

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

7 **Part II**

8 **Economic Nexus for Out-of-State Wholesalers**

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

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

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

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

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

35 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.08
36 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as
37 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 if the remote seller enters into an agreement with a
4 resident of this state under which the resident, for a commission or
5 other consideration, directly or indirectly refers potential
6 customers, whether by a link on an internet web site or otherwise, to
7 the remote seller, if the cumulative gross receipts from sales by the
8 remote seller to customers in this state who are referred to the
9 remote seller by all residents with this type of an agreement with
10 the remote seller exceed ten thousand dollars during the preceding
11 calendar year. This presumption may be rebutted by proof that the
12 resident with whom the remote seller has an agreement did not engage
13 in any solicitation in this state on behalf of the remote seller that
14 would satisfy the nexus requirement of the United States Constitution
15 during the calendar year in question. Proof may be shown by (a)
16 establishing, in a manner acceptable to the department, that (i) each
17 in-state person with whom the remote seller has an agreement is
18 prohibited from engaging in any solicitation activities in this state
19 that refer potential customers to the remote seller, and (ii) such
20 in-state person or persons have complied with that prohibition; or
21 (b) any other means as may be approved by the department.

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

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

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

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

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

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

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

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

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

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

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

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

13 (iii) More than two hundred fifty thousand dollars of receipts
14 from this state; or

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

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

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

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

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

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

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

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

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

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

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

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

36 (3)(a) Payroll counting toward the thresholds in subsection
37 (1)(c)(ii) and (iv) of this section is the total amount paid by the
38 taxpayer for compensation in this state during the immediately
39 preceding tax year plus nonemployee compensation paid to
40 representative third parties in this state. Nonemployee compensation

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

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

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

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

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

18 (a) Those amounts included in the numerator of the receipts
19 factor under RCW 82.04.462(~~and~~);

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

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

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

1 thousand dollars. Any adjustment will apply to tax periods that begin
2 after the adjustment is made.

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

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

18 (b) For purposes of this subsection, a person is physically
19 present in this state if the person has property or employees in this
20 state.

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

26 (ii) A remote seller as defined in section 202 of this act is
27 presumed to be engaged in activities in this state that are
28 significantly associated with the remote seller's ability to
29 establish or maintain a market for its products in this state if the
30 remote seller is presumed to have a substantial nexus with this state
31 under section 202 of this act. The presumption in this subsection
32 (6)(c)(ii) may be rebutted as provided in section 202 of this act. To
33 the extent that the presumption in section 202 of this act is no
34 longer operative pursuant to section 205 of this act, the presumption
35 in this subsection (6)(c)(ii) is no longer operative. Nothing in this
36 section may be construed to affect in any way RCW 82.04.424,
37 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms
38 "agent" or "other representative" in this subsection (6)(c).

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

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

11 (2) For purposes of this section:

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

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

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

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

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

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

1 directly in a manufacturing operation or research and development
2 operation, to sales to a person engaged in testing for a manufacturer
3 or processor for hire of machinery and equipment used directly in a
4 testing operation, or to sales of or charges made for labor and
5 services rendered in respect to installing, repairing, cleaning,
6 altering, or improving the machinery and equipment.

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

12 (c)(i) The exemption under this section is in the form of a
13 remittance for a gas distribution business, as defined in RCW
14 82.16.010, claiming the exemption for machinery and equipment used
15 for the production of compressed natural gas or liquefied natural gas
16 for use as a transportation fuel.

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

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

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

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

39 (a) "Machinery and equipment" means industrial fixtures, devices,
40 and support facilities, and tangible personal property that becomes

1 an ingredient or component thereof, including repair parts and
2 replacement parts. "Machinery and equipment" includes pollution
3 control equipment installed and used in a manufacturing operation,
4 testing operation, or research and development operation to prevent
5 air pollution, water pollution, or contamination that might otherwise
6 result from the manufacturing operation, testing operation, or
7 research and development operation. "Machinery and equipment" also
8 includes digital goods.

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

10 (i) Hand-powered tools;

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

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

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

19 (c) Machinery and equipment is "used directly" in a manufacturing
20 operation, testing operation, or research and development operation
21 if the machinery and equipment:

22 (i) Acts upon or interacts with an item of tangible personal
23 property;

24 (ii) Conveys, transports, handles, or temporarily stores an item
25 of tangible personal property at the manufacturing site or testing
26 site;

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

29 (iv) Provides physical support for or access to tangible personal
30 property;

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

32 (vi) Produces another item of tangible personal property for use
33 in the manufacturing operation, testing operation, or research and
34 development operation;

35 (vii) Places tangible personal property in the container,
36 package, or wrapping in which the tangible personal property is
37 normally sold or transported; or

38 (viii) Is integral to research and development as defined in RCW
39 82.63.010.

1 (d) "Manufacturer" means a person that qualifies as a
2 manufacturer under RCW 82.04.110. "Manufacturer" also includes a
3 person that:

4 (i) Prints newspapers or other materials; or

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

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

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

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

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

36 (i) "Testing" means activities performed to establish or
37 determine the properties, qualities, and limitations of tangible
38 personal property.

39 (j) "Testing operation" means the testing of tangible personal
40 property for a manufacturer or processor for hire. A testing

1 operation begins at the point where the tangible personal property
2 enters the testing site and ends at the point where the tangible
3 personal property leaves the testing site. The term also includes the
4 testing of tangible personal property for use in that portion of a
5 cogeneration project that is used to generate power for consumption
6 within the manufacturing site of which the cogeneration project is an
7 integral part. The term does not include the testing of tangible
8 personal property for use in the production of electricity by a light
9 and power business as defined in RCW 82.16.010 or the preparation of
10 food products on the premises of a person selling food products at
11 retail.

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

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

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

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

24 (ii) Permitted to file a consolidated return for federal income
25 tax purposes.

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

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

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

35 (iii) The business activities of the affiliated group primarily
36 include development, sales, and licensing of computer software and
37 services.

38 **Sec. 302.** RCW 82.12.02565 and 2014 c 216 s 402 and 2014 c 140 s
39 14 are each reenacted and amended to read as follows:

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

9 (2) The definitions, conditions, and requirements in RCW
10 82.08.02565 apply to this section.

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

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

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

21 ~~((Unless the context clearly requires otherwise,))~~ The
22 definitions in this section apply throughout this chapter unless the
23 context clearly requires otherwise.

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

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

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

34 (4) "Biotechnology" means the application of technologies, such
35 as recombinant DNA techniques, biochemistry, molecular and cellular
36 biology, genetics and genetic engineering, cell fusion techniques,
37 and new bioprocesses, using living organisms, or parts of organisms,
38 to produce or modify products, to improve plants or animals, to
39 develop microorganisms for specific uses, to identify targets for

1 small molecule pharmaceutical development, or to transform biological
2 systems into useful processes and products or to develop
3 microorganisms for specific uses.

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

5 (6) "Electronic device technology" means technologies involving
6 microelectronics; semiconductors; electronic equipment and
7 instrumentation; radio frequency, microwave, and millimeter
8 electronics; optical and optic-electrical devices; and data and
9 digital communications and imaging devices.

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

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

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

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

22 (iii) The economic benefit of the deferral passed to the lessee
23 is no less than the amount of tax deferred by the lessor and is
24 evidenced by written documentation of any type of payment, credit, or
25 other financial arrangement between the lessor or owner of the
26 qualified building and the lessee.

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

30 (9)(a) "Initiation of construction" means the date that a
31 building permit is issued under the building code adopted under RCW
32 19.27.031 for:

33 (i) Construction of the qualified building, if the underlying
34 ownership of the building vests exclusively with the person receiving
35 the economic benefit of the deferral;

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

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

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

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

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

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

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

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

28 (14) "Qualified buildings" means construction of new structures,
29 and expansion or renovation of existing structures for the purpose of
30 increasing floor space or production capacity used for pilot scale
31 manufacturing or qualified research and development, including plant
32 offices and other facilities that are an essential or an integral
33 part of a structure used for pilot scale manufacturing or qualified
34 research and development. If a building or buildings are used partly
35 for pilot scale manufacturing or qualified research and development,
36 and partly for other purposes, the applicable tax deferral shall be
37 determined by apportionment of the costs of construction under rules
38 adopted by the department. Such rules may include provisions for
39 determining the amount of the deferral based on apportionment of
40 costs of construction of an investment project consisting of a

1 building or multiple buildings, where qualified research and
2 development or pilot scale manufacturing activities are shifted
3 within a building or from one building to another building.

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

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

27 (16) "Qualified research and development" means research and
28 development performed within this state in the fields of advanced
29 computing, advanced materials, biotechnology, electronic device
30 technology, and environmental technology.

31 (17) "Recipient" means a person receiving a tax deferral under
32 this chapter.

33 (18) "Research and development" means activities performed to
34 discover technological information, and technical and nonroutine
35 activities concerned with translating technological information into
36 new or improved products, processes, techniques, formulas,
37 inventions, or software. The term includes exploration of a new use
38 for an existing drug, device, or biological product if the new use
39 requires separate licensing by the federal food and drug
40 administration under chapter 21, C.F.R., as amended. The term does

1 not include adaptation or duplication of existing products where the
2 products are not substantially improved by application of the
3 technology, nor does the term include surveys and studies, social
4 science and humanities research, market research or testing, quality
5 control, sale promotion and service, computer software developed for
6 internal use, and research in areas such as improved style, taste,
7 and seasonal design.

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

11 NEW SECTION. **Sec. 305.** If RCW 82.08.02565, 82.12.02565, or
12 82.63.010 are amended by any other act enacted during the regular or
13 any special session of the 2015 legislature, each amendment without
14 reference to the other amendment or amendments of the same statute,
15 the legislature intends for the amendments in this act to be deemed
16 to not conflict in purpose with the amendments in any other such act
17 for the purposes of RCW 1.12.025 and that the amendments in this act
18 be given effect.

19 NEW SECTION. **Sec. 306.** Sections 301 and 302 of this act do not
20 apply with respect to machinery and equipment, as defined in RCW
21 82.08.02565, first used by the taxpayer in this state before the
22 effective date of sections 301 and 302 of this act.

23 **Part IV**
24 **Miscellaneous Provisions**

25 NEW SECTION. **Sec. 401.** (1) Except as provided otherwise in this
26 section, this act is necessary for the immediate preservation of the
27 public peace, health, or safety, or support of the state government
28 and its existing public institutions, and takes effect August 1,
29 2015.

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

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