4 read as follows:

5 (1) This chapter does not apply to a person making retail sales
6 in Washington if:

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

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

10 (ii) The taking of orders; or

11 (iii) The processing of payments; and

12 (b) The activities are conducted electronically via a web site on
13 a server or other computer equipment located in Washington that is
14 not owned or operated by the person making sales into this state nor
15 owned or operated by an affiliated person. For purposes of this
16 section, persons are "affiliated persons" with respect to each other
17 where one of the persons has an ownership interest of more than five
18 percent, whether direct or indirect, in the other, or where an
19 ownership interest of more than five percent, whether direct or
20 indirect, is held in each of the persons by another person or by a
21 group of other persons which are affiliated with respect to each
22 other.

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

29 (b) The department of revenue must provide notice of the
30 expiration date of this section to affected parties, the chief clerk
31 of the house of representatives, the secretary of the senate, the
32 office of the code reviser, and others as deemed appropriate by the
33 department.

34 **Part III**

35 **Manufacturing Machinery and Equipment Exemption for Software**
36 **Manufacturers**

1 **Sec. 301.** RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s
2 13 are each reenacted and amended to read as follows:

3 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to
4 a manufacturer or processor for hire of machinery and equipment used
5 directly in a manufacturing operation or research and development
6 operation, to sales to a person engaged in testing for a manufacturer
7 or processor for hire of machinery and equipment used directly in a
8 testing operation, or to sales of or charges made for labor and
9 services rendered in respect to installing, repairing, cleaning,
10 altering, or improving the machinery and equipment.

11 (b) Except as provided in (c) of this subsection, sellers making
12 tax-exempt sales under this section must obtain from the purchaser an
13 exemption certificate in a form and manner prescribed by the
14 department by rule. The seller must retain a copy of the certificate
15 for the seller's files.

16 (c)(i) The exemption under this section is in the form of a
17 remittance for a gas distribution business, as defined in RCW
18 82.16.010, claiming the exemption for machinery and equipment used
19 for the production of compressed natural gas or liquefied natural gas
20 for use as a transportation fuel.

21 (ii) A gas distribution business claiming an exemption from state
22 and local tax in the form of a remittance under this section must pay
23 the tax under RCW 82.08.020 and all applicable local sales taxes.
24 Beginning July 1, 2017, the gas distribution business may then apply
25 to the department for remittance of state and local sales and use
26 taxes. A gas distribution business may not apply for a remittance
27 more frequently than once a quarter. The gas distribution business
28 must specify the amount of exempted tax claimed and the qualifying
29 purchases for which the exemption is claimed. The gas distribution
30 business must retain, in adequate detail, records to enable the
31 department to determine whether the business is entitled to an
32 exemption under this section, including: Invoices; proof of tax paid;
33 and documents describing the machinery and equipment.

34 (iii) The department must determine eligibility under this
35 section based on the information provided by the gas distribution
36 business, which is subject to audit verification by the department.
37 The department must on a quarterly basis remit exempted amounts to
38 qualifying businesses who submitted applications during the previous
39 quarter.

1 (iv) Beginning July 1, 2028, a gas distribution business may not
2 apply for a refund under this section or RCW 82.12.02565.

3 (2) For purposes of this section and RCW 82.12.02565:

4 (a) "Machinery and equipment" means industrial fixtures, devices,
5 and support facilities, and tangible personal property that becomes
6 an ingredient or component thereof, including repair parts and
7 replacement parts. "Machinery and equipment" includes pollution
8 control equipment installed and used in a manufacturing operation,
9 testing operation, or research and development operation to prevent
10 air pollution, water pollution, or contamination that might otherwise
11 result from the manufacturing operation, testing operation, or
12 research and development operation. "Machinery and equipment" also
13 includes digital goods.

14 (b) "Machinery and equipment" does not include:

15 (i) Hand-powered tools;

16 (ii) Property with a useful life of less than one year;

17 (iii) Buildings, other than machinery and equipment that is
18 permanently affixed to or becomes a physical part of a building; and

19 (iv) Building fixtures that are not integral to the manufacturing
20 operation, testing operation, or research and development operation
21 that are permanently affixed to and become a physical part of a
22 building, such as utility systems for heating, ventilation, air
23 conditioning, communications, plumbing, or electrical.

24 (c) Machinery and equipment is "used directly" in a manufacturing
25 operation, testing operation, or research and development operation
26 if the machinery and equipment:

27 (i) Acts upon or interacts with an item of tangible personal
28 property;

29 (ii) Conveys, transports, handles, or temporarily stores an item
30 of tangible personal property at the manufacturing site or testing
31 site;

32 (iii) Controls, guides, measures, verifies, aligns, regulates, or
33 tests tangible personal property at the site or away from the site;

34 (iv) Provides physical support for or access to tangible personal
35 property;

36 (v) Produces power for, or lubricates machinery and equipment;

37 (vi) Produces another item of tangible personal property for use
38 in the manufacturing operation, testing operation, or research and
39 development operation;

1 (vii) Places tangible personal property in the container,
2 package, or wrapping in which the tangible personal property is
3 normally sold or transported; or

4 (viii) Is integral to research and development as defined in RCW
5 82.63.010.

6 (d) "Manufacturer" means a person that qualifies as a
7 manufacturer under RCW 82.04.110. "Manufacturer" also includes a
8 person that:

9 (i) Prints newspapers or other materials; or

10 (ii) Is engaged in the development of prewritten computer
11 software that is not transferred to purchasers by means of tangible
12 storage media.

13 (e) "Manufacturing" means only those activities that come within
14 the definition of "to manufacture" in RCW 82.04.120 and are taxed as
15 manufacturing or processing for hire under chapter 82.04 RCW, or
16 would be taxed as such if such activity were conducted in this state
17 or if not for an exemption or deduction. "Manufacturing" also
18 includes printing newspapers or other materials. An activity is not
19 taxed as manufacturing or processing for hire under chapter 82.04 RCW
20 if the activity is within the purview of chapter 82.16 RCW.

21 (f) "Manufacturing operation" means the manufacturing of
22 articles, substances, or commodities for sale as tangible personal
23 property. A manufacturing operation begins at the point where the raw
24 materials enter the manufacturing site and ends at the point where
25 the processed material leaves the manufacturing site. With respect to
26 the production of class A or exceptional quality biosolids by a
27 wastewater treatment facility, the manufacturing operation begins at
28 the point where class B biosolids undergo additional processing to
29 achieve class A or exceptional quality standards. Notwithstanding
30 anything to the contrary in this section, the term also includes that
31 portion of a cogeneration project that is used to generate power for
32 consumption within the manufacturing site of which the cogeneration
33 project is an integral part. The term does not include the
34 preparation of food products on the premises of a person selling food
35 products at retail.

36 (g) "Cogeneration" means the simultaneous generation of
37 electrical energy and low-grade heat from the same fuel.

38 (h) "Research and development operation" means engaging in
39 research and development as defined in RCW 82.63.010 by a
40 manufacturer or processor for hire.

1 (i) "Testing" means activities performed to establish or
2 determine the properties, qualities, and limitations of tangible
3 personal property.

4 (j) "Testing operation" means the testing of tangible personal
5 property for a manufacturer or processor for hire. A testing
6 operation begins at the point where the tangible personal property
7 enters the testing site and ends at the point where the tangible
8 personal property leaves the testing site. The term also includes the
9 testing of tangible personal property for use in that portion of a
10 cogeneration project that is used to generate power for consumption
11 within the manufacturing site of which the cogeneration project is an
12 integral part. The term does not include the testing of tangible
13 personal property for use in the production of electricity by a light
14 and power business as defined in RCW 82.16.010 or the preparation of
15 food products on the premises of a person selling food products at
16 retail.

17 (3) This section does not apply (a) to sales of machinery and
18 equipment used directly in the manufacturing, research and
19 development, or testing of marijuana, useable marijuana, or
20 marijuana-infused products, or (b) to sales of or charges made for
21 labor and services rendered in respect to installing, repairing,
22 cleaning, altering, or improving such machinery and equipment.

23 (4) The exemptions in this section do not apply to an ineligible
24 person. For purposes of this subsection, the following definitions
25 apply:

26 (a) "Affiliated group" means a group of two or more entities that
27 are either:

28 (i) Affiliated as defined in RCW 82.32.655; or

29 (ii) Permitted to file a consolidated return for federal income
30 tax purposes.

31 (b) "Ineligible person" means all members of an affiliated group
32 if all of the following apply:

33 (i) At least one member of the affiliated group was registered
34 with the department to do business in Washington state on or before
35 July 1, 1981;

36 (ii) As of the effective date of this section, the combined
37 employment in this state of the affiliated group exceeds forty
38 thousand full-time and part-time employees, based on data reported to
39 the employment security department by the affiliated group; and

1 (iii) The business activities of the affiliated group primarily
2 include development, sales, and licensing of computer software and
3 services.

4 **Sec. 302.** RCW 82.12.02565 and 2014 c 216 s 402 and 2014 c 140 s
5 14 are each reenacted and amended to read as follows:

6 (1) The provisions of this chapter do not apply in respect to the
7 use by a manufacturer or processor for hire of machinery and
8 equipment used directly in a manufacturing operation or research and
9 development operation, to the use by a person engaged in testing for
10 a manufacturer or processor for hire of machinery and equipment used
11 directly in a testing operation, or to the use of labor and services
12 rendered in respect to installing, repairing, cleaning, altering, or
13 improving the machinery and equipment.

14 (2) The definitions, conditions, and requirements in RCW
15 82.08.02565 apply to this section.

16 (3) This section does not apply to the use of (a) machinery and
17 equipment used directly in the manufacturing, research and
18 development, or testing of marijuana, useable marijuana, or
19 marijuana-infused products, or (b) labor and services rendered in
20 respect to installing, repairing, cleaning, altering, or improving
21 such machinery and equipment.

22 (4) The exemptions in this section do not apply to an ineligible
23 person as defined in RCW 82.08.02565.

24 **Sec. 303.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted
25 and amended to read as follows:

26 ~~((Unless the context clearly requires otherwise,))~~ The
27 definitions in this section apply throughout this chapter unless the
28 context clearly requires otherwise.

29 (1) "Advanced computing" means technologies used in the designing
30 and developing of computing hardware and software, including
31 innovations in designing the full spectrum of hardware from hand-held
32 calculators to super computers, and peripheral equipment.

33 (2) "Advanced materials" means materials with engineered
34 properties created through the development of specialized processing
35 and synthesis technology, including ceramics, high value-added
36 metals, electronic materials, composites, polymers, and biomaterials.

37 (3) "Applicant" means a person applying for a tax deferral under
38 this chapter.

1 (4) "Biotechnology" means the application of technologies, such
2 as recombinant DNA techniques, biochemistry, molecular and cellular
3 biology, genetics and genetic engineering, cell fusion techniques,
4 and new bioprocesses, using living organisms, or parts of organisms,
5 to produce or modify products, to improve plants or animals, to
6 develop microorganisms for specific uses, to identify targets for
7 small molecule pharmaceutical development, or to transform biological
8 systems into useful processes and products or to develop
9 microorganisms for specific uses.

10 (5) "Department" means the department of revenue.

11 (6) "Electronic device technology" means technologies involving
12 microelectronics; semiconductors; electronic equipment and
13 instrumentation; radio frequency, microwave, and millimeter
14 electronics; optical and optic-electrical devices; and data and
15 digital communications and imaging devices.

16 (7) "Eligible investment project" means an investment project
17 which either initiates a new operation, or expands or diversifies a
18 current operation by expanding, renovating, or equipping an existing
19 facility. The lessor or owner of the qualified building is not
20 eligible for a deferral unless:

21 (a) The underlying ownership of the buildings, machinery, and
22 equipment vests exclusively in the same person; or

23 (b)(i) The lessor by written contract agrees to pass the economic
24 benefit of the deferral to the lessee;

25 (ii) The lessee that receives the economic benefit of the
26 deferral agrees in writing with the department to complete the annual
27 survey required under RCW 82.63.020(2); and

28 (iii) The economic benefit of the deferral passed to the lessee
29 is no less than the amount of tax deferred by the lessor and is
30 evidenced by written documentation of any type of payment, credit, or
31 other financial arrangement between the lessor or owner of the
32 qualified building and the lessee.

33 (8) "Environmental technology" means assessment and prevention of
34 threats or damage to human health or the environment, environmental
35 cleanup, and the development of alternative energy sources.

36 (9)(a) "Initiation of construction" means the date that a
37 building permit is issued under the building code adopted under RCW
38 19.27.031 for:

1 (i) Construction of the qualified building, if the underlying
2 ownership of the building vests exclusively with the person receiving
3 the economic benefit of the deferral;

4 (ii) Construction of the qualified building, if the economic
5 benefits of the deferral are passed to a lessee as provided in
6 subsection (7) of this section; or

7 (iii) Tenant improvements for a qualified building, if the
8 economic benefits of the deferral are passed to a lessee as provided
9 in subsection (7) of this section.

10 (b) "Initiation of construction" does not include soil testing,
11 site clearing and grading, site preparation, or any other related
12 activities that are initiated before the issuance of a building
13 permit for the construction of the foundation of the building.

14 (c) If the investment project is a phased project, "initiation of
15 construction" shall apply separately to each phase.

16 (10) "Investment project" means an investment in qualified
17 buildings or qualified machinery and equipment, including labor and
18 services rendered in the planning, installation, and construction or
19 improvement of the project.

20 (11) "Multiple qualified buildings" means qualified buildings
21 leased to the same person when such structures: (a) Are located
22 within a five-mile radius; and (b) the initiation of construction of
23 each building begins within a sixty-month period.

24 (12) "Person" has the meaning given in RCW 82.04.030 and includes
25 state universities as defined in RCW 28B.10.016.

26 (13) "Pilot scale manufacturing" means design, construction, and
27 testing of preproduction prototypes and models in the fields of
28 biotechnology, advanced computing, electronic device technology,
29 advanced materials, and environmental technology other than for
30 commercial sale. As used in this subsection, "commercial sale"
31 excludes sales of prototypes or sales for market testing if the total
32 gross receipts from such sales of the product, service, or process do
33 not exceed one million dollars.

34 (14) "Qualified buildings" means construction of new structures,
35 and expansion or renovation of existing structures for the purpose of
36 increasing floor space or production capacity used for pilot scale
37 manufacturing or qualified research and development, including plant
38 offices and other facilities that are an essential or an integral
39 part of a structure used for pilot scale manufacturing or qualified
40 research and development. If a building or buildings are used partly

1 for pilot scale manufacturing or qualified research and development,
2 and partly for other purposes, the applicable tax deferral shall be
3 determined by apportionment of the costs of construction under rules
4 adopted by the department. Such rules may include provisions for
5 determining the amount of the deferral based on apportionment of
6 costs of construction of an investment project consisting of a
7 building or multiple buildings, where qualified research and
8 development or pilot scale manufacturing activities are shifted
9 within a building or from one building to another building.

10 (15)(a) "Qualified machinery and equipment" means fixtures,
11 equipment, and support facilities that are an integral and necessary
12 part of a pilot scale manufacturing or qualified research and
13 development operation. "Qualified machinery and equipment" includes:
14 Computers; software; data processing equipment; laboratory equipment,
15 instrumentation, and other devices used in a process of
16 experimentation to develop a new or improved pilot model, plant
17 process, product, formula, invention, or similar property;
18 manufacturing components such as belts, pulleys, shafts, and moving
19 parts; molds, tools, and dies; vats, tanks, and fermenters; operating
20 structures; and all other equipment used to control, monitor, or
21 operate the machinery. For purposes of this chapter, qualified
22 machinery and equipment must be either new to the taxing jurisdiction
23 of the state or new to the certificate holder, except that used
24 machinery and equipment may be treated as qualified machinery and
25 equipment if the certificate holder either brings the machinery and
26 equipment into Washington or makes a retail purchase of the machinery
27 and equipment in Washington or elsewhere.

28 (b) "Qualified machinery and equipment" does not include any
29 fixtures, equipment, or support facilities, if the sale to or use by
30 the recipient is not eligible for an exemption under RCW 82.08.02565
31 or 82.12.02565 solely because the recipient is an ineligible person
32 as defined in RCW 82.08.02565.

33 (16) "Qualified research and development" means research and
34 development performed within this state in the fields of advanced
35 computing, advanced materials, biotechnology, electronic device
36 technology, and environmental technology.

37 (17) "Recipient" means a person receiving a tax deferral under
38 this chapter.

39 (18) "Research and development" means activities performed to
40 discover technological information, and technical and nonroutine

1 activities concerned with translating technological information into
2 new or improved products, processes, techniques, formulas,
3 inventions, or software. The term includes exploration of a new use
4 for an existing drug, device, or biological product if the new use
5 requires separate licensing by the federal food and drug
6 administration under chapter 21, C.F.R., as amended. The term does
7 not include adaptation or duplication of existing products where the
8 products are not substantially improved by application of the
9 technology, nor does the term include surveys and studies, social
10 science and humanities research, market research or testing, quality
11 control, sale promotion and service, computer software developed for
12 internal use, and research in areas such as improved style, taste,
13 and seasonal design.

14 NEW SECTION. **Sec. 304.** Section 303 of this act does not apply
15 with respect to deferral certificates issued under chapter 82.63 RCW
16 before January 1, 2015.

17 NEW SECTION. **Sec. 305.** If RCW 82.08.02565, 82.12.02565, or
18 82.63.010 are amended by any other act enacted during the regular or
19 any special session of the 2015 legislature, each amendment without
20 reference to the other amendment or amendments of the same statute,
21 the legislature intends for the amendments in this act to be deemed
22 to not conflict in purpose with the amendments in any other such act
23 for the purposes of RCW 1.12.025 and that the amendments in this act
24 be given effect.

25 NEW SECTION. **Sec. 306.** Sections 301 and 302 of this act do not
26 apply with respect to machinery and equipment, as defined in RCW
27 82.08.02565, first used by the taxpayer in this state before the
28 effective date of sections 301 and 302 of this act.

29 **Part IV**
30 **Late Payment Penalties**

31 **Sec. 401.** RCW 82.32.090 and 2011 c 24 s 3 are each amended to
32 read as follows:

33 (1) If payment of any tax due on a return to be filed by a
34 taxpayer is not received by the department of revenue by the due
35 date, there is assessed a penalty of (~~five~~) nine percent of the

1 amount of the tax; and if the tax is not received on or before the
2 last day of the month following the due date, there is assessed a
3 total penalty of (~~fifteen~~) nineteen percent of the amount of the
4 tax under this subsection; and if the tax is not received on or
5 before the last day of the second month following the due date, there
6 is assessed a total penalty of (~~twenty-five~~) twenty-nine percent of
7 the amount of the tax under this subsection. No penalty so added may
8 be less than five dollars.

9 (2) If the department of revenue determines that any tax has been
10 substantially underpaid, there is assessed a penalty of five percent
11 of the amount of the tax determined by the department to be due. If
12 payment of any tax determined by the department to be due is not
13 received by the department by the due date specified in the notice,
14 or any extension thereof, there is assessed a total penalty of
15 fifteen percent of the amount of the tax under this subsection; and
16 if payment of any tax determined by the department to be due is not
17 received on or before the thirtieth day following the due date
18 specified in the notice of tax due, or any extension thereof, there
19 is assessed a total penalty of twenty-five percent of the amount of
20 the tax under this subsection. No penalty so added may be less than
21 five dollars. As used in this section, "substantially underpaid"
22 means that the taxpayer has paid less than eighty percent of the
23 amount of tax determined by the department to be due for all of the
24 types of taxes included in, and for the entire period of time covered
25 by, the department's examination, and the amount of underpayment is
26 at least one thousand dollars.

27 (3) If a warrant is issued by the department of revenue for the
28 collection of taxes, increases, and penalties, there is added thereto
29 a penalty of ten percent of the amount of the tax, but not less than
30 ten dollars.

31 (4) If the department finds that a person has engaged in any
32 business or performed any act upon which a tax is imposed under this
33 title and that person has not obtained from the department a
34 registration certificate as required by RCW 82.32.030, the department
35 must impose a penalty of five percent of the amount of tax due from
36 that person for the period that the person was not registered as
37 required by RCW 82.32.030. The department may not impose the penalty
38 under this subsection (4) if a person who has engaged in business
39 taxable under this title without first having registered as required
40 by RCW 82.32.030, prior to any notification by the department of the

1 need to register, obtains a registration certificate from the
2 department.

3 (5) If the department finds that a taxpayer has disregarded
4 specific written instructions as to reporting or tax liabilities, or
5 willfully disregarded the requirement to file returns or remit
6 payment electronically, as provided by RCW 82.32.080, the department
7 must add a penalty of ten percent of the amount of the tax that
8 should have been reported and/or paid electronically or the
9 additional tax found due if there is a deficiency because of the
10 failure to follow the instructions. A taxpayer disregards specific
11 written instructions when the department has informed the taxpayer in
12 writing of the taxpayer's tax obligations and the taxpayer fails to
13 act in accordance with those instructions unless, in the case of a
14 deficiency, the department has not issued final instructions because
15 the matter is under appeal pursuant to this chapter or departmental
16 regulations. The department may not assess the penalty under this
17 section upon any taxpayer who has made a good faith effort to comply
18 with the specific written instructions provided by the department to
19 that taxpayer. A taxpayer will be considered to have made a good
20 faith effort to comply with specific written instructions to file
21 returns and/or remit taxes electronically only if the taxpayer can
22 show good cause, as defined in RCW 82.32.080, for the failure to
23 comply with such instructions. A taxpayer will be considered to have
24 willfully disregarded the requirement to file returns or remit
25 payment electronically if the department has mailed or otherwise
26 delivered the specific written instructions to the taxpayer on at
27 least two occasions. Specific written instructions may be given as a
28 part of a tax assessment, audit, determination, closing agreement, or
29 other written communication, provided that such specific written
30 instructions apply only to the taxpayer addressed or referenced on
31 such communication. Any specific written instructions by the
32 department must be clearly identified as such and must inform the
33 taxpayer that failure to follow the instructions may subject the
34 taxpayer to the penalties imposed by this subsection. If the
35 department determines that it is necessary to provide specific
36 written instructions to a taxpayer that does not comply with the
37 requirement to file returns or remit payment electronically as
38 provided in RCW 82.32.080, the specific written instructions must
39 provide the taxpayer with a minimum of forty-five days to come into
40 compliance with its electronic filing and/or payment obligations

1 before the department may impose the penalty authorized in this
2 subsection.

3 (6) If the department finds that all or any part of a deficiency
4 resulted from engaging in a disregarded transaction, as described in
5 RCW 82.32.655(3), the department must assess a penalty of thirty-five
6 percent of the additional tax found to be due as a result of engaging
7 in a transaction disregarded by the department under RCW
8 82.32.655(2). The penalty provided in this subsection may be assessed
9 together with any other applicable penalties provided in this section
10 on the same tax found to be due, except for the evasion penalty
11 provided in subsection (7) of this section. The department may not
12 assess the penalty under this subsection if, before the department
13 discovers the taxpayer's use of a transaction described under RCW
14 82.32.655(3), the taxpayer discloses its participation in the
15 transaction to the department.

16 (7) If the department finds that all or any part of the
17 deficiency resulted from an intent to evade the tax payable
18 hereunder, a further penalty of fifty percent of the additional tax
19 found to be due must be added.

20 (8) The penalties imposed under subsections (1) through (4) of
21 this section can each be imposed on the same tax found to be due.
22 This subsection does not prohibit or restrict the application of
23 other penalties authorized by law.

24 (9) The department may not impose the evasion penalty in
25 combination with the penalty for disregarding specific written
26 instructions or the penalty provided in subsection (6) of this
27 section on the same tax found to be due.

28 (10) For the purposes of this section, "return" means any
29 document a person is required by the state of Washington to file to
30 satisfy or establish a tax or fee obligation that is administered or
31 collected by the department, and that has a statutorily defined due
32 date.

33 Part V

34 Miscellaneous Provisions

35 NEW SECTION. **Sec. 501.** (1) Except as provided otherwise in this
36 section, this act is necessary for the immediate preservation of the
37 public peace, health, or safety, or support of the state government

1 and its existing public institutions, and takes effect August 1,
2 2015.

3 (2) Part II of this act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect September 1, 2015.

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