From: ATG MI REV PRR
To: ATG DL REV OLY Division; ATG DL BCU Seattle Division
Subject: Martinell (10) PRR-2026-0158 Search Request
Date: Tuesday, February 24, 2026 5:19:35 AM

Public Records Search Request – Martinell (10)

Deadline for Responding	**February 27, 2026** *If you have questions, need clarification, or if you are unable to do a search before the response deadline, please contact the sender of this email directly.*
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Link to File	\\ATG.WA.LCL\ATG\DIV\REV\PRR\2026-0158-Martinell (10) Save all responsive documents as indicated in the Public Records Request Division Manual.
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Ellie Mayer
Paralegal, Revenue & Finance Division
360-586-0674 | ellie.mayer@atg.wa.gov
Washington State Office of the Attorney General | atg.wa.gov

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From: Jensen, LaDona R <LaDona.Jensen@atg.wa.gov>
Sent: Monday, February 23, 2026 1:03 PM
To: ATG MI ADM PRR <ADMPRRmail@ATG.WA.GOV>; ATG MI SGO PRR <sgoprr@atg.wa.gov>; ATG MI REV PRR <REVPRR@atg.wa.gov>
Subject: Martinell (10) PRR-2026-0158 Search Request

Dear Staff:

Please let me know by C.O.B on **February 27, 2026** if we have records. If YES we have records, please provide them or a first batch of records by **March 13, 2026**. Please also let me know if this request should be directed to other divisions in addition to those listed here: PRR-2026-0158.

PLEASE READ CAREFULLY – your YES/NO answer is an ATTESTATION of your individual/division search results. Please submit your ATTESTATION at the bottom of the page **here**.

PRR#: PRR-2026-0158
Requester: TJ Martinell (10)
PRO: LaDona R Jensen

Initial Language:

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Agency	Reporting Category	Activity	Court Case
001 Divisional	AGPR AGO Public Records Work	3000 General	General

PRO Reference ACE Page

La Dona Jensen
Director of Public Records
& Constituent Services
WA Attorney General's Office
ladona.jensen@atg.wa.gov

The Center Square

From: ATG MI REV PRR
To: Owings, Kelly (ATG); Stolz, Kelly (ATG); Yunker, Dina L. (ATG)
Subject: OVERDUE - Martinell (10) PRR-2026-0158 Search Request
Date: Tuesday, March 3, 2026 9:26:39 AM

Good morning,

Your response to this request is overdue. Please log your response as soon as possible.

Kindly,
Ellie Mayer
Paralegal, Revenue & Finance Division
360-586-9674 | ellie.mayer@atg.wa.gov
Washington State Office of the Attorney General | atg.wa.gov

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Public Records Search Request – Martinell (10)

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PRO: LaDona R Jensen

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PRO Reference ACE Page

La Dona Jensen
Director of Public Records
& Constituent Services
WA Attorney General's Office
ladona.jensen@atg.wa.gov

The Center Square

From: ATG MI REV PRR
To: Yunker, Dina L. (ATG); Stolz, Kelly (ATG); Moon, David (ATG); Inman, Kyleen (ATG); Adams, Kate (ATG)
Subject: REMINDER - Martinell (10) PRR-2026-0158 Search Request
Date: Friday, February 27, 2026 12:16:40 PM

Good afternoon,

I am needing your response to this request. It is due today.

Ellie Mayer
Paralegal, Revenue & Finance Division
360-586-9674 | ellie.mayer@atg.wa.gov
Washington State Office of the Attorney General | atg.wa.gov

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Director of Public Records
& Constituent Services
WA Attorney General's Office
ladona.jensen@atg.wa.gov

The Center Square

E0075-2: 10% individual income tax, exempt first $1 million of taxable income

Current Law

Washington does not have an individual income tax.

Proposal

Estimate revenues for an individual income tax with a 10% rate.

The tax base is an individual's federal adjusted gross income (AGI).

Each individual's first $1 million in AGI is exempt.

An "out-of-state" credit is allowed for taxes paid to another state or foreign jurisdiction. The amount of this credit is the lesser of the following:
- The amount of tax paid to the other jurisdiction on income also subject to the Washington tax.
- The amount of gross tax due (prior to applying the credit) times the share of a taxpayer's AGI subject to tax in the other jurisdiction.

Credits are also allowed for the following:
- Capital gains tax paid on the same income.
- Business and occupation (B&O) tax paid on the same income.

The tax applies to income received by Washington residents and Washington-sourced income received by nonresidents.

Effective Date

This proposal takes effect on January 1, 2029, with the first estimated payments due in April 2029 and the first tax returns due in April 2030.

Revenue Estimate

The table below shows the fund(s) impacted and the source of the revenues from this proposal:

Fund - Source	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
GF-State - NEW	0	0	0	865,000,000	4,070,000,000	4,480,000,000
Fiscal Year Total	0	0	0	865,000,000	4,070,000,000	4,480,000,000
Biennial Total		0		865,000,000		8,550,000,000

The Center Square

E0075-2: 10% individual income tax, exempt first $1 million of taxable income

Revenue Assumptions

- This proposal takes effect January 1, 2029. The first quarterly payments by employers are due in April 2029, impacting 3 months of collections in fiscal year 2029.
- The first returns are due in April 2030.
- Growth rates mirror growth rates in the Economic and Revenue Forecast Council's November 2025 forecast.
- In response to the new tax, affected taxpayers do not reduce taxable income.
- A standard deduction of $1,000,000 per individual applies for tax year 2029. Each year, the Department of Revenue adjusts this deduction for inflation.
- The B&O credit is calculated using two methods, and the lower amount is used. The first multiplies an individual's share of a business's gross receipts by the B&O tax due. The second multiplies an individual's share of AGI from that business by the individual's income tax due.
- The total amount of credits may not exceed the tax due. A taxpayer may not carry back or carry forward unused credits.
- Because the IRS enforcement budget has been reduced, the Institute on Taxation and Economic Policy (ITEP) has predicted a reduction in federal tax collections. Based on the ITEP analysis, we applied a 4.71% downward adjustment to taxpayers' AGI, prior to estimating collections.

Data Sources

- Department of Revenue, Excise tax data
- Economic and Revenue Forecast Council, November 2025 forecast
- Internal Revenue Service (2024), Publication 6149 calendar year projections by state
- Internal Revenue Service: Individual income tax returns for tax year 2022

Local Government Impact

None

Note

Please note that our review, comments, and any estimates provided are not intended to reflect a policy position by the Department and are solely to assist you in exploring options under development.

Further Information

Kathy Oline
Research and Fiscal Analysis Division
(360) 534-1534

The Center Square

Individual State Agency Fiscal Note

Bill Number: T 9190	Bill Title: AN ACT Relating to establishing an excise tax on income received by individuals from employment, business, and investment activities	Agency: 140 Department of Revenue

Part I: Estimates

[ ] No Fiscal Impact

Estimated Cash Receipts to:

Fund	Fiscal Year 2026	Fiscal Year 2027	2025-2027 Total	2027-29 Biennium	2029-31 Biennium
GF-State NEW				2,420,000,000	5,580,000,000
Total				2,420,000,000	5,580,000,000

Estimated Expenditures from:

	Fiscal Year 2026	Fiscal Year 2027	2025-2027 Total	2027-29 Biennium	2029-31 Biennium
FTE Staff Years					
Fund					
GF-State 001					
Total					

The revenue and expenditures estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

[X] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

[ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

[ ] Capital budget impact, complete Part IV.

[ ] Requires new rule making, complete Part V.

Legislative Contact: JEFF MITCHELL	**Phone: 360-786-7139**	**Date: 11/7/2025**
Agency Preparation:	**Phone:**	**Date:**
Agency Approval	**Phone:**	**Date:**
OFM Review:	**Phone:**	**Date:**

The Center Square

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

CURRENT LAW:
Washington does not have a tax on individual income.

PROPOSAL:
This proposal creates a new excise tax on income received by individuals from employment, business, and investment activities.

The tax equals 9.9% multiplied by an individual's Washington adjusted gross income (AGI).

An individual computes the amount of Washington AGI by making the following adjustments to their federal AGI:
- Excluding federal net long-term capital gains and losses.
- Excluding interest income from bond and other obligations issued by the United States, Washington, or a municipality located in Washington.
- Subtracting the $1,000,000 standard deduction.

For nonresidents, the portion of federal AGI derived from a Washington source is subject to the tax.

Individuals receiving income subject to both the business and occupation (B&O) tax and the proposed excise tax on income may apply the B&O tax credit. The amount of the credit is equal to the B&O tax paid on the income taxed under this proposal.

Individuals receiving income subject to both a tax imposed by another jurisdiction and the proposed excise tax on income may apply the "out-of-state" tax credit. The credit amount is the amount of taxes paid to the other jurisdiction.

EFFECTIVE DATE:
The bill takes effect 90 days after the final adjournment of the session with imposition of tax beginning January 1, 2027. However, due to the time it will take to implement this bill, the department cannot impose the tax until January 1, 2028, with the first returns due in April 2029.

II. B - Revenue Impact

ASSUMPTIONS:
- The department will implement system requirements for this bill by January 1, 2029, with the first returns due in April 2029.
- Growth rates mirror growth rates in the Economic and Revenue Forecast Council's November 2025 forecast.
- In response to the new tax, affected taxpayers do not reduce taxable income.
- A standard deduction of $1,000,000 per individual applies for tax year 2028. Each year, the Department of Revenue adjusts this deduction for inflation.
- The total amount of credits may not exceed tax due. A taxpayer may not carry back or carry forward unused credits.
- Because the IRS enforcement budget has been reduced, the Institute on Taxation and Economic Policy (ITEP) has predicted a reduction in federal collections. Based on the ITEP analysis, we applied a 4.71% downward adjustment to taxpayers' AGI, prior to estimating collections.

DATA SOURCES:
- Department of Revenue, Excise tax data
- Economic and Revenue Forecast Council, November 2025 forecast

The Center Square

- Internal Revenue Service (2024), Publication 6149 calendar year projections by state
- Internal Revenue Service: Individual income tax returns for tax year 2022

REVENUE ESTIMATES
This bill increases state revenues by an estimated $2.4 billion in fiscal year 2029.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):

FY 2026 -	$ 0
FY 2027 -	$ 0
FY 2028 -	$ 0
FY 2029 -	$ 2,420,000
FY 2030 -	$ 2,710,000
FY 2031 -	$ 2,870,000

II. C - Expenditure Impact

In process

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

Should this legislation become law, the department will use the standard process to adopt the following new rules:
- WAC 458-20-NEW, titled: "Personal excise tax-Indian Country."
- WAC 458-20-NEW, titled: "Administration."
- WAC 458-20-NEW, titled: "Definitions, deductions, and exemptions."
- WAC 458-20-NEW, titled: "Allocation and apportionment: Resident and nonresident employees."
- WAC 458-20-NEW, titled: "Allocation and apportionment: Professional athletes."
- WAC 458-20-NEW, titled: "Business income/pass-through entities apportionment/allocation."

This rulemaking would affect individuals residing in and outside of Washington.

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Revenue Impact Detail

			First Biennium		Second Biennium		Third Biennium	
FUND	SOURCE	CODE	1st YEAR	2nd YEAR	3rd YEAR	4th YEAR	5th YEAR	6th YEAR
GF-State	NEW	0000				2,420,000,000	2,710,000,000	2,870,000,000
Total						2,420,000,000	2,710,000,000	2,870,000,000
OTHER								
Total								
Net						2,420,000,000	2,710,000,000	2,870,000,000

Revenue Impact - by Biennium

FUND	SOURCE	CODE	1st Biennium	2nd Biennium	3rd Biennium
GF-State	NEW	0000		2,420,000,000	5,580,000,000
Total				2,420,000,000	5,580,000,000
OTHER					
Total					
Net				2,420,000,000	5,580,000,000

The Center Square

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE APARTMENT OPERATORS ASSOCIATION OF SEATTLE, INC., DONALD C. HAAS AND VIRGINIA HAAS, husband and wife, A. S. STUSSER, FRANK R. FRAZIER and JENNIE COFFEY,
Respondents,

v.

WILLIAM S. SCHUMACHER, CHARLES W. HODDE and CLARK SQUIRE, as the Tax Commission of and as Tax Commissioners for the State of Washington,
Appellants,

CENTRAL BUILDING COMPANY and LOUBELLE REALTY CO., INC.,
Respondents.

No. 35276

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THURSTON COUNTY

HONORABLE JAMES HODSON, JUDGE

BRIEF OF APPELLANTS

JOHN J. O'CONNELL,
Attorney General,

JOHN W. RILEY,
Deputy Attorney General,

Attorneys for Appellants.

Office and Post Office Address: Temple of Justice, Olympia, Wn.

TJM10-00305
PRR-2026-0158

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TJM10-00307
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE APARTMENT OPERATORS ASSOCIATION OF SEATTLE, INC., DONALD C. HAAS AND VIRGINIA HAAS, husband and wife, A. S. STUSSER, FRANK R. FRAZIER and JENNIE COFFEY,
Respondents,

v.

WILLIAM S. SCHUMACHER, CHARLES W. HODDE and CLARK SQUIRE, as the Tax Commission of and as Tax Commissioners for the State of Washington,
Appellants,

CENTRAL BUILDING COMPANY and LOUBELLE REALTY CO., INC.,
Respondents.

No. 35276

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THURSTON COUNTY

HONORABLE JAMES HODSON, JUDGE

BRIEF OF APPELLANTS

STATEMENT OF THE CASE

I. NATURE OF THE ACTION

This is an action for a declaratory judgment as to the constitutionality of those por-

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tions of chapter 5, Laws of 1959, Extraordinary Session[1] (hereinafter referred to as "the act"), which extends the business and occupation tax (RCW chapter 82.04) to the business of " * * * renting or leasing of real property."[2]

II. Summary of Pleadings and Proceedings

This action was initiated by the plaintiffs, The Apartment Operators Association of Seattle, Inc., Donald C. Haas and Virginia Haas, husband and wife, A. S. Stusser, Frank R. Frazier and Jennie Coffey (Tr. 1-8). They were joined by the plaintiffs-intervenors, Central Building Company and Loubelle Realty Co., Inc., both Washington corporations (Tr. 11-18).

The defendants (hereinafter referred to as the "State") interposed demurrers to both the complaint and complaint in intervention (Tr. 20, 21, 22). The State's demurrers were

[1]Chapter 5, section 4, Laws of 1959 Extraordinary Session.
[2]For text see Appendix "A".

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overruled (Tr. 24, 25). The State then filed answers to both complaints (Tr. 26).

The parties then submitted an "Agreed Statement of Facts" to the trial court (Tr. 26) which resulted in the entry of the trial court's Findings of Fact and Conclusions of Law (Tr. 27-40), and Declaratory Judgment and Injunction (Tr. 41-43) on July 17, 1959.

Notice of Appeal was served and filed on the same day.

III. Nature of the Judgment

The judgment of the trial court declares the act in question to be unconstitutional and void as contrary to sections 3,[3] 12,[4] 23,[5] 29 [6] and 32 [7] of Article I of the Constitution of the State of Washington, the Fourteenth [8] and Seventeenth [9] Amendments to the Constitution of the

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[3]Text of Art. I, § 3 (State Constitution), Appendix B.
[4]Text of Art. I, § 12 (State Constitution), Appendix B.
[5]Text of Art. I, § 23 (State Constitution), Appendix B.
[6]Text of Art. I, § 29 (State Constitution), Appendix B.
[7]Text of Art. I § 32 (State Constitution), Appendix B.
[8]Fourteenth Amendment (State Constitution) Appendix B.
[9]Seventeeth Amendment (State Constitution) Appendix B.

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State of Washington (Article VII) and Fourteenth Amendment to the Constitution of the United States of America.[10] (Tr. 41-43.)

The judgment of the court further enjoins the state (members of the Tax Commission) from collecting taxes imposed by the Act from "* * * *any person, firm, partnership or corporation whatsoever* * * *." (Tr. 41-43.) (Emphasis added.)

IV. Facts of the Case

The facts of this case are set forth in the Agreed Statement of Facts (Tr. 26) which was submitted to the trial court by counsel following arguments on the State's general demurrers to the complaints of the plaintiffs (Tr. 20) and intervenors-plaintiffs (Tr. 21).

The statement discloses the following essential facts:

1. Each of the plaintiffs and intervenors-

[10]Fourteenth Amendment, Sec. 1 (Federal Constitution) Appendix B.

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plaintiff (except the plaintiff The Apartment Operators Association of Seattle, Inc. and plaintiff A. S. Stusser) own or have a leasehold estate in apartment houses or business properties situated in the State of Washington (Tr. 26, ¶¶ I-VII, Agreed Statement of Facts).

2. The plaintiffs (except A. S. Stusser and The Apartment Operators Association of Seattle, Inc.) are each generally engaged in the business of maintaining and operating apartment buildings (Tr. 26, ¶¶ II, IV and V, Agreed Statement of Facts).

3. The intervenors Central Building Company and Loubelle Realty Co., Inc., as corporations are each enjoying and exercising their corporate franchises and privileges (Tr. 26, ¶¶ VI and VII, Agreed Statement of Facts). The Central Building Company maintains and operates a large business building, while the Loubelle Realty Co., Inc., has merely leased (see Exhibit C, Agreed St., Tr. 26) the real

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estate upon which a large business building has been erected.

4. From these activities all of these plaintiffs and intervenors-plaintiff receive rentals in excess of $300.00 per month and $3,600.00 per year. (Tr. 26)

5. Plaintiffs A. S. Stusser and The Apartment Operators Association of Seattle, Inc., do not claim ownership of property, are not engaged in business and the state makes no claim upon them here.

6. The Legislature of the State of Washington in special session in the year 1959 adopted Senate Bill No. 6 which was approved by the Governor of the State of Washington. All portions of said bill hereafter referred to took effect on the 1st day of April, 1959, and ever since said time have been and now are in effect. Senate Bill 6 has been designated "chapter 5, Laws Extraordinary Session 1959." (See Appendix "A".)

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7. The defendants William S. Schumacher and Clark Squire are the duly appointed, qualified and acting tax commissioners for the State of Washington. They constitute the Tax Commission of the State of Washington, the administrative board which is charged with the administration and enforcement of the act.

8. The Attorney General, and the defendants William S. Schumacher and Clark Squire, as Commissioners and as the Tax Commission of the State of Washington (hereinafter referred to as "the State"), believe that chapter 5, Laws Extraordinary Session 1959, is valid and constitutional. Accordingly, the act has been so construed as to subject the business activities of the plaintiffs Donald C. Haas and Virginia Haas, husband and wife, and as a marital community, and Frank R. Frazier, and Jennie Coffey, and the intervenors-plaintiff Loubelle Realty Co., Inc., and Central Building Company, to be subject to the act. It is the con-

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tention of the State that each of said plaintiffs and intervenors-plaintiff is "engaging in business" and that the act imposes a tax upon the privilege of engaging in business in the State of Washington measured by the gross rentals received by the said plaintiffs in the course of their operation of apartments and apartment buildings and business offices and business buildings within the State of Washington.

The several plaintiffs and intervenors allege a rainbow of factual variations which seek to "set up" various constitutional objections to the legislation in question. These factual-legal variations under which each plaintiff labors, and a summary of the State's rebuttal thereto may be illustrated by the following summary:

1. *The Apartment Operators Association of Seattle, Inc.:*

   (See paragraph I, Complaint.) An association of apartment house operators whose

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members have allegedly assigned their causes of action to the association.

(Under no conceivable set of facts could the association show damage. It receives no rents, would pay no tax. Accordingly, even if the tax were questionable this plaintiff cannot show damage.) (Discussion Part III, B, *infra*)

2. *Donald C. Haas and Virginia Haas, husband and wife:*

   (See paragraph II, Complaint.) Residents of Washington and owners of an apartment house situated in Washington.

3. *Frank R. Frazier:*

   (See paragraph III, Complaint.) A resident of Washington who leases an entire apartment building from its owner for a fixed rental. Frazier in turn maintains and operates the apartment house and rents portions of the leased premises to his tenants. He contends that his activities do not con-

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stitute "engaging in business" since the State contends that the owner of the building is engaged in business and subject to the act.

(Frazier's privileged activity is separate and distinct from that of his lessor. Each is an identifiable activity entirely unrelated and properly classified as "engaging in business" by the legislature.) (Discussion, Part III, C, D, *infra)*

4. *A. S. Stusser:*

(See paragraph IV, Complaint.) A resident of Washington who rents an apartment for a fixed rental.

(As a tenant paying rent Stusser is not asked to pay a tax. He cannot—under any conceivable circumstance—show or claim damage.) (Discussion, Part III, G, *infra)*

5. *Jennie Coffey:*

(Paragraph V, Complaint.) This plaintiff is a resident of Oregon but owns an apartment building located in Vancouver, Wash-

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ington. She maintains and operates the apartment by means of a resident manager.

(That she may perhaps reside elsewhere—does not lessen the impact of the obvious fact that her apartment house *is* situated in Washington and that she is *ipso facto* "engaging in business.") (Discussion, Part III, F, H, *infra*)

6. *Central Building Company* (Intervenor-Plaintiff):

Is a Washington corporation engaged in the business of operating an office building in Seattle. This plaintiff alleges that it has interests in certain long term leaseholds executed by it as lessor prior to the effective date of the act in question, the income on rentals from which will be unconstitutionally taxed.

(Discussion, Part III, H, *infra)*

7. *Loubelle Realty Co., Inc.* (Intervenor-Plaintiff):

Owns certain property in Washington which

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it leased on September 11, 1957, for 30 years subject to two successive options to renew. It alleges its lessees are obligated to pay all tax due upon the realty in question, and that its only activity consists of receiving its "ground rent" each month.

(But this plaintiff is nevertheless "engaging in business.")

ASSIGNMENTS OF ERROR

1. The trial court erred in failing to enter a finding of fact providing:

> That the ownership of apartment buildings and real estate by the plaintiffs Donald C. Haas and Virginia Haas, husband and wife, and Jennie Coffey, and the operation, maintenance, rental and activities in connection with operating such apartment buildings by the said plaintiffs each constituted a "business" in the State of Washington pursuant to RCW 82.04.230; and

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that each of said plaintiffs were and are "engaging in business" in the State of Washington.

2. The trial court erred in failing to enter a finding of fact providing:

That the possession of a leasehold estate in an apartment building and the operation, maintenance, rental and other activities in connection with operation and management of an apartment building constituted a "business" in the State of Washington; and that the plaintiff Frank R. Frazier was and is "engaging in business" in the State of Washington.

3. The trial court erred in failing to enter a finding of fact providing:

That the ownership of business buildings and real estate by intervenors-plaintiff Central Building Company and Loubelle Realty Co., Inc., and the operation, man-

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agement, rental and other activities in connection with the operation of business properties each constituted a "business" in the State of Washington pursuant to RCW 82-.04.230.

4. The trial court erred in failing to enter a finding of fact providing:

That the intervenors-plaintiff Loubelle Realty Co., Inc., and Central Building Company are each Washington corporations; that their corporate activities of owning business buildings and real estate and the operation, management, rental and other activities in connection with operation of such business properties each constitutes an exercise and enjoyment of the corporate franchises of each of said corporations granted by the State of Washington; and that each corporation is therefore "engaging in business" within the State of Washington.

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5. The trial court erred in failing to enter a conclusion of law providing that:

> The plaintiffs Donald C. Haas and Virginia Haas, husband and wife, Frank R. Frazier and Jennie Coffey, and the intervenors-plaintiff Central Building Company and Loubelle Realty Co., Inc., were and are each "engaging in business" in the State of Washington pursuant to RCW 82.04.240.

6. The trial court erred in failing to enter a conclusion of law providing that:

> The plaintiffs Donald C. Haas and Virginia Haas, husband and wife, Frank R. Frazier and Jennie Coffey, and intervenors-plaintiff Central Building Company and Loubelle Realty Co., Inc., were and are each subject to the provisions of chapter 5, Laws of 1959 Extraordinary Session, pertaining to the "business of renting and leasing real property"; that the said act is an excise

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tax which constitutionally extends the existing business and occupation tax of chapter 82.04 of the Revised Code of Washington to the business of renting and leasing real property; that the measure of the tax is properly based upon the gross receipts received by the plaintiff in the business of renting and leasing real property; that the classification by the legislature in said act pertaining to the "business of renting and leasing real property" rests upon a reasonable and fair basis and is neither discriminatory nor arbitrary.

7. The trial court erred in entering conclusion of law No. I providing:

> "That this Court has jurisdiction over the persons and parties and over the subject matter considered herein."

in that the plaintiffs The Apartment Operators Association of Seattle, Inc., and A. S. Stusser are improper parties to these proceedings and

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cannot be subject to the jurisdiction of the court or the order of the court below.

8. The trial court erred in entering conclusion of law No. II providing:

> "That this cause is an appropriate cause for relief by way of a declaratory judgment."

in that the plaintiffs The Apartment Operators Association of Seattle, Inc., and A. S. Stusser are improper parties to these proceedings and cannot be subject to the jurisdiction of the court or the order of the court below.

9. The trial court erred in entering conclusion of law No. III providing:

> "That those portions of section 4 of chapter 5, Laws of Extraordinary Session, 1959, passed by the Legislature of the State of Washington, which purport to levy and collect from every person a tax for the act or privilege of
>
> 'engaging within this State in the business of * * * (5) the rent-

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ing or leasing of real property * * *"

hereinafter referred to as the 'Provisions for Tax on Rents,' are void and unconstitutional under sections 3, 12, 23, 29 and 32 of Article I of the Constitution of the State of Washington, and under the Fourteenth and Seventeenth Amendments to said Constitution, and said Provisions for Tax on Rents are void and unconstitutional under the Fourteenth Amendment to the Constitution of the United States of America."

10. The trial court erred in entering conclusion of law No. IV providing:

"That the Provisions for Tax on Rents as applied to the real property of the plaintiffs and the plaintiff-intervenors for the year 1959 violate the 40-mill limitation contained in the Seventeenth Amendment to the Constitution of the State of Washington."

11. The trial court erred in entering conclusion of law No. V providing:

"That the plaintiffs and the plaintiff-

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intervenors are entitled to have entered herein a declaratory judgment declaring said Provisions for Tax on Rents to be void and unconstitutional."

12. The trial court erred in entering conclusion of law No. VI providing:

"That the defendants, and each of them, and their successors in office, individually and as the Tax Commission of the State of Washington and their employees and agents, should be forever enjoined from levying, collecting, or demanding payment of the taxes imposed by said Provisions for Tax on Rents from any person, firm, partnership or corporation whatsoever, and from attempting to enforce any penalty by reason of failure of any person, firm, partnership or corporation whatsoever to pay said taxes or file tax returns or other documents with respect to or reflecting said taxes, and should be forever enjoined from expending any amounts of money belonging to the State of Washington in preparing to enforce said Provisions for Tax on Rents and collecting the taxes imposed thereunder."

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13. The trial court erred in entering declaratory judgment and injunction in favor of plaintiffs and against the defendants.

ARGUMENT

INTRODUCTION

It is appellant's belief that the foregoing assignments of error are individually and collectively hinged to a single question of law:

> *Is the tax in question an excise tax or a property tax?*

If the tax in question is an excise tax (and we submit that it is) then all of respondents' arguments based upon property tax concepts must fall like dominoes.

Accordingly, appellants' argument will be divided as follows:

1. General Consideration of the Nature of the Tax in Question.
2. Application of Recognized Judicial Criterion for Analysis of Taxes.

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3. Consideration of the Nature of the State's Power of Taxation.
4. Comparison of Tax Here With Other Taxes.
5. Analysis of *Jensen v. Henneford.*
6. Consideration of Trial Court's Application of Specific Constitutional Provisions.
7. Summary of Appellants' Argument.

Assignments of Error number 1 through number 6 which are severally and collectively concerned with the problem of whether the respondents are "engaging in business" in Washington and are therefore subject to the provisions of the act are discussed in further detail below. Appellants submit that the Agreed Statement of Facts (Tr. 26) establishes conclusively that under the Laws of Washington respondents are "engaging in business" here. These matters are discussed below at Part I-B, *infra*, of Appellants' Argument.

Assignments of Error, number 9 and number 10 involving specific constitutional provi-

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sions erroneously invoked by the trial court, are discussed in Part VI, *infra*, of this brief.

I.

NATURE OF THE TAX QUESTION

A. Legislative Background

The 1959 session of the Washington State Legislature was faced with a fiscal problem of emergency proportions.

The situation was described in an article in the Washington Law Review in the Fall of 1958 as follows:

> "The State of Washington today is critically hampered in the financing of its government at all levels by a fiscal straitjacket that has been materializing over a period of nearly thirty years. Legal and financial expedients of the last decade signify its increasing pressure. Government so confined obviously cannot respond to basic social and economic changes, and many such changes are observed in Washington. Dramatic increases in population,

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the trend toward increased industrialization, growing urbanization throughout the state, the development in the Puget Sound area of one of the nation's major urban complexes with accompanying expansion of the role of governmental services in the life of the regional culture, all cumulate and interact. Meanwhile, the state's legal and administrative mechanisms for drawing upon economic capacity no longer suffice to underwrite needed governmental services. * * *

"There are many indications of the dimensions of the problem. The general fund of the state treasury, the fund used to finance the major proportion of general services rendered by the state government, is seriously overdrawn. Careful analysis of its apparent condition, and a projection to the end of the current biennium, show the probability of an accumulated overdraft of between 80 and 100 million dollars. The likelihood is that this overdraft can be financed for the immediate future, as it has been in the recent past, by interfund loans and advances from other funds and accounts in the treasury. But

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this practice cannot continue indefinitely. Unless corrective action is taken, the condition of the fund will grow progressively worse and more difficult to correct. The point is that the state has not in recent years, is not now, and cannot in the foreseeable future, support expenditure commitments from the authorized revenues of the fund. Past efforts to avoid inevitable changes by postponement have made showings of improvement, but such showings were temporary. * * *" 33 Wash. L. Rev. 225, page 241.

At the same time the Tax Advisory Council of the State of Washington commented that

"*The fiscal crisis confronting the state of Washington has assumed emergency proportions.* Despite tax increases in three out of the last four biennia, the present biennium began with a deficit of about $30 million and, due to the combined effects of an unbalanced budget and a business recession, the next biennium will probably begin with a deficit of $80 million. It has been estimated by some that if taxes are not increased again the budget for 1959-

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1961 will probably be out of balance in excess of $100 million in addition to this starting deficit. * * *" "Financing State and Local Government in Washington, Report of the Tax Advisory Council of the State of Washington" (1958), p. 7. (Emphasis supplied.)

As a part of the council's recommendations, the report of the Governor's Tax Advisory Council provided in part that:

"*At the state level, additional revenue to finance the immediate needs of government for the ensuing biennium must be derived from sources within the present tax structure — primarily from the sales tax imposed on a broader base and at an increased rate, supplemented by the revenue realized from the removal of certain exemptions.*

"Within the tax structure at the state level, as with the property tax, the Council was disturbed by the existence of a very large number of exemptions, exclusions, deductions and special rates. While many of these benefits might have been justified at the time they were enacted, the overall

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tax burden has increased so greatly in recent years that these exemptions should be carefully reviewed with an eye not only on the effect of the exemptions to the beneficiaries but also on the tax burden which they require the rest of the taxpayers to assume. The Council and its subcommittees reviewed many exemptions, but concluded that virtually their entire time could be spent in these areas without solving the major problem. As part of its revenue program the Council recommends *the removal of the exemptions in the B & O tax of agriculture and of the rental of real property* (RCW 82.04.330 and 82.04.390, respectively). * * * " "Financing State and Local Government in Washington, Report of the Tax Advisory Council of the State of Washington" (1958), p. 22. (Empasis supplied.)

In the Governor's message to the legislature the Governor advised the legislature:

"This Administration inherited grave fiscal problems; a growing deficit, inadequate services and a poor fiscal management system. * * *

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"A growing financial problem is not unique to our state. Our sister states are affected likewise. We are faced, however, with rapid population growth which must be met not alone by services to business and agriculture but which strains our resources to provide for adequate public schools and higher education, proper institutional care and treatment, and equitable and humane provision for our older citizens. In some respects, however, we do stand out from our sister states. We have assumed at the State level a greater share of the cost of public schools and public assistance than is true in their case. To this we owe a large part of our General Fund problem. We owe it, also, to some of the outmoded provisions of our State Constitution which prevent local government from providing adequate services *locally financed.* The answer obviously is not to move further toward assumption of local burdens by the State unless we wish to destroy local government.

"We inherited a deficit of almost $30 million. Despite savings through curtailed expenditures in this biennium amounting to some $20 million, our revenue fell during

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> the recent recession and our public assistance requirements increased. The result is an increase in the deficit for this biennium. In the coming biennium for which we are now budgeting the situation is not improved. Despite an increase in revenue to the General Fund resulting from renewed business activity this increase does not keep pace with expenditure requirements. *Against estimated revenues of $730.4 million from present sources we need, even after careful budget pruning, $835.5 million to meet appropriation requirements for the next biennium, leaving an excess of expenditures over revenues from present sources of $105.1 million.* * * *" "Budget Message of Albert D. Rosellini, Governor of Washington, to the Thirty-Sixth Legislature" (January 12, 1959), p. i. (Emphasis supplied.)

The Governor's revenue programs patterned for the most part after his Tax Advisory Council's recommendations, were based upon an analysis of the then existing tax structure:

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"The revenue program I am offering to you has several distinct advantages over several other ways of raising new revenues *within the existing tax structure.* First, by spreading part of the burden over services and motor vehicles where the load is distributed more nearly according to ability to pay, the impact on individuals and families of more modest means has been lessened. Second, these taxes are not a direct levy on production, and although business will share in the burden through its purchases of taxable goods and services, the tax climate for industry will not be appreciably changed. Finally, these proposals are related to existing statutes, definitions, and administrative rulings which make their impact more certain and their revenues more assured." "Budget Message of Albert D. Rosellini, Governor of Washington, to the Thirty-Sixth Legislature" (January 12, 1959), p. vii. (Emphasis supplied.)

The foregoing indicates the atmosphere and light of the times in which the 1959 sessions of the Washington State Legislature were operat-

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ing. Faced with these circumstances, it enacted in extraordinary session, Senate Bill No. 6, (Appendix A) which has since been designated as chapter 5 of the Laws of 1959 Extraordinary Session, which contains in principal part the revenue acts of 1959.

As indicated above this action was commenced by Respondents for the purpose of challenging those portions of chapter 5, Laws of 1959 Extraordinary Session, which extend the Business and Occupation tax to the privilege of engaging in the business of renting and leasing real property.

The effect of the act upon chapter 82.04 of the Revised Code of Washington may be illustrated by the following sections of the Code deemed pertinent here.

RCW 82.04.150:

> " 'Engaging in business' means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a

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business when the liquidators thereof hold themselves out to the public as conducting such business." (Not amended by the act.)

RCW 82.04.220:

"There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be." (Not amended by the act.)

RCW 82.04.280:

"Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals or magazines; (2) building, repairing or improving any publicly owned street, place, road, highway, bridge or trestle which is used, or to be used, primarily for foot or vehicular traffic; including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course

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of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, bridge or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire; (4) operating a cold storage warehouse, but not including the rental of cold storage lockers; *(5) the renting or leasing of real property; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one-quarter of one percent.*" (As amended by the act; emphasis supplied.)

RCW 82.04.300:

"This chapter shall apply to any person engaging in any business activity taxable under RCW 82.04.230, 82.04.240, 82-.04.250, 82.04.260, 82.04.270 and 82.04-.280 other than those whose value of products, gross proceeds of sales, or gross income of the business is less than three hundred dollars per month: *Provided,* That where one person engages in more than one business activity and the combined mea-

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sures of the tax applicable to such businesses equal or exceed three hundred dollars per month, no exemption or deduction from the amount of tax is allowed by this section." (As amended by the act.)

RCW 82.04.390:

"This chapter shall not apply to gross proceeds derived from the sale of real estate. This however, shall not be construed to allow a deduction of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions." (As amended by the act.)

B. APPLICATION OF THE ACT TO PLAINTIFFS' ACTIVITIES. (ASSIGNMENT OF ERROR NO. 1 THROUGH NO. 6)

1. *Respondents Haas, Coffey and Frazier*

In view of statements set forth in the Agreed Statement of Facts (Tr. 26) each of the Respondents (except the Apartment Operators Association and A. S. Stusser) are squarely

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within the provisions of RCW 82.04.150, 82.04-.220, 82.04.280 as amended by the act and the trial court should have so held.

Thus the Respondents Haas and Coffey are the owners of apartment buildings and the Respondent Frazier is possessed of a leasehold estate in an apartment building. They each maintain and operate their respective properties as multiple unit apartment buildings by keeping them in rentable condition, offering apartments to prospective tenants and renting or leasing apartments to tenants. (P. II, III, V, Agreed Statement of Facts, Tr. 26.) The foregoing activities of these Respondents result in gross receipts, rentals and /or income to them in excess of $300 per month and $3600 per year. (Paragraph XI, Agreed Statement of Facts, Tr. 26.)

Clearly therefore these Respondents are "engaging in business" (RCW 82.04.150), *supra*, since their activities were obviously engaged in " * * * with the object of gain,

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benefit or advantage" (RCW 82.04.140) and therefore constitute businesses within (RCW 82.04.140) *supra.*

Finally, the "gross income" received by each of these Respondents exceeds the minimum specified by RCW 82.04.300 *supra* indicating not only *prima facie* coverage by the act but also that the business activity is of a tempo or volume in excess of the minimum amount established by the legislature as "business activity" intended to be covered by the act. (RCW 82.04.300.)

2. *Respondents Central Building and Loubelle Realty Co., Inc.*

Central Building Company and Loubelle Realty Company, Inc., are both Washington Corporations. The activities of these corporate Respondents is in general similar to that of the Respondents Haas, Frazier and Coffey except that these corporations deal in business properties. (See Paragraphs VI and VII, Agreed Statement of Facts, Tr. 26.)

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It will be noted that Respondent Central Building Company owns real property situated in King County and that it maintains the building situated thereon in condition suitable to rent to tenants and that it does so rent portions thereof from time to time. (Tr. 26; P. VI, *supra.*)

This activity is within its declared corporate powers set forth in Article II of Exhibit A of the Agreed Statement of Facts (Tr. 26) providing in pertinent part that the powers of the corporation shall include

> "* * * (c) In all ways in its own right, to acquire, hold, manage, operate, develop, improve, change, exchange, lease, sell, and dispose of properties and interests of all kinds, whether real, personal or mixed and wheresoever situate."

Similarly, Loubelle Realty Co., Inc., owns and has leased real property situated in King County. It invested its sums in realty and then entered into a complex, detailed lease of the real

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estate with another corporation. (See Exhibit C, Agreed Statement of Facts, Tr. 26.)

Loubelle's corporate articles provide that its purposes and corporate franchises include the power

> " * * * (d) to acquire, hold, lease, sell, mortgage, hypothecate real property and personal property used in connection with said real estate, and for such purposes to do anything necessary or incidental thereto." (Exhibit B, Agreed Statement of Facts, Tr. 26.)

Finally, each corporation realizes or receives gross receipts, rentals, and/or income as a result of the activities just described which exceeds $300 per month and $3600 per year, the minimum level of business activity established by the legislature as covered by the act. (RCW 82.04.300, *supra.*)

It follows necessarily that these respondents are enjoying "the exercise of corporate or

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franchise powers * * *" (RCW 82.04.150, *supra*), and that they are each "engaging in business" accordingly.

An abundance of Washington case law supports this conclusion.

3. *Respondents Apartment Operators of Seattle, Inc., and A. S. Stusser.*

These plaintiffs are improper parties to this proceeding. The complaint (Tr. 1) indicates that neither party is injured and cannot possibly be injured by the act. Therefore they are hardly real parties in interest. *State ex rel. Tattersall v. Yelle*, 52 Wn. (2d) 856, 329 P. (2d) 841.

4. *Respondents Are Engaging In Business: Case Authority.*

The following Washington decisions establish clearly that the trial court should have concluded that respondents are "engaging in business" and are subject to the act:

Thys v. State, 31 Wn. (2d) 739, 199 P.

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(2d) 68; *Yakima Fruit Growers Ass'n v. Henneford*, 187 Wash. 252, 60 P. (2d) 62; *Milwaukee Land Co. v. State*, 188 Wash. 52, 61 P. (2d) 996; *Puget Sound Stevedoring Co. v. State Tax Comm.*, 189 Wash. 131, 63 P. (2d) 532; *North Pac. Coast Freight Bureau v. State*, 12 Wn. (2d) 563, 122 P. (2d) 467.

In *Thys v. State, supra*, the plaintiff made a contention similar to that urged by the plaintiff, Loubelle Realty Company, Inc., in this case. The plaintiff there was a foreign corporation. The sole act performed in this state was the delivery to lessees of hop picking machines which were leased on a long term basis for a given consideration. The plaintiff contended that it had never visited the State of Washington, was a nonresident thereof, and was not "doing business" so as to justify imposition of the tax in question. The court held that a foreign corporation is doing business within the state when through an agent it does a series of similar acts

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for the purposes of realizing pecuniary benefits or otherwise accomplishing an objective "or does a single act for such purpose with the intention of thereby initiating a series of such acts."

In *North Pac. Coast Freight Bureau v. State*, *supra*, the plaintiff association (a non-profit partnership) claimed that it acted merely as an agent for members and consequently that its acts did not constitute "engaging in business." The bureau dealt with the public as a distinct legal entity and its activities consisted of publishing of freight tariffs and distributing them to the members of the association. This court held unequivocally that the acts of the bureau *did* constitute engaging in business, and held further "in considering the meaning of the terms 'business' and 'engaging in business,' we must accept the definition of those terms found in the act." *North Pac. Coast Freight Bureau*, *supra*, p. 571.

In *Milwaukee Land Co. v. State*, 188 Wash.

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52, 61 P. (2d) 996 (1936), *supra*, in a decision resting upon facts presenting issues dispositive of the question here, the taxpayer-corporation was held to be "engaging in business." There the Milwaukee Land Company was an organization wholly owned by Milwaukee Railroad whose sole function was to hold real estate. During reporting periods in question, taxpayer's acts consisted solely of sale of real property. An excise tax was imposed for the privilege of engaging in business in Washington. The corporation contended that it was not "engaging in business." This court held,

> "* * * it was not required that, in any given month or other appreciable period of time, respondent should engage in all or even most of the specified purposes of its incorporation. If it engaged in any one or more of them, necessary and usual in its general scheme of business, then it engaged in, and was promoting, that business or occupation. * * *" *Milwaukee Land Co.*, *supra*, p. 55.

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In a case before the United States Supreme Court referred by our Washington court in the case of *Thys v. State, supra,* and found by our court to "be interesting," the United States Supreme Court held that a British corporation was "transacting business" and was therefore subject to the provisions of the Clayton Act when its activities consisted solely of negotiating contracts with a third party. The British corporation was represented by a single individual in the United States.

In a lengthy discussion of what constitutes "engaging in business" and "transacting business" the court held in pertinent part as follows:

> "* * * Because all corporate action must be vicarious, that content could be determined only by an act of judgment which selects and attributes to the corporation, from the mass of activities done or purporting to be done on its behalf, those acts of individuals which are relevant for the particular statutory purposes and policies

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in hand." *U. S. v. Scophony Corporation*, 333 U. S. 795, 68 S. Ct. 855, 92 L. Ed. 1091.

Accordingly, the court found that the taxpayer in question, acting by means of a single representative who was a director and a representative in negotiations concerning ownership of stock, organization of subsidiary corporations, etc., constituted continuing efforts to resolve a corporate impasse directed to saving and resuscitating the taxpayer's business. These activities constituted "transacting business" under the act in question. The United States Supreme Court cited as authority for this proposition *International Shoe Co. v. Washington*, 326 U. S. 316, 90 L. ed. 101, 66 S. Ct. 154, 161 A. L. R. 1057; *United States v. Scophony Corporation*, *supra.*

In another interesting case which was appealed to the United States Supreme Court (*Stone v. Stapling Machine Co.*, 71 So. (2d) 205, 220 Miss. 470, appeal dismissed 348

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U. S. 802), the taxpayer's sole activities within the taxing state constituted the location of personal property within the taxing state. The taxpayer rented the machines in question to residents of the State of Mississippi in New Jersey. The lessees then transported the machines to the State of Mississippi and used them there and paid taxpayer's rentals and royalties pursuant to a contract. The State of Mississippi exacted a tax measured by the gross income from the rentals of the machines located within the State of Mississippi. The Mississippi Code 1942, section 10111, imposed the tax

> "(1) Upon every person engaging or continuing within this state in any of the following businesses, there is likewise hereby levied and shall be collected a tax on account of the business engaged in equal to two per cent of the gross income of the business * * *
>
> "Renting or leasing of tangible personal property."

The Mississippi Code provided that the term "business"

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> " * * * shall include all activities or acts engaged in (personal or corporate) or caused to be engaged in with the object of gain, benefit or advantage either direct or indirect and not exempting sub-activities producing marketable commodities used or consumed in the main business activity. Each of such subactivities shall be considered business engaged in, taxable in the class in which it falls." Miss. Code 1942, § 10104.

The court will note that the foregoing language of the Mississippi Code is substantially equivalent to their counterparts in the Washington Code (RCW 82.04.140 and RCW 82.04.150).

The Mississippi court held as follows:

> " * * * All the things necessary for the prosecution of a business need not take place within the state imposing a privilege tax thereon before the tax can be exacted. All that is necessary is that something be done to take place within the taxing state that is incidental to or substantially connected with the prosecution of the business. *State of Wisconsin v. J. C. Penney Co.*, 311

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U. S. 435, 61 S. Ct. 246, 85 L. Ed. 267, 130 A. L. R. 1229. * * * "

Accordingly the trial court erred in failing to make and enter Findings of Fact and Conclusions of Law consistent with the foregoing principles of law. The trial court should be instructed to enter Findings of Fact and Conclusions of Law specified in Assignments of Error No. 1 through No. 6, accordingly.

C. Prior History of the Washington Business and Occupation Excise Tax

Since 1933 the Washington excise tax system has constituted an integral part of the State's tax structure. (See 33 Wash. L. Rev. 1, "Legal Aspects of the State's Fiscal Crisis," Alfred E. Harsch.)

At virtually every session of the Washington State Legislature[2] since the year of 1933 the

[2]Chapter 191, Laws of 1933; chapter 180, Laws of 1935; chapter 227, Laws of 1937; chapter 225, Laws of 1939; chapter 178, Laws of 1941; chapter 249, Laws of 1944-1945; chapter 156, Laws of 1943; chapter 228, Laws of 1949; chapter 9, Laws of 1951, Ex Sess.; chapter 28, Laws of 1951, 2d Ex. Sess.; chapter 91 and chapter 195, Laws of 1953; chapter 389, Laws of 1955; chapter 10, Laws of 1955, Ex. Sess.; chapter 279, Laws of 1957.

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excise tax system as now codified in chapter 82-.04 of the Revised Code of Washington has been varied, adjusted and extended to include new classifications of activities or businesses intended to be subjected to this tax for the privilege of "engaging in business." (RCW 82.04-.280) This business and occupation tax system now includes many diverse classifications.

Thus, among various classifications included in chapter 82.04 (RCW) are the following: Extractors: a tax upon persons engaging in the business as an "extractor." It will be observed that this includes business of extracting minerals from real property, removing timber, and sand or gravel; Manufacturing: RCW 82.04.240; Retailers: RCW 82.04.250; Buyers and Sellers of Grains and Flour Manufacturers: RCW 82.04.260; Wholesalers: RCW 82.04.270; Printers, Publishers and Highway Contractors: RCW 82.04.280; Professional Services and Other Activities: RCW 82.04.290.

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In addition the legislature has further extended the classifications under chapter 82.04 and refined them by providing many exemptions. Thus, the following exemptions have been traditionally established by the legislature: Farmers: RCW 82.04.330; Athletic Exhibitions: RCW 82.04.340; Racing Meets Conducted Under Licenses Administered by the Horseracing Commission: RCW 82.04.350; Fraternal and Beneficiary Organizations: RCW 82.04.370; Financial Institutions: RCW 82.04-.400; Chick Hatcheries: RCW 82.04.410.

Parenthetically it should be observed that heretofore the legislature has also specifically exempted the business of renting and leasing real property: RCW 82.04.390 (until amended by chapter 5, Laws of 1959, Extraordinary Session, sections 4, 5, 6, 7 and 8 thereof. Appendix A.)

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Conclusion

The foregoing discussion indicates that prior to the 1959 session of the Washington State Legislature, State Government was faced with fiscal difficulties of emergency proportions. Pre-legislative hearings and recommendations of the governor to the legislature indicated the need for extension of the then existing tax structure to meet the fiscal amergency confronting the State. The legislature through the medium of Senate Bill No. 6 designated as chapter 5, Laws of 1959 Extraordinary Session, increased rates and extended the tax base of the existing system to meet financial demand upon State government. The method of increasing rates and extending the base falls well within the existing method and customary procedure.

The provisions of the act challenged by respondents are clearly applicable to respondents' business activities.

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We shall next discuss existing standards for distinguishing between excise taxes and property taxes. It is, of course, appellants' view that the tax in question is an excise tax and that the trial court erroneously concluded that the tax in question was a property tax.

II.

APPLICATION OF RECOGNIZED JUDICIAL CRITERIA FOR ANALYSIS OF TAXES RESULTS IN CHARACTERIZATION OF THIS TAX AS AN EXCISE

A. What Is an Excise Tax?

1. *Cooley on Taxation*

An excise tax is " * * * an indirect tax and has no reference to earnings or income *except that the sum of such earnings or income may be made the measure of the tax.* The most common form of the tax, in case of a state tax, is an occupation or license tax. * * * " 1 Cooley on Taxation, 4th Edition, page 127, § 42. (Emphasis supplied.)

"An excise tax, * * * as op-

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posed to a property tax, includes taxes sometimes designated by statute or referred to as privilege taxes, license taxes, *occupation taxes*, and *business taxes*. * * *" 1 Cooley on Taxation, *supra*, page 129. (Emphasis supplied.)

"* * * the obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand, as in the case of a property tax, is lacking. * * *" 1 Cooley on Taxation, *supra*, page 132, § 46.

2. *Washington Supreme Court Definition of Excise Tax Was Ignored by the Trial Court*

The Washington Supreme Court has consistently held that the business and occupation tax is an excise imposed upon the privilege of acquiring income, and does not concern itself with income that has already been acquired. See paragraphs F, G, *infra*. Inherent in this principle is the fact that an excise tax measured

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by the amount of income in no way affects the incidence or the nature of the tax. *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 25 P. (2d) 91. This court has insisted that the incidence of the tax must be distinguished from the measure of the tax. *Du Pont de Nemours & Co. v. State* 44 Wn. (2d) 339, 352, 267 P. (2d) 667 (1954).

> "* * * the privilege of engaging in business and gainful pursuits under the protection of our laws is something which must and does exist before the business can be established, and something far and away beyond and above the mere ownership of a business. * * *" *State ex rel. Stiner v. Yelle, supra,* p. 406.

B. WHAT IS A PROPERTY TAX?

The nature of the tax in the case at bar may be analyzed by approaching the problem from the opposite side of the spectrum and by distinguishing it from generally accepted definitions of "property tax." For if the tax in question is not a property tax, it is of necessity an excise tax. (Cooley, Taxation, *supra.*)

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An excellent annotation on the subject is found at 103 A. L. R. 18. The editors note that:

"One general test is suggested in Society for Savings v. Coite (1868) 6 Wall (U. S.) 594, 18 L. ed. 897; in effect as follows: An excise and a property tax when the two approach each other ordinarily may be distinguished by the respective methods adopted of levying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although privileges may be included in the valuation, it is considered a property tax." 103 A. L. R. 18.

" 'The essential difference between an ad valorem tax and any form of privilege tax * * * is based upon the value of the property, tangible or intangible. The

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> privilege tax need not be based upon such value at all. * * *' " *Pac. Gas & E. Co. v. Roberts*, 168 Cal. 420, 143 P. 700." 103 A. L. R., *supra*, page 20.

By the test suggested in the foregoing, the tax in the case at bar is clearly not a property tax, but in fact and law an *excise tax.*

The plaintiffs' complaints phrase many factual variations to support their several contentions that the tax in question is a property tax, but

> "' * * * All such methods of reasoning, however philosophical they may appear to be, have been met over and over again by the courts with the uniform result that "taxes on property," as used in the organic law, means taxes on things tangible or intangible, as distinguished from taxation on the right to use or transfer things, or on the proceeds of business in which the use of things is essential, and that is because such meaning is to the common, ordinary meaning, and so the one which, nothing appearing to the contrary,

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> it must be presumed was intended in framing the constitutional provision.' *Chicago & N. W. R. Co. v. State* (1906) 128 Wis. 553, 108 N. W. 557." (n. 103 A. L. R. 18, *supra*, 20.)

Examples of rejected arguments made to this court urging characterization of taxes as "property taxes" are *Mahler v. Tremper*, 40 Wn. (2d) 405, 243 P. (2d) 627 (1952); *St. Paul & Tacoma Lbr. Co. v. State*, 40 Wn. (2d) 347, 243 P. (2d) 474; *Klickitat County v. Jenner*, 15 Wn. (2d) 373, 130 P. (2d) 880; *State ex rel. Hansen v. Salter*, 190 Wash. 703, 70 P. (2d) 1056.

In Mahler v. Tremper, supra, plaintiff contended that the Real Estate Sales Excise Tax was a property tax. Plaintiffs' contentions were rejected.

In the *St. Paul & Tacoma Lbr. Company* case the plaintiff argued that use taxes imposed on lumber which it had produced from its own timber in its own mills amounted to a property

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tax. This court held the argument "patently specious." (p. 354.)

> "* * * The tax here involved was not imposed upon the company because it owned the tangible personal property, but because it used that property * * *." (p. 354.)

In *State ex rel. Hansen v. Salter, supra,* this court held

> "* * * That a tax upon the use of personal property is an excise, is no longer open to question in this state. * * *" (p. 705.)

thereby rejecting plaintiff's claim that the tax was a property tax. We do not contend that the tax here is upon the use of real property—it is one step removed, and impinges upon the privilege of engaging in business of renting (using) real property. Even so that foregoing language seems dispositive of respondents' contention in this case.

Had the trial court considered the simple

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definition of "property tax" and the Washington cases cited above it would clearly have concluded that the tax in question is an excise tax rather than a property tax.

C. The Trial Court's Erroneous Construction of the Tax in This Case *Reductio ad Absurdum* Would Destroy the Entire Washington Excise Tax System.

If the trial court's erroneous conclusion that the source of the revenue by which a tax is measured is the test or *indicia* for determining whether or not the tax is a property tax or an excise tax were logically extended, the bulk of the Washington excise tax system would be destroyed. Thus, if the tax here, which is a tax imposed upon the privilege of engaging in renting and leasing real property, is held to be a tax upon the rents, we would be forced to reason that the tax measured by proceeds from tolls on an interstate bridge is a tax on tolls and invalid. But this court held to the contrary in

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Columbia River Bridge Co. v. State, 46 Wn. (2d) 385, 282 P. (2d) 283.

Similarly, a different result would follow than that which obtained in *Mahler v. Tremper*, *supra*. *United States Steel Corporation v. State*, 51 Wn. (2d) 224, 316 P. (2d) 1099 (1957); *Crown Zellerbach v. State*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954); *Du Pont de Nemours & Co. v. State*, *supra*, and others.

The incidence of the tax in question is upon "the privilege of engaging in business," *Du Pont de Nemours & Co. v. State*, 44 Wn. (2d) 339, 267 P. (2d) 667. *Klickitat County v. Jenner*, 15 Wn. (2d) 373, 130 P. (2d) 880. Gross receipts or income of the business are relevant only insofar as they provide a convenient measure of taxation.

It is fundamental "that the method of measuring the tax does not change its character." *Seattle Gas Co. v. Seattle*, 192 Wash. 456, 460 (citing *State ex rel. Stiner v. Yelle*, *supra*, and

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American Manufacturing Co. v. St. Louis, 250 U. S. 459, 63 L. ed. 1084, 39 S. Ct. 522); *Klickitat County v. Jenner, supra*, and others.

D. THE "INCIDENT" TEST OF TAXATION SUPPORTS CONSTITUTIONALITY AND CLASSIFICATION AS AN EXCISE TAX.

An attack upon the tax in question, based upon the premise that the indirect effect or result of the tax is to tax the property from which the rents are derived, is not supportable in logic or law. Ever since the case of *Morrow v. Henneford*, 182 Wash. 625, 47 P. (2d) 1016, the Washington Supreme Court, with the exception of "the income tax cases," has adhered to the "incidence" test to determine whether or not a tax offends the Constitution. *Du Pont de Nemours & Co. v. State, supra; Columbia River Bridge Co. v. State, supra; Mahler v. Tremper, supra; United States Steel Corporation v. State*, 51 Wn. (2d) 224, 316 P. (2d) 1099.

The United States Supreme Court in a

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long line of decisions similarly turns its approach with respect to federal constitutional questions upon the "point of incidence of the tax." *Hump Hairpin Mfg. Co. v. Emmerson*, 258 U. S. 290, 66 L. ed. 622, 42 S. Ct. 305; *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602, 95 L. ed. 573, 71 S. Ct. 508; *J. D. Adams Mfg. Co. v. Storen*, 304 U. S. 307, 82 L. ed. 1365, 58 S. Ct. 913; *American Mfg. Co. v. St. Louis*, 250 U. S. 459, 63 L. ed. 1084, 39 S. Ct. 522; *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, 82 L. ed. 823, 58 S. Ct. 546.

Thus, although a state imposed tax may incidentally impinge itself upon products which flow in interstate commerce, it is nevertheless valid and not *ipso facto* incompatible to the Federal Commerce Clause. *Columbia River Bridge Co. v. State, supra; McGoldrick v. Berwind-White Coal Min. Co.*, 309 U. S. 33, 84 L. ed. 565; *Williams v. Stockham Valves*, No. 33, October Term 1958 (CCH Bulletin 577); *Northwestern*

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Company v. Minnesota, No. 33, October Term, 1958 (CCH Bulletin 577).

The incidence test was applied by the Washington Supreme Court and approved by the United States Supreme Court in *United States Steel Corporation v. State*, 51 Wn. (2d) 224, 316 P. (2d) 1099 (1957); and *Crown Zellerbach v. State of Washington*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954); and *Du Pont de Nemours & Co. v. State*, 44 Wn. (2d) 339, 267 P. (2d) 667 (1954). (See also *Seattle Gas Co. v. Seattle*, 192 Wash. 456, 73 P. (2d) 1312, 77 P. (2d) 382 (1937), 107 A. L. R. 267, in which the court concluded that the fact that an occupation tax is measured by gross income or sales does not change its character as an excise tax upon the privilege of engaging in a classified business, citing with approval *Clark v. Titusville*, 184 U. S. 329; *American Mfg. Co. v. St. Louis*, *supra.*)

Mahler v. Tremper, 40 Wn. (2d) 405, again

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approved the incidence test adopted in the *Morrow* case *(Morrow v. Henneford, supra)* and approved an excise tax imposed upon the privilege of conveying real property and held that it was not a property tax and therefore was not repugnant to the Washington Constitution.

> "The tax incidence in the case at bar relates to the sale of real estate. The tax sustained in the *Morrow* case, *supra*, related to, or was imposed upon, the sale of personal property. Appellant has advanced many ingenious arguments, but we can visualize no distinction between the *Morrow* case and the one at bar, except the fact that the former was concerned with a transaction tax involving personal property, while the latter is concerned with a transaction tax involving real estate. We recognize the distinction between real and personal property and realize quite well that many arguments involving the difference can be made in an effort to distinguish the tax in the *Morrow* case from the one in the case at bar. Without more, we are convinced that chapter 11 imposes an excise, and that constitutional provisions rel-

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ative to taxes on property are no more applicable here than they were in *Morrow v. Henneford, supra.* Our thinking on this aspect of the matter is well explained by the comment of the court in the *Vancouver Oil Company* case, *supra,* at page 320, as follows:

" 'With reference to the first contention, that is, that the tax is a property tax, little need be said, because this contention is covered by what is said in the recent case of *Morrow v. Henneford,* 182 Wash. 625, 47 P. (2d) 1016, where it was held that the tax provided for in chapter 180 was an excise tax, and not a property tax.'

"At this point it is appropriate to refer to several basic principles of law which are generally applicable to the instant case. In *State ex rel. King County v. State Tax Commission,* 174 Wash. 336, 341, 24 P. (2d) 1094, we said:

" 'The power of taxation is an incident of sovereignty, and is possessed by the State without being expressly conferred by the people. It is a legislative power, and when the people, by the Constitution, create a department of government upon which

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they confer the power to make laws, the power of taxation follows as a necessary part of the general power. *State ex rel. Thompson v. Nichols*, 29 Wash. 159, 69 Pac. 771; *State ex rel. Board of Commissioners v. Clausen*, 95 Wash. 214, 163 Pac. 744. The legislature had a right to enact chapter 106, even though not expressly authorized by the Constitution.

" 'Since the legislature had the power of taxation, it follows that it might confer such power upon such agencies as it deemed fit and proper for the valuation and equalization of inter-county properties.'

"In *Morrow v. Henneford*, *supra*, at page 630, we referred to a decision of the United States Supreme Court as follows:

" 'In *Bromley v. McCaughn*, 280 U. S. 124, 50 S. Ct. 46, the court held that a tax imposed upon transfers of property by gift is not a direct tax, but an excise on the exercise of one of the powers incident to ownership, and need not be apportioned. The court said:

" ' "Whatever may be the precise line which sets off direct taxes from others, we need not now determine. While taxes levied

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upon or collected from persons because of their general ownership of property may be taken to be direct, *Pollock v. Farmers Loan & Trust Company*, 157 U. S. 429, 158 U. S. 601, this Court has consistently held, almost from the foundation of the government, that a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership, is an excise which need not be apportioned, and it is enough for present purposes that this tax is of the latter class. [Citing cases.]

" ' "It is a tax laid only upon the exercise of a single one of those powers incident to ownership, the power to give the property owned to another. Under this statute all the other rights and powers which collectively constitute property or ownership may be fully enjoyed free of the tax. So far as the constitutional power to tax is concerned, it would be difficult to state any intelligible distinction, founded either in reason or upon practical considerations of weight, between a tax upon the exercise of the power to give property *inter vivos* and the disposition of it by legacy, upheld in *Knowlton*

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v. Moore, *supra*, the succession tax in *Scholey v. Rew*, *supra*, the tax upon the manufacture and sale of colored oleomargarine in *McCray v. United States*, *supra*, the tax upon sales of grain upon an exchange in *Nicol v. Ames*, *supra*, the tax upon sales of shares of stock in *Thomas v. United States*, *supra*, the tax upon the use of foreign built yachts in *Billings v. United States*, *supra*, the tax upon the use of carriages in *Hylton v. United States*, *supra*; * * *

" ' "It is true that in each of these cases the tax was imposed upon the exercise of one of the numerous rights of property, but each is clearly distinguishable from a tax which falls upon the owner merely because he is owner, regardless of the use or disposition made of his property. See *Billings v. United States*, *supra*; *cf. Pierce v. United States*, 232 U. S. 290 * * *

" ' "The power to give cannot be said to be a more important incident of property than the power to use, the exercise of which was taxed in *Billings v. United States*, and even though differences in degree may be carried to a point where they produce dis-

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> tinctions in kind, the present levy falls so far short of taxing generally the uses of property that it cannot be likened to the taxes on property itself which have been recognized as direct. It falls, rather, into that category of imposts or excises which, since they apply only to a limited exercise of property rights, have been deemed to be indirect and so valid although not apportioned." ' " *Mahler v. Tremper*, 40 Wn. (2d) 405, 406, 243 P. (2d) 627 (1952).

The distinction discussed above between the privilege of engaging within the State in a business which is separate and apart from the right of ownership of such a business was made with great clarity in the case of *Great Northern R. Co. v. Cohn*, 3 Wn. (2d) 672, 101 P. (2d) 985 (1940).

The court there cited the leading excise tax case, *State ex rel. Stiner v. Yelle*, 174 Wash. 402, *supra*, quoting with approval the following statement:

> " ' "The privilege of engaging in business and gainful pursuits under the pro-

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> tection of our laws is something which must and does exist before the business can be established, and something far and away beyond and above the mere ownership of a business * * *
>
> "'"This is the privilege * * * which it is now sought to tax."'" *Great Northern R. Co. v. Cohn, supra*, page 682.

In *Fisher Flouring Mills Co. v. State*, 35 Wn. (2d) 482, the then Attorney General attempted to defend an extension of the business and occupation tax code adopted by the Laws of 1943, chapter 156, § 1, page 487, by contending that the business and occupation tax was in effect a gross income tax and that the legislature intended to tax a manufacturer's gross income from whatever source derived. But the court clearly and unequivocably rejected the contention stating that merely because the taxes were measured by the "value of the products manufactured" (or sold at retail, or sold at wholesale or received by rentals) would not have the effect of making the tax a gross income

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tax. Once again our supreme court ratified the doctrine adopted by the court in *State ex rel. Stiner v. Yelle, supra,* in holding that the business and occupation tax is an excise tax imposed upon the privilege of engaging in business which is separate and apart from the right of owning a business itself.

E. APPLICATION OF THE DOCTRINE OF STATE EX REL. STINER V. YELLE TO THE CASE AT BAR SUPPORTS CLASSIFICATION OF THIS TAX AS AN EXCISE.

Since the leading case in Washington on characterization of the Business and Occupation tax as an excise tax is *State ex rel. Stiner v. Yelle, supra* the following extended quotes seem to be appropriate:

> "Without entering into a history of conditions giving rise to this legislation, it is sufficient to say that the legislature was confronted by a situation of the utmost gravity requiring the prompt and effective raising of much additional revenue and making necessary the placing of a heavy

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tax burden upon every available source from which taxes might legally be drawn, or from which revenue might be derived, without causing more harm and loss than the depressed state of industry could bear. Faced with this situation, chapter 191 was enacted, which is entitled:

" 'An Act relating to taxation; imposing taxes upon the privilege of engaging in business activities and providing for the ascertainment, assessment, collection and distribution thereof; providing for the administration and enforcement of this act; providing penalties, making appropriations; and declaring that this act shall take effect immediately.'

"Section one of the act contains definitions of certain of its terms, one or two of which will be set out and referred to as we proceed.

"Section two (p. 871) provides:

" 'From and after the first day of August, 1933, and until the thirty-first day of July, 1935, there is hereby levied and there shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such

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> tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows: * * *' [Rem. 1933 Sup., § 8326-2.]"

The foregoing language is identical to the existing statutory basis of the entire business and occupation tax code at chapter 82.04 of the Revised Code of Washington.

Pointing out that the major attack upon the statutes in question was based upon the assumption that the tax under consideration was a property tax, the court resolved any differences which may have existed or developed in previous cases by holding as follows (174 Wash. 402, 406):

> "Time and space will not permit a review of the authorities on this question. Slight differences in the terms of the acts considered, or in constitutional provisions, have led to a maze of conflicting and bewildering decisions. It may be that we have, in some prior case, used language not wholly consistent with our present

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views. After an exhaustive study of the cases, we are well satisfied that this is not a property tax, even under the broad and all inclusive terms of our Constitution. To hold otherwise would render it exceedingly difficult if not impossible to sustain any excise tax.

"It is true that the Constitution defines property as anything subject to ownership and, in a sense, one's business and its earnings are owned by him, but the privilege of engaging in business and gainful pursuits under the protection of our laws is something which must and does exist before the business can be established, and something far and away beyond and above the mere ownership of a business. Man in a state of nature gained his sustenance by his strength or cunning, or both, and that which he so gained might, and no doubt often was, taken from him before he could use and enjoy it by someone stronger and more cunning. Hence, the established state enacted laws for the protection of human rights, the rights of property, and to prevent the weak or the credulous from becoming the helpless victims of

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the force or fraud of the strong and the cunning.

"Peace officers and courts, among many other things, were established to this end, and every citizen is now measurably safe in pursuing any gainful occupation with the expectation that he will be by the state fully protected and made secure in his property investment, and also in his gains therefrom. *This is the privilege, far above mere property, which it is now sought to tax to the end that it may pay, in some part, its fair share of the cost to the state of its creation and continuance.*

"Income may be acquired, but only in exceptional cases, such as annuities and the like, is it susceptible of ownership. When acquired, income immediately becomes property in the hands of the acquirer, and it is, of course, taxable with other property of the same class.

"*This act does not concern itself with income which has been acquired, but only with the privilege of acquiring, and that the amount of the tax is measured by the amount of the income in no way affects*

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the purpose of the act or the principle involved." (Emphasis supplied.)

By application of the foregoing principle to the case at bar, the tax in question is merely another business and occupation tax imposed upon persons "engaging in (the) business" of "renting and leasing" real property. The conclusion, that this tax is an *excise* tax and not a *property* tax is thus beyond dispute.

The foregoing doctrine set forth by this court in *State ex rel. Stiner v. Yelle*, *supra*, has been consistently followed by this court, and that this doctrine is the law of this State is beyond dispute.

Cascade Tel. Co. v. State Tax Commission, 176 Wash. 617, 30 P. (2d) 976 (1934)

Austin v. Seattle, 176 Wash. 654, 30 P. (2d) 646 (1934)

Ajax v. Gregory, 177 Wash. 474, 32 P. (2d) 560 (1934)

Tacoma v. State Tax Commission, 177 Wash. 604, 33 P. (2d) 899 (1934)

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Uhden, Inc. v. Greenough, 181 Wash. 412, 421, 43 P. (2d) 983 (1935)

Paramount Pictures Dist. Co. v. Henneford, 184 Wash. 376, 51 P. (2d) 385 (1935)

Seattle Gas Co. v. Seattle, 192 Wash. 456, 73 P. (2d) 1312, 77 P. (2d) 382 (1937)

Great Northern R. Co. v. Cohn, 3 Wn. (2d) 672, 101 P. (2d) 985 (1940)

Drury the Tailor v. Jenner, 12 Wn. (2d) 508, 122 P. (2d) 493 (1942)

Gruen v. State Tax Commission, 35 Wn. (2d) 1, 211 P. (2d) 651 (1949)

Mahler v. Tremper, 40 Wn. (2d) 405, 243 P. (2d) 627 (1952)

A further discussion of the principles of *State ex rel. Stiner v. Yelle* and the relevance of subsequent decisions of this court approving the doctrine of *Stiner v. Yelle* is set forth below. Suffice it to say the trial court has totally ignored this simple and fundamental test and has chosen to base its decision upon a construction of the act as a property tax. This is evident from the court's conclusions of law wherein the

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court has referred to the pertinent portions of chapter 5 of the Laws of 1959 Extraordinary Session as "*the provisions for tax on rents* * * *." (Tr 27, Conclusions of Law No. 3.)

F. EVERY B & O TAX CASE SINCE 1933 HAS APPROVED AND RATIFIED THE DOCTRINE OF STATE EX REL. STINER V. YELLE.

It is appellants' view that the doctrine of *State ex rel. Stiner v. Yelle, supra,* is still the law of the State of Washington. Many cases subsequent to the *Stiner* decision have adopted, approved and indeed extended the language of that case. In none of them has the validity of the doctrine ever been limited; indeed, no case since *State ex rel. Stiner v. Yelle*, in the view of appellants, can be construed to limit, vary or contradict the principles set forth in exceptionally clear and unequivocal language by Justice Tolman.

We will now consider *seriatim* the cases subsequent to *State ex rel. Stiner v. Yelle* to ~~Tolman~~.

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prove appellants' position that the foregoing principles are still the law of the State; and when applied to the case at bar must necessarily result in the classification of the tax here as an excise tax.

1. *Cascade Tel. Co. v. State Tax Commission*, 176 Wash. 616, 30 P. (2d) 976 (1934). This court having resolved its differences as to the operative effect of the original business and occupation tax code in the *Stiner* case, found no difficulty thereafter in concluding that the business and occupation tax was "an excise tax pure and simple." *Cascade Tel. Co. v. State Tax Commission, supra*, p. 617.

2. In *Austin v. Seattle*, 176 Wash. 654, 30 P. (2d) 646 (1934), the court was confronted with the Seattle business and occupation tax which was phrased in substantially identical language to that of the Washington business and occupation tax. At this early date (March 1934) the appellants had switched their attack

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from the basis urged in the *Stiner* case (*State ex rel. Stiner v. Yelle, supra*) and challenged the Seattle tax on the basis of arbitrary classification. This court similarly dismissed the appeal indicating that it would not interfere with the exercise of the legislature's power of taxation except for

> "' * * * arbitrary action, clear abuse, or constructive fraud appearing on the face of the act or from facts of which we may take judicial knowledge.' *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 25 P. (2d) 91, and cases there cited." *Austin v. Seattle, supra*, p. 656.

3. In *Ajax v. Gregory*, 177 Wash. 465, 32 P. (2d) 560 (1934), the original Washington Liquor Control Act was approved and held to be constitutional as an excise tax enacted under the police power. This court specifically approved and cited as authority for its action the case of *State ex rel. Stiner v. Yelle, supra*, at p. 474.

4. *Tacoma v. State Tax Commission*, 177

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Wash. 604, 33 P. (2d) 899, considered a single remaining constitutional objection which had not been presented to it in *State ex rel. Stiner v. Yelle, supra* (to wit, that it deprived the taxpaying corporation of property without due process of law and impaired contractual relationships entered into prior to the enactment of the business and occupation tax in the form of revenue bond). The court approved again the doctrine of *State ex rel. Stiner v. Yelle,* and further observed that

> "The power to tax is the basic principle upon which government is founded. Without that right, no government worthy of the name can long exist. The lack of power to tax was one of the main causes of the complete breakdown of the association which the thirteen colonies attempted to establish by virtue of the articles of confederation, and rendered necessary the 'more perfect union' which was formed under the Constitution. * * *" *Tacoma v. State Tax Commission, supra,* p. 611.

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Accordingly, the court concluded that

> "* * * Every presumption is in favor of the reservation by the State of the complete exercise of this fundamental right." *Tacoma v. State Tax Commission*, *supra*, p. 612.

5. In *Supply Laundry Co. v. Jenner*, 178 Wash. 72, 34 P. (2d) 363, the challenge was again made to the business and occupation tax after an amendment by the 1933 legislature (Extraordinary Session) reinstating and extending in certain respects provisions of the first act which the Governor had vetoed after the regular session of the legislature. This court, in upholding the act and its amendments by the 1933 Extraordinary Session of the legislature, stated that

> "The substructure of this opinion is founded upon the recent case of *State ex rel. Stiner v. Yelle*, *supra*. That was an *En Banc* decision, in which was expressed a wide divergence of opinion. *Although the present writer entertained and expressed a view dissentient with that of the major-*

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ity upon the questions there presented, that decision is, nevertheless, now the law of this state. It was therein held that the occupation tax was an excise tax, and not a property tax, and that, therefore, the uniformity clause contained in the fourteenth amendment of our constitution (being now Art. VII, § 1) did not apply. *With the nature of the tax thus definitely settled,* the court invoked the principle that the legislature in such case had a very broad power, and that we, as a court could not interfere with that power except for arbitrary action, clear abuse or constructive fraud appearing on the face of the act or from facts from which we may take judicial notice, * * *." (Emphasis supplied.) *Supply Laundry Co. v. Jenner, supra,* p. 75.

6. In *Uhden, Inc. v. Greenough,* the court cited as prevailing law, *State ex rel. Stiner v. Yelle, supra,* as authority for the proposition that

> "* * * an act of the legislature will be presumed to be valid unless there is no reasonable doubt as to its validity.

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* * *" *Uhden, Inc. v. Greenough, supra*, p. 420, 421.

7, 8. In 1935 the *Stiner* case was approved in six cases. *Rainier National Park Co. v. Henneford*, 182 Wash. 159, 45 P. (2d) 617; and *Fisher's Blend Station v. State Tax Comm.*, 182 Wash. 163, 45 P. (2d) 942 (reversed and remanded by the United States Supreme Court, 297 U. S. 650 (1936), involved interstate questions not involved here).

9, 10, 11. In the celebrated case of *Morrow v. Henneford*, 182 Wash. 625, 47 P. (2d) 1016, the challenge was directed to the sales tax laws of 1935. This court was again, without equivocation, able to approve and adopt the doctrine of *State ex rel. Stiner v. Yelle.* Still later in 1935 in separate attacks upon the business and occupation tax based upon the interstate commerce clause, this court approved *State ex rel. Stiner v. Yelle. Paramount Pictures Dist. Co. v. Henneford*, 184 Wash. 376, 379, 51 P.

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(2d) 385 (1935); *Great Northern R. Co. v. Cohn*, 3 Wn. (2d) 672, 101 P. (2d) 985, p. 682. (Although the taxpayers prevailed for other reasons in both cases.)

12. In 1942 the *Stiner* case was approved in *Drury the Tailor v. Jenner*, 12 Wn. (2d) 508, 122 P. (2d) 493 (1942).

13. In 1949 in the Soldiers' Bonus Cigarette Tax Act case of *Gruen v. State Tax Commission*, 35 Wn. (2d) 1, 211 P. (2d) 651 (1949), p. 33, this court cited the *Stiner* case as the prevailing law in Washington and acknowledged the wide discretion of the legislature in classifying trades, businesses and occupations which may be subjected to special forms of regulation or taxation through excise or licensing taxation and held that

> "* * * If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.

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* * *" *Brown-Forman Co. v. Kentucky*, 217 U. S. 563.

14. In 1952 the court again considered and approved the doctrine of *State ex rel. Stiner v. Yelle* in the case of *Mahler v. Tremper*, 40 Wn. (2d) 405, 406, 243 P. (2d) 627 (1952). The tax there under consideration was the real estate sales excise tax. This court stated:

> "We have reviewed *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 25 P. (2d) 91 (business and occupation tax); *Morrow v. Henneford*, 182 Wash. 625, 47 P. (2d) 1016 (sales tax); *Vancouver Oil Co. v. Henneford*, 183 Wash. 317, 49 P. (2d) 14 (compensating tax); *Klickitat County v. Jenner*, 15 Wn. (2d) 373, 130 P. (2d) 880 (sales tax); *Gruen v. State Tax Commission*, 35 Wn. (2d) 1, 211 P. (2d) 651 (soldiers bonus—cigarette tax); and numerous other cases." *Mahler v. Tremper*, *supra*, p. 406.
>
> "We are committed to the proposition that a tax upon the sale of property is not a tax upon the subject matter of that sale. A sales tax upon personal property or a sales tax upon real property is a tax upon

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the act or incidence of transfer. The imposition relates to an exercise of one of several rights in and to property. Imposition is not upon each and every owner merely because he is the owner of the property involved." *Mahler v. Tremper*, *supra*, p. 409.

In three recent decisions this court has been confronted with attacks upon the B & O tax system by major taxpayers of the State. In none of these cases was the principle of the *Stiner* case subjected to an attack. Implicit within the court's decision in each case, however, was the acceptance of the principles outlined above.

In *DuPont de Nemours & Co. v. State*, 44 Wn. (2d) 339, 267 P. (2d) 667, the plaintiff contended that it was not engaged in business and was serving as an agent of the United States government and, hence, its receipts from operations of portions of the Hanford Atomic Energy project could not be included in its tax base on

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the theory that the tax would impinge upon the United States government. The court held that the legal incidence of the tax was DuPont's activities and that the tax was validly exacted.

> "Equally untenable is appellants' argument that the tax in question is a tax upon the funds deposited in the special account. This is not an *ad valorem* tax. It is a tax levied upon *persons* engaged in specified business activities. The tax is measured by the application of the prescribed rate against the gross proceeds of any such business.
>
> "The gross proceeds of the business here in question consist of cash reimbursements received from the government, funds received from third persons, and credits received through payroll deductions. The tax would be measured by the application of the prescribed rate to these proceeds, wherever they were deposited or whatever the contractor did with them." *DuPont de Nemours & Co. v. State, supra,* p. 347.

In *United States Steel Corporation v. State,* 51 Wn. (2d) 224, 226, 316 P. (2d) 1099 (1957),

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this court denied appellant's contention that the incidence of the tax was upon interstate commerce because the Act failed to apportion the tax base between transactions which were entirely local and those which involved shipment through interstate commerce. Again emphasizing the incidence test of taxation, this court summarily dismissed the taxpayer's contention, observing,

> "* * * There is no question of apportionment here. The tax is measured solely by appellant's local wholesale and retail activities. * * *"

Similarly, in *Crown Zellerbach v. State of Washington*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954), apportionment was denied to the taxpayer who contended that the tax measured by the gross proceeds from sales in interstate commerce could not be permitted. The court again emphasized the principle of the incidence of taxation as distinguished from the measure of tax.

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Conclusion

Every recognized judicial criterion for analysis of taxes results in a characterization of the tax here as an "excise tax". So also is it beyond dispute that the doctrine of *State ex rel. Stiner v. Yelle, supra,* is the established law in the State of Washington, and that when the fundamental principles of that decision are applied to the portions of chapter 5, Laws of 1959, Extraordinary Session, and particularly those portions of it that extend the business and occupation tax to the business of renting and leasing real property, the following principles must obtain:

1. A business and occupation tax imposed upon the privilege of engaging in business and measured by the gross income of the business is an *excise tax.*
2. This court must presume the validity of the pertinent portions of the act in question and the burden is upon the plaintiffs (respondents) to overcome the presumption of validity of the tax here in question.

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3. The incident of the tax here and the language of this act does not concern itself with the income which has been acquired, but only with the privilege of acquiring. Accordingly, the fact that the tax is measured by the amount of income derived from rentals on real property can in no way affect the purpose of the act or the principle involved.

Throughout the fabric of the *Stiner* case doctrine runs the thread of a fourth principle: to wit: The legislature may freely classify trades, businesses and occupations for the purpose of subjecting them to the business and occupation tax. The ramifications of that principle as related to the State's power of taxation are discussed in the next portion of this argument.

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III

THE TRIAL COURT'S ERROR IMPINGES UPON THE LEGISLATURE'S POWER OF TAXATION

Appellants submit that the respondent must concede that

(1) the tax in question is an excise tax;

(2) that it is beyond doubt that the respondents are severally "engaging in business";

(3) that it is beyond contention that the incident of the tax in question is upon the privilege of engaging in business; and

(4) that the only connection between the respondents' property and the tax in question is that the gross income by which the tax will be measured is derived from real property.

It has been further demonstrated that the measure of the tax is entirely unrelated to the incident of the tax and cannot be considered in determining the nature of the tax.

We shall now consider whether or not the

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legislature may reasonably classify for purposes of the business and occupation tax "the business of renting and leasing real property * * *." Section 5, chapter 5, Laws of 1959, Ex. Sess. (See Appendix.)

A. THE LEGISLATURE'S POWER TO IMPOSE AN EXCISE TAX IS FUNDAMENTAL AND INVOKES THE RIGHT TO MAKE ANY REASONABLE CLASSIFICATION FOR PURPOSES OF AN EXCISE TAX.

This court has held that the power to tax is the basic principle upon which government is founded.

> "The power to tax is the basic principle upon which government is founded. Without that right, no government worthy of the name can long exist. The lack of power to tax was one of the main causes of the complete breakdown of the association which the thirteen colonies attempted to establish by virtue of the articles of confederation, and rendered necessary the 'more perfect union' which was formed under the Constitution. The right to tax un-

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derlies and adheres in all of our legislative enactments.

" * * *

" * * * 'We have held consistently that taxation is a matter involving the soverign power of the state and subject only to the limitations which that sovereignty has imposed upon itself, either in the constitutional or positive law of the state. To read into the operations of the tax laws the particular principles which form the accretion of judicial precedent in matters of individual relationship and of contract would be an unwarranted invasion of the legislative power. The power to tax includes the power to retax and impose other burdens of taxation upon the same subjects of taxation, at the will of the supreme taxing power. The power to levy special assessments for public improvements, according to the benefits, is delegated to the local authorities, but is wholly derived from the sovereign taxing power, and could assuredly be exercised in the first instance by it. * * * " *Tacoma v. State Tax Commission*, 177 Wash. 604, 611, 33 P. (2d) 899 (1934).

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This court has also held

> " 'A very wide discretion must be conceded to the legislative power of the state in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulation or taxation through an excise or license tax. If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' *Brown-Forman Co. v. Kentucky*, 217 U. S. 563." *State ex rel. Stiner v. Yelle*, *supra*, p. 407.

Even more recently and emphatically this court correctly declared that,

> " ' "*The discretion of the legislature in this field is so broad that it is not competent for the court to mark the constitutional limitations of it other than at the farthest one might go without transcending all reason.*" ' " (Emphasis supplied.) *Gruen v. State Tax Commission*, 35 Wn. (2d) 133, 211 P. (2d) 651 (1949).

Respondents' position is necessarily in con-

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flict with the foregoing declarations by this court with respect to the sovereign power of taxation and the included power of the legislature to make classifications for the purpose of imposing excises upon the activities so classified.

B. THE LEGISLATURE, CONFRONTED WITH A FISCAL EMERGENCY, EXTENDED THE EXISTING TAX BASE BY MEANS OF A REASONABLE CLASSIFICATION OF ACTIVITIES PREVIOUSLY EXEMPTED.

This court may take judicial notice of the fiscal affairs of the State of Washington discussed in the first portion of this brief (Argument, ¶ I-A, *supra)*. 20 Am. Jur. 67 Sec. 44 "Evidence".

In the light of such compelling facts, is there anything unreasonable in removing the exemption previously afforded respondents by RCW 82.04.390 (ch. 249, sec. 2 (j), Laws of 1945; ch. 180, sec. 11, Laws of 1935; ch. 5, sec. 8, Laws of 1959, Ex. Sess.) and establishing a new classification of business activity to be sub-

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jected to the business and occupation tax? We think not.

In *State ex rel. Stiner v. Yelle, supra,* this court noted the fiscal emergency then confronting the State legislature and observed:

> "Without entering into a history of conditions giving rise to this legislation, it is sufficient to say that the legislature was confronted by a situation of the utmost gravity requiring the prompt and effective raising of much additional revenue and making necessary the placing of a heavy tax burden upon every available source from which taxes might legally be drawn, or from which revenue might be derived, without causing more harm and loss than the depressed state of industry could bear. Faced with this situation, chapter 191 was enacted, which is entitled:
>
> " 'An Act relating to taxation; imposing taxes upon the privilege of engaging in business activities and providing for the ascertainment, assessment, collection and distribution thereof; providing for the administration and enforcement of this act;

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providing penalties; making appropriations; and declaring that this act shall take effect immediately.' " *State ex rel. Stiner v. Yelle*, *supra*, pp. 403, 404.

"The State is facing stark necessity. The legislature has earnestly endeavored to meet this critical situation. This law is, perhaps, not perfect. No tax law yet devised has been entirely fair and just to all in its practical workings. * * * " (174 Wash. 413.)

"We have, then, a measure which evidences the purpose to tax the privilege of carrying on those businesses which are, in a broad sense, commercial in their nature, * * * These commercial businesses are peculiarly dependent upon the state for protection in order that they may be carried on successfully, and they, more than all others, are responsible for, and receive the benefit of, that which the state expends in maintaining peace and order and the safety of private property." *State ex rel. Stiner v. Yelle*, *supra*, p. 408.

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C. THE COURT MUST PRESUME NECESSITY OF THE STATE LEGISLATURE'S EXERCISE OF ITS POWER OF TAXATION.

Appellants do not concede that the respondents could raise the question of whether or not the legislature's exercise of its power of taxation in the instant case was necessary and, therefore, that necessity in and of itself requires the court to extend to the legislature a broader view of the scope of its legislative discretion. This question was discussed in the recent case *of Gaulden v. Kirk* (Fla.), 47 So. (2d) 567, involving an excise tax imposed upon the privilege of engaging in the business of renting and leasing real property. Discussing this general problem, the Florida Supreme Court held:

> "* * * We do not hold that the appellant could have created the factual issue of necessity in connection with legislation upon the subject of taxation. It is sufficient to say that the appellant did not do so. It is not only proper for us to assume that public necessity required the enact-

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ment of this legislation in the absence of a direct challenge * * * but the executive proclamation calling for the Special Session shows clearly that the Sovereign could not perform its responsibility and duty in providing essential requirements of government without additional revenue * * *"

Conclusion

The legislature's power of taxation is a fundamental principle upon which government is founded. Similarly, the legislature's discretion in excise taxation is very broad and must be sustained unless exercised arbitrarily or capriciously. In this case the legislature's classification of the business of renting and leasing real property was clearly a reasonable exercise of its taxing power required by necessity of social and economic demands upon the state government.

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IV

OTHER STATE EXCISE TAXES, THOUGH MEASURED BY SUMS ACCUMULATED THROUGH THE EXERCISE OF "PROPERTY RIGHTS," HAVE BEEN UNIFORMLY SUSTAINED BY THIS COURT AS LEGITIMATE EXERCISE OF STATE POWER OF TAXATION.

A. Real Estate Sales Excise Tax

In the recent case of *Mahler v. Tremper*, *supra*, involving the constitutionality of the county excise tax on real estate sales, codified in RCW, chapter 28.45 (chapter 11, Laws of 1951), this court held that a tax imposed upon the right to transfer real property was not a property tax and therefore was not incompatible with the Washington Constitution. This court held, quoting from *Bromley v. McCaughn*, 280 U. S. 124, 50 S. Ct. 46, and *Morrow v. Henneford*, *supra*, that a tax

> "'* * * laid only upon the exercise of a single one of those powers incident to ownership, * * *'"

is not a property tax, but is rather an excise tax.

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> " 'Whatever may be the precise line which sets off direct taxes from others, we need not now determine. While taxes levied upon or collected from persons because of their general ownership of property may be taken to be direct, *Pollock v. Farmers Loan & Trust Company*, 157 U. S. 429, 158 U. S. 601, this Court has consistently held, almost from the foundation of the government, that a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership, is an excise which need not be apportioned, and it is enough for present purposes that this tax is of the latter class. * * * ' " *Bromley v. McCaughn*, 280 U. S. 124, 50 S. Ct. 46.

We reiterate that the tax here is *not* imposed upon any single incident or element of property ownership; the tax *is* imposed upon the privilege of "engaging in business". Assuming *arguendo* that the tax here does impinge upon an element of ownership of respondents' respective real properties, nevertheless, the decision of *Mahler v. Tremper*, *supra*, would be

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dispositive of respondents' contentions. Thus, if the tax in *Mahler v. Tremper* is an excise tax *a fortiori*, the tax here is an excise tax.

B. USE TAX

Similarly, in *Henneford v. Silas Mason Co.*, 300 U. S. 577, 81 L. ed. 814, the celebrated "use-tax" case, the United States Supreme Court sustained this court's determination that a tax imposed upon the privilege of using property within this state was an excise tax and not a property tax.

Is there any property right more fundamental than the right to use property already owned or acquired by a taxpayer? If a tax imposed upon the privilege of using property is not a property tax and therefore constitutes an excise tax (and this is clearly the law of the State of Washington and of the United States), surely the tax in the case at bar cannot be classified as a property tax.

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C. INHERITANCE TAX

Inheritance taxes of the State of Washington are similarly imposed upon the right or privilege of succession. *In re Knight's Estate*, 31 Wn. (2d) 813; *In re Plasterer's Estate*, 49 Wn. (2d) 339; *In re Lloyd's Estate*, 153 Wash. Dec. 177. The measure of the tax is based upon the value of the property passing by succession as of the date of decedent's death. *In re Bowers' Estate*, 196 Wash. 79, 81 P. (2d) 813; *In re Gufler's Estate*, 43 Wn. (2d) 440.

Is the right or privilege of an heir to succeed to property a lesser property right or privilege than the right to derive income from property or to use personal property? If an impost laid upon that right or privilege does not constitute a property tax, an impost upon the *privilege of engaging in business* (in which the only relationship of the property right is the indirect one involved in the measurement or determination of the amount of tax) should not be charac-

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terized as a property tax. The tax here must be characterized as an excise tax accordingly.

D. ASSUMING THE TAX IMPINGES UPON AN INCIDENT OR RIGHT OF OWNERSHIP IN PROPERTY, THE TAX IS NOT *Ipso Facto*, A PROPERTY TAX; IT IS, NEVERTHELESS, AN EXCISE TAX.

In the immediately preceding sections of this brief we have considered taxes which impinge upon events occasioned by the exercise of given vested property rights. It will be noted that in each case the tax is measured by the sales price or value of the property involved.

Appellants do not concede that the incident of taxation here impinges upon the exercise of any identifiable property right, much less upon the property itself. We reiterate our contention that the tax imposes only upon the privilege of engaging in business exactly as declared by the legislature, and we submit that this court should not ignore that legislative declaration.

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However, assuming for purposes of the argument that this court chose to ignore the legislative declaration and held to the contrary that the tax here impinges upon respondents' property rights—it would not follow that the tax is *ipso facto* a property tax. The tax is an excise tax since

> (1) "'"* * * a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership, is an excise * * *"'"

Mahler v. Tremper, *supra*, p. 408, citing and quoting *Bromley v. McCaughn*, *supra*;

> (2) the tax here is not measured by or even related to the value of the property involved. On the contrary, the tax is measured by the gross receipts received during the course of taxpayer's business activities.

In *Gaulden v. Kirk*, *supra*, in considering this factor the Florida Supreme Court declared that

> "The tax levied by the statute here under attack is none the less an excise tax,

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because the amount of the tax to be paid is measured by the compensation received for the merchandise sold or services rendered. * * * [and not the value of taxpayer's property]

"Although the tax is determined upon the price charged for the merchandise or services, it is not a tax upon the personal property or services, but upon the privilege of selling the same, and it is measured by the extent to which the privilege is enjoyed. * * * *Nachman v. State Tax Commission*, 233 Ala. 628, 173 So. 25 (text 31) * * *" *Gaulden v. Kirk*, *supra*, p. 574.)

Conclusion

In the case of other excise taxes classified by the Washington legislature, with the approval of this court, the incidence of the excise tax is upon one or more of a number of property rights. But an impost levied upon a single right of property does not necessarily constitute a property tax and, except in the Washington

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"income tax cases" (discussed immediately below), this court has uniformly held taxes of the nature of that of the case at bar to be "excise" in nature rather than "property" taxes. *A fortiori* the tax here is an excise tax even if the incident of taxation is assumed *arguendo* to fall upon a "property right."

V

THE ANOMALY OF THE INCOME TAX CASES

We recognize that this court has held that "income" is "property." *Jensen v. Henneford*, 185 Wash. 209; (*cf. Petroleum Navigation Co. v. Henneford*, 185 Wash. 495; *Power, Inc. v. Huntley*, 39 Wn. (2d) 191; *Aberdeen Savings and Loan Ass'n v. Chase*, 157 Wash. 351; and *Culliton v. Chase*, 174 Wash. 363.)

These cases have caused considerable consternation, to say the least. (See 33 W. L. R. 225; 33 W. L. R. 398; 9 W. L. R. 81.)

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In *Jensen v. Henneford*, 185 Wash. 209, although approving the doctrine of *State ex rel. Stiner v. Yelle*, *supra*, the court trapped itself with unfortunate language upon which the respondents in this case will base their plea. That language is as follows:

> "* * * The right to receive, the reception, and the right to hold, are progressive incidents of ownership and indispensable thereto. To tax any one of these elements is to tax their sum total, namely, ownership, and, therefore, the property (income) itself. * * *" *Jensen v. Henneford*, *supra*, p. 219.

Appellants submit that the foregoing conclusion is erroneous. Since respondents have based their case upon this decision, appellants respectfully submit the following reasons as the basis for this request that the court reconsider the foregoing conclusion of the *Jensen* case.

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A. THE RULE OF *Jensen v. Henneford Reductio ad Absurdum* WOULD DESTROY WASHINGTON'S EXCISE TAX SYSTEM.

If *Jensen v. Henneford* were in fact held to stand for the proposition that the tax here (a tax imposed upon the privilege of engaging in the business of renting and leasing real property) is actually a tax upon the right to receive income and therefore unconstitutional as a tax upon the property itself, the result extended to its logical conclusion would be catastrophic. Such an extension could invalidate the entire business and occupation tax code of the State of Washington which produces approximately $115,000,000 per biennium.

As we have indicated in Part IV, *supra* this court has held that a tax upon a single right in property is not necessarily a property tax. *Mahler v. Tremper*, *supra*. The decisions of these cases *a fortiori* lead to the conclusion that the tax here is an excise tax, not a property tax.

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B. *Jensen* CASE IS BASED UPON AN INCORRECT DEFINITION OF "PROPERTY TAXES" OR "TAXES ON PROPERTY," AND INCORRECT APPLICATION OF ART. VII, WASHINGTON CONSTITUTION.

Appellants submit that the "uniformity" provisions and the tax procedures prescribed by Article VII of the Constitution (the 14th and 17th Amendments to the Washington Constitution) are concerned only with property taxes in the classical sense of the term. *Morrow v. Henneford*, 182 Wash. 625, 47 P. (2d) 1016; *St. Paul & Tacoma Lbr. Co. v. State*, 40 Wn. (2d) 347, 243 P. (2d) 474; *Ellis' Estate*, 169 Wash. 581, 14 P. (2d) 37; *Nipges v. Thornton*, 119 Wash. 464, 206 Pac. 17; *Supply Laundry Co. v. Jenner*, 178 Wash. 72, 34 P. (2d) 363.

The 14th and 17th Amendments to the Constitution, read together, produced the new Article VII of the Washington Constitution. The mandate with which we are concerned here and with which the court was concerned in the *Jen-*

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sen case is that "All taxes shall be uniform on the same class of property * * *."

It will be noted that the 14th Amendment defines "property" as anything subject to ownership. The 17th Amendment further qualifies the constitutional limitations of Article VII, by virtue of the description there of the method of imposing taxes. Appellant contends that the subject matter of Article VII insofar as uniformity is concerned is the classical "property tax."

> "Constitutional provisions as to equality and uniformity apply only to (1) taxes as distinguished from other charges or fees, and ordinarily, to (2) taxes on 'property' as distinguished from occupation taxes, and the like. They do not apply to inheritance and succession taxes, for the reason that they are not taxes on property; nor to income taxes; nor to road polltaxes; nor to special assessments for local improvements. The provisions do apply to all kinds of property taxes, including school taxes." *1 Cooley on Taxation*, *supra*, p. 569, § 267.

See also part I, B, C, this Argument, *supra*.

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The second reason why the tax in the *Jensen* case is not a property tax is that the tax there (and the tax in the case at bar) was not measured by the value of the property from which the income was derived. Rather, it is measured by the extent to which the privilege (properly classified by the legislature) was to be enjoyed by the taxpayer. In *Gaulden v. Kirk*, *supra*, in considering this very question, the Florida Supreme Court held that a tax imposed upon the privilege of engaging in the business of renting and leasing real property, measured by three percent of the gross rentals received, is not an *ad valorem* or property tax, but an excise tax, to be compared with any other business and occupation tax.

The Florida court adopted the following statement of the Alabama court in *Nachman v. Tax Commission*, 233 Ala. 628, 635, 173 So. 25:

"* * * a tax upon 'the gross

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amount of sales of merchandise' was not a tax upon the goods themselves, or fruits of sale, but upon the business or act of selling; that it was not a *property* or *income* tax, but an occupation or privilege tax, the amount being regulated by the extent to which the privilege has been enjoyed. [citing cases]

"The only limitation imposed upon the Legislature is that when it proceeds to impose a tax on occupations or privileges it must be equal and uniform. * * *" *Nachman v. Tax Commission, supra*, p. 31.

C. *Jensen v. Henneford, supra,* IN DIRECT CONFLICT WITH *Mahler v. Tremper, supra.*

Even if we concede the validity of the holding of the *Jensen* case that the tax there (and the tax here) impinges upon one of the elements of property ownership, it does not follow that the tax is a property tax. See Argument, part III, C, *supra.* In other words, *Jensen v. Henneford* is erroneous and in direct conflict with this court's decision in *Mahler v. Tremper* holding that " * * * a tax imposed upon a particu-

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lar use of property or the exercise of a single power over property incidental to ownership, is an excise * * *." *Mahler v. Tremper*, *supra*, p. 408.

D. *Jensen* DECISION CONSTITUTES SUBVERSION OF STATE'S POWER OF TAXATION.

Jensen v. Henneford was premised largely upon language of the United States Supreme Court in *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, which was extended in *Power, Inc. v. Huntley*, 39 Wn. (2d) 191, and *Cary v. Bellingham*, 41 Wn. (2d) 468, to a holding that the state may not levy an excise tax unless the right or activity in question is a "substantive privilege granted or permitted by the state." *Cary v. Bellingham*, *supra*.

The foregoing criterion should be examined in the light of Justice Cardozo's statement in *Steward Mach. Co. v. Davis*, 301 U. S. 548, 580 (1937). Speaking upon the power to levy

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an excise tax upon an "inalienable" right, it was said:

> "* * * We learn that employment for lawful gain is a 'natural' or 'inherent' or 'inalienable' right, and not a 'privilege' at all. But natural rights, so called, are as much subject to taxation as rights of less importance. An excise is not limited to vocations or activities that may be prohibited altogether. It is not limited to those that are the outcome of a franchise. It extends to vocations or activities pursued as of common right. * * *"

See also *New York ex rel. Cohn v. Graves et al.*, 300 U. S. 308; 33 Wash. L. Rev. 398.

E. *Jensen* CASE IN CONFLICT WITH MORE RECENT AUTHORITY TO THE CONTRARY

In *Gaulden v. Kirk*, *supra*, 572, a tax was imposed upon the privilege of renting and leasing real property measured by three percent of the rentals received. The Florida Supreme Court concluded that the tax in question was not a property tax.

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In sustaining the tax, the Florida Supreme Court observed that

> " * * * through the years an enlargement of the field of excise taxes developed and the modern view that 'an excise tax is any tax which does not fall within the classification of a poll tax or a property tax' (51 Am. Jur. 61) * * *
>
> "Although the privilege of engaging in business may be classified as a species of property it is not property in the usual, customary and commonly accepted meaning of the word. * * *
>
> " * * * in every instance such a tax law has been upheld as against the contention that it imposed a property, rather than an excise tax and was therefore unconstitutional. 47 Am. Jur. 197, 128 A. L. R. 894, 117 A. L. R. 847, 110 A. L. R. 1486, 103 A. L. R. 93, 89 A. L. R. 1432." *Gaulden v. Kirk*, *supra*, p. 574.

Conclusion

Jensen v. Henneford is readily distinguishable from the case at bar in that (1) the incidence of the tax here is the privilege of engaging

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in business; (2) the tax here is an extension of a previously existing system by the addition of a reasonable classification made through a legislative exercise of the state's power of taxation; (3) the rates of tax here are uniform and not graduated.

Nevertheless, the rule of the *Jensen* case is fundamentally erroneous and its formulation is so broad and misleading that reconsideration, or at least qualification, of the rule of *Jensen v. Henneford* is indicated and needed here.

VI.

THE TAX IS COMPATIBLE WITH THE WASHINGTON CONSTITUTION AND FEDERAL CONSTITUTION.

(Preliminary Comment: This portion of our brief is in support of appellants' assignments of error No. 7 through No. 13 and particularly to the conclusions of law and judgment of the trial court declaring the act to be

> "* * * unconstitutional under sections 3, 12, 23, 29 and 32 of Article I of the

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> Constitution of the State of Washington and under the Fourteenth and Seventeenth Amendments to said constitution and * * * under the Fourteenth Amendment to the Constitution of the United States of America. * * *" (Tr. 41, Declaratory Judgment and Injunction)

We shall now consider each of the constitutional provisions which were erroneously invoked by the trial court. (Sections 29 and 32 of Article I of the Washington State Constitution will be considered jointly within each of the sections below.)

A. DUE PROCESS: THE TAX IS COMPATIBLE WITH THE DUE PROCESS PROVISIONS OF THE WASHINGTON CONSTITUTION (ARTICLE I, § 3, AND THE FEDERAL CONSTITUTION, § 1, AMENDMENT XIV)

Article I, § 3 of the Washington Constitution, provides as follows:

> "No person shall be deprived of life, liberty, or property, without due process of law."

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This provision of the Washington Constitution is substantially equivalent to its counterpart in the Federal Constitution (§ 1 of Amendment XIV) providing:

> " * * * nor shall any state deprive any person of life, liberty, or property, without due process of law; * * * "

Will the respondents be deprived of due process of law by virtue of the tax imposed by sections 4, 5, 7 and 8 of chaper 5 of the Laws of 1959, Ex. Sess.?

Certainly this question must be answered in the *negative!*

The sole basis upon which respondents can urge that they have been denied due process of law is to urge here that the legislature's classification set forth in the act is arbitrary and capricious or palpably fraudulent by virtue of facts of which the court might take judicial notice. 1 Cooley on Taxation, 4th ed., 332, § 143.

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As Professor Cooley has observed, it would seem that

> " * * * In tax cases, especially those carried to the Supreme Court of the United States, it is customary, * * * to add to other constitutional objections, for good measure, the contention that the tax law violates the due process of law provision. In nearly every case, however, except those cases where notice and hearing are involved, the court has merely rejected the contention without discussion. The result is that hundreds of cases are to be found in the digests holding that a particular tax statute, as to substantive rights, does not violate the due process clause. These decisions are of little or no value. In fact outside of decisions relating to notice and hearing and the like, the particulars in which tax statutes may violate the due process clause are very limited. * * * "

1. Washington Decisions

A recent instance in which a taxpayer has contended that the business and occupation tax of Washington might violate due process and

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equal protection provisions of the State and Federal Constitutions is *Benj. Franklin Thrift Stores v. Henneford*, 187 Wash. 472, 60 P. (2d) 86. In the *Ben Franklin* case this court held that the maintenance of a warehouse by two or more retail establishments from which warehouse goods are conveyed to the retail establishments constituted a proper legislative classification, and that the law was not vulnerable to an attack upon the ground that it was discriminatory or unequal in that goods taken from a warehouse which supplied a single store was not so taxed. It should be noted that no such distinction is made as between the taxpayers here and any other person included within the general classification of the legislature in the act in question. The act involved here taxes all persons who are engaged in the business of renting and leasing real property.

A similar contention was urged in the case of *Drury The Tailor v. Jenner*, 12 Wn. (2d) 508,

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122 P. (2d) 493, but it was rejected. See also *Texas Co. v. Cohn*, 8 Wn. (2d) 360; *Montana Headlight Oil Co. v. State*, 8 Wn. (2d) 724; *Gruen v. State Tax Commission*, 35 Wn. (2d) 1, 211 P. (2d) 651.

2. Federal Decisions

The due process clause of the 14th Amendment of the Federal Constitution, when urged in opposition to state tax legislation, will generally be invoked only in cases where the state's action is " * * * palpably arbitrary or grossly unequal in its application to the persons concerned; * * *" 51 Am. Jur., Taxation, § 92, p. 124.

Prof. Cooley concluded also that a state tax law will be held to conflict with the due process clause in the Federal Constitution " ' * * * only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property

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without compensation—to spoliation under the guise of exerting the power of taxing. * * *' " 1 Cooley on Taxation, *supra*, p. 337.

The due process clause is applied as a limitation upon the taxing power of the states, only in rare and special instances. *Magnano Co. v. Hamilton*, 292 U. S. 40.

> " * * * It has been said that the test of whether a tax law violates the due process clause is whether it bears some fiscal relation to the protection, opportunities, and benefits given by the state, or, in other words, whether the state has given anything for which it can ask a return. * * * " 51 Am. Jur., *supra*, p. 125; *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, 130 A. L. R. 1229.

3. Other Authorities

In *Gaulden v. Kirk*, *supra*, the Florida court found that a tax imposed upon the privilege of engaging in the business of renting real property, which exempted two-family dwellings and rentals received from permanent residents of

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hotels, was not a discriminatory or arbitrary classification so as to deprive the plaintiffs of their property without due process. In *Nachman v. Tax Commission, supra,* the Alabama Supreme Court upheld the business and occupation tax imposed on the privilege of retailing merchandise. The taxpayers contended that they were deprived of due process in that only specific businesses were included in the legislature's classification. The court held that

> "The only limitation imposed upon the Legislature is that when it proceeds to impose a tax on occupations or privileges, it must be equal and uniform. * * *" *Nachman v. Tax Commission, supra,* p. 635.

B. EQUAL PROTECTION: THE TAX IS COMPATIBLE WITH ARTICLE I, § 12 OF THE WASHINGTON CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE FEDERAL CONSTITUTION (FOURTEENTH AMENDMENT)

Does this tax discriminate in any way between any of the parties to this action and any

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person or persons within the classification prescribed by the act? We think not.

> "Inequality of taxes means substantial differences. Practical equality is constitutional equality. There is no imperative requirement that taxation shall be absolutely equal. If there were, the operations of government must come to a stop, from the absolute impossibility of fulfilling it. The most casual attention to the nature and operation of taxes will put this beyond question. No single tax can be apportioned so as to be exactly just, and any combination of taxes is likely in individual cases to increase instead of diminish the inequality. Theoretically, tax laws should be framed with a view to apportioning the burdens of government so that each person enjoying government protection shall be required to contribute so much as is his reasonable proportion, and no more. The tax law that comes nearest to accomplishing this is, in theory, the most perfect. * * *" 1 Cooley on Taxation, *supra*, pp. 558, 559.

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1. Washington Decisions

The centention that the exercise of its legislative discretion in classifying businesses subject to the business and occupation tax of Washington works to deprive other classes of citizens of equal protection of the law has been thoroughly disposed of and well defined by this court, insofar as the Washington Constitution is concerned, in *State ex rel. Stiner v. Yelle, supra*; *Austin v. Seattle*, 176 Wash. 654, 30 P. (2d) 646; *Puget Sound, Etc. v. Seattle*, 172 Wash. 668, 21 P. (2d) 727; *Pacific Tel. & Tel. Co. v. Seattle*, 172 Wash. 649, 21 P. (2d) 721; *Drury The Tailor v. Jenner, supra; Texas Co. v. Cohn, supra; Gruen v. State Tax Commission, supra*; and others.

As in the case of due process, the question of the equal protection provisions of the State and Federal Constitutions involve largely the problem of reasonableness of classification which has been discussed immediately above.

Nevertheless, at the risk of redundancy, it

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seems well to point out that the extent that the state legislature may go in classifying a business for purposes of the excise tax has been stated to involve a legislative discretion

> "'"* * * so broad that it is not competent for the court to mark the constitutional limitations of it other than at the farthest one might go without transcending all reason."'" *Gruen v. State Tax Commission, supra,* p. 33.

In *Texas Co. v. Cohn,* a thorough discussion of previous federal and state cases on the question summarized the applicable general principle governing the power of the legislature to make classifications for excise tax purposes as follows:

> "A state legislature has very broad discretion in making classifications in the exercise of its taxing powers. A classification of commodities, businesses, or occupations, for excise tax purposes, under which the classes are taxed at unequal rates, or one class is taxed and another is exempted, will be upheld as constitutional

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if it is not arbitrary nor capricious and rests upon some reasonable basis of difference or policy. The difference between the classes need not be great. It may consist of physical and chemical dissimilarity of commodities or difference in the character or manner of their uses. Classification may also be permissible if it is reasonably related to some lawful taxing policy of the state, such as greater ease or economy in the administration or collection of a tax, the selection of a fruitful source of revenue with the exemption of sources less promising, or the equalization of the burdens of taxation. If any such reasonable basis for the classification exists, or conceivably may exist, then the circumstance that there is competition between a commodity or business which is taxed and some commodity or business which is not taxed, does not materially affect the validity of the classification." *Texas Co. v. Cohn*, *supra*, pp. 386-387.

In *Austin v. Seattle*, 176 Wash. 654, 656, 30 P. (2d) 646, the plaintiffs complained that a Seattle municipal business and occupation

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tax was void because of an arbitrary classification and that the plaintiffs were denied of equal protection granted to national banks which had been exempted from a general classification which would include any and all other banks or lending institutions. This court concluded

> "This is, of course, an excise tax. *Pacific Telephone & Telegraph Co. v. Seattle, supra.*
>
> " 'This being an excise tax, the legislature, under the 14th amendment to our state constitution, has very broad power, and we cannot interfere with that power except for arbitrary action, clear abuse, or constructive fraud appearing on the face of the act or from facts of which we may take judicial knowledge.' *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 25 P. (2d) 91, and cases there cited."

2. Federal Cases

It has long been recognized that there is no denial of equal protection of the laws or of due process of law as guaranteed by the Federal

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Constitution when a state imposes an excise tax upon the privilege of engaging in business within that state. *St. Louis S. W. R. v. Arkansas*, 235 U.S. 350, 367, 59 L. ed. 265 (1914). This case clearly and forcibly stated the principles governing the application of the 14th amendment when the court stated:

> "Nothing in the Fourteenth Amendment imposes any iron-clad rule upon the States with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based upon arbitrary distinctions. [citing cases]"

And in the case of *Steward Machine Co. v. Davis*, 301 U.S. 548, in passing upon the constitutionality of the Federal Social Security Act, Justice Cardozo considered that federal authority to impose an excise tax to be as extensive as that granted the states. With respect to the 5th and 14th Amendments, he observed:

" * * * even the states, though subject to

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> such a clause, are not confined to a formula of rigid uniformity * * * [citing case] They may tax some kinds of property at one rate, and others at another, and exempt others altogether. [citing cases] They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akin thereto. [citing cases] * * * " *Steward Machine Co. v. Davis, supra*, p. 584.

As another example of what equal protection of the laws of the Federal Constitution does not mean, with respect to state taxation, we cite *Swiss Oil Corp. v. Shanks*, 273 U.S. 407, 47 S. Ct. 393, 71 L. ed. 709. In that case the court held that a tax upon production of crude oil is a license and not a property tax, and, therefore, its exaction in addition to the ad valorem tax by the state upon the property from which the oil was derived is not double taxation which unconstitutionally deprives those from whom it is exacted of the equal protection of the laws. See also 51 Am. Jur. 130, et seq., §§

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89-112, Taxation, Limitations of the Federal Constitution on State Power of Taxation.

The United States Supreme Court held in *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, that

> " * * * A very wide discretion must be conceded to the legislative power of the State in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulation or taxation through an excise or license tax. If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law. * * * " *Brown-Forman Co. v. Kentucky, supra.* (Quoted with approval by this court in *State ex rel. Stiner v. Yelle, supra*, p. 91.)

In *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, the United States Supreme Court reversed the Wisconsin Supreme Court's determination that as a matter of federal constitutional law the Wisconsin act in question violated the

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United States Constitution. The tax in question was imposed on earnings of corporations qualified to do business within Wisconsin. The court found that "the practical operation of this legislation was to impose an additional tax on corporate earnings within Wisconsin, but to postpone the liability for this tax until such earnings were paid out in dividends." This feature was denied out-of-state corporations. The supreme court found that to relieve local earnings of a foreign corporation from a dividend tax would have had a depressive effect on local enterprises, but this, in the eyes of the supreme court, did not constitute denial of equal privileges and immunities.

3. Other Authorities

In *Gaulden v. Kirk, supra,* apparently the most recent state supreme court decision which considers the problem of equal protection of the laws and which seems particularly relevant here because it involves a privilege tax on the

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business of renting and leasing real property, construed the equality and uniformity provisions of the State and Federal Constitutions to require only a like tax upon all those persons who exercise the privilege taxed. Thus, "the equality and uniformity consist in the imposition of the like tax upon all who exercise the privilege taxed." *Gaulden v. Kirk*, *supra*. As indicated above, the *Gaulden* case involved a tax upon the privilege of engaging in the business of renting and leasing real property. The taxpayer there contended that the provisions of the act which exempted two-family dwellings and rentals to permanent residents of hotels was discriminatory and deprived the taxpayers of equal protection of the laws under the Florida and Federal Constitutions. The classification was held to be reasonable.

It must be concluded accordingly that there can be no contention here that any individual taxpayer engaged in the business of renting and

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leasing real property in the State of Washington is discriminated against as against any other person within the same class. (1 Cooley on Taxation, *supra*, p. 608, § 291, *et seq.*)

In appellants' view, there should be nothing sacred about the respondents' property here. The use to which they put their property within the State of Washington constitutes "engaging in business," and a reasonable excise tax imposed upon the privilege of engaging in business seems most realistic and proper. Why should respondents' activities be favored over those of the taxpayer in *Henneford v. Mason, supra;* the retail grocer who sells his property to others and pays the business and occupation tax measured by his gross sales; the wholesaler who sells his property to other persons and pays a business and occupation tax measured by his gross sales? One can only wonder why it is that persons engaging in a business of renting and leasing real property have been able to re-

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ceive the preferential treatment which they have enjoyed for so long a period of time. That they have received a windfall and have not been classified until now is no reason for declaring the action of the 1959 legislature Extraordinary Session to be arbitrary and capricious, much less for contending that it denies the taxpayers the equal protection of the law.

In our view, the legislature's action only makes the law more equal, particularly with respect to persons who have been subject to the business and occupation tax since 1933.

C. ARTICLE I, § 23 OF THE WASHINGTON CONSTITUTION: THE ACT DOES NOT IMPAIR CONTRACTUAL PREROGATIVES OF ANY OF THE PARTIES AND IS THEREFORE COMPATIBLE WITH THE WASHINGTON CONSTITUTION (ARTICLE I, § 23)

The intervenors, Loubelle Realty Co., Inc., and Central Building Company, allege that their contractual property rights are impaired. The property rights, theoretically to be impaired

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by the legislation in question, consist of long term leases executed prior to the effective date of the act in question. That this contention is groundless is made evident in a number of Washington Supreme Court decisions commencing with *Tacoma v. State Tax Commission*, 177 Wash. 604, 611, 33 P. (2d) 899. In the *Tacoma* case the respondents contended that revenues from public utilities had been pledged to the retirement of revenue bonds and interest thereon, and that the act impaired the obligations of respondents, rendering them financially unable to retire the bonds and continue operation, and that the result amounted to an unconstitutional deprivation of property. That law is applicable to the case at bar, and we can do no better than to quote the language of our supreme court as follows:

> "The supreme court of Oregon, in the case of *Portland v. Portland Railway, Light & Power Co.*, 80 Ore. 271, 156 Pac. 1058, used the following language:

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" 'The defendant is not denied the equal protection of the law merely because it has made contracts to furnish electricity at prescribed rates and the tax will diminish the profits of those contracts. Section 1 of the Fourteenth Amendment to the federal Constitution is not violated. Contracts must always be entered into with full knowledge that the government may at any time draw upon its extensive powers of taxation; and when the company made contracts to furnish light it did so subject to the right of the municipality to exercise its taxing power in all its fullness: 8 Cyc. 997.

" 'Nor are the obligations of contracts impaired, and Article I of Section 10 of the national Constitution is not violated, by the collection of taxes which are imposed by a law passed subsequent to the making of a contract. The ordinance does not strike at the terms of the contracts; the agreements are preserved, and are enforceable now the same as before by both parties; the obligation of the contracts still binds to the same extent as before the passage of the ordinance, and there is no impairment of any obligations.'

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"In the case of *State ex rel. Sedalia v. Weinrich*, 291 Mo. 461, 236 S. W. 872, the supreme court of Missouri said:

" 'Whatever rights, if any, accrued, accrued subject to the power of the Legislature to amend the law. The fact that the city incurred a lawful indebtedness under one levy could not estop the Legislature to exercise its constitutional power to reduce the levy. The debt was incurred with full knowledge of the fact that the Legislature could make the change and, in fact, the possibility of such a change was an incident of the contract since the applicable law became a part of it.'

" * * *

"The power to tax is the basic principle upon which government is founded. Without that right, no government worthy of the name can long exist. The lack of power to tax was one of the main causes of the complete breakdown of the association which the thirteen colonies attempted to establish by virtue of the articles of confederation, and rendered necessary the 'more perfect union' which was formed under the constitution. The right to tax

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underlies and adheres in all of our legislative enactments. We are not here concerned with an express limitation or waiver of the power to tax, but only what respondents argue should be held to be an implied contract on the part of the state, by virtue of which and because of the rights of the holders of the utility bonds issued by respondents, the state cannot levy an excise which affects the proprietary operations conducted by respondents.

" * * *

"In the case of *Everett v. Adamson*, 106 Wash. 355, 180 Pac. 144, this court considered the effect of chapter 98, Laws of 1911, p. 467, which, *inter alia*, provided that, before instituting foreclosure of certificates of delinquency for general taxes, local improvement assessments against the property covered by the certificates must be paid. The owner of a certificate of delinquency, issued prior to the enactment of the law of 1911, maintained that, under the law, he could foreclose the same without complying with the terms of the later statute. He argued that his certificate gave him a vested right which the state

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could not later alter by imposing upon him an additional burden. This court, in the course of its opinion in holding the act of 1911 effective, said:

" 'Respondent's position is postulated almost entirely upon the theory of contractual relationship.

" 'We cannot concede that contract is analogous to a proposition of this kind. To do so would be to invite a serious curtailment of the sovereign power of taxation—that power which is one of the supreme powers of the state. If we were to hold that the principle of contract applied in one instance in the field of taxation, we would logically be compelled to extend the whole of the principles of contract to the entire field of taxation. We have held consistently that taxation is a matter involving the sovereign power of the state and subject only to the limitations which that sovereignty has imposed upon itself, either in the constitutional or positive law of the state. To read into the operations of the tax laws the particular principles which form the accretion of judicial precedent in matters of individual relationship

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> and of contract would be an unwarranted invasion of the legislative power. The power to tax includes the power to retax and impose other burdens of taxation upon the same subjects of taxation, at the will of the supreme taxing power. The power to levy special assessments for public improvements, according to the benefits, is delegated to the local authorities, but is wholly derived from the sovereign taxing power, and could assuredly be exercised in the first instance by it. * * * ' " *Tacoma v. Tax Commission*, *supra*, p. 615 *et seq.*

Surely, *Tacoma v. State Tax Commission*, *supra*, and *Everett v. Adamson*, 106 Wash. 355, 180 Pac. 144, are dispositive of this contention by these plaintiffs.

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D. THE FOURTEENTH AND SEVENTEENTH AMENDMENTS OF THE WASHINGTON CONSTITUTION ARE NOT APPLICABLE HERE

1. *The Fourteenth and Seventeenth Amendments Apply to "Property Taxes" Only.*

Many Washington Supreme Court cases have considered the purpose and effect of the 14th and 17th Amendments to the State Constitution. The term "property", as used and defined by the 14th Amendment, is taken in the usual, customary and commonly accepted meaning of the word. It is beyond dispute that the 14th Amendment does not limit the legislature's very broad authority to classify excise taxes, and that Article VII makes reference to taxes upon "real property" and has no application to taxes upon trades, professions or occupations or to privilege and excise taxes. See *Standard Oil Co. v. Graves,* 94 Wash. 291, 162 Pac. 558; *State ex rel. Stiner v. Yelle, supra; Austin v. Seattle,* 176 Wash. 654; *Bloxom v. Henneford,*

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193 Wash. 540, 76 P. (2d) 586; *Gruen v. State Tax Commission*, 35 Wn. (2d) 1, 211 P. (2d) 651.

This is in accord with the generally accepted meaning of the term "property" as used in other constitutional limitations of other states. As stated in *Gaulden v. Kirk*, *supra*

> " * * * through the years an enlargement of the field of excise taxes developed, and the modern view that 'an excise tax is any tax which does not fall within the classification of a poll tax or a property tax,' (51 Am. Jur. 61) * * *
>
> " * * *
>
> "Although the privilege of engaging in business may be classified as a species of property, it is not property in the usual, customary and commonly accepted sense of the word. * * *
>
> " * * * in every instance such a tax law has been upheld as against the contention that it imposed a property, rather than an excise tax and was therefore unconstitutional. 47 Am. Jur. 197, 128 A.L.R. 894, 117 A.L.R. 847, 110 A.L.R. 1486, 103

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A.L.R. 93, 89 A.L.R. 1432." *Gaulden v. Kirk*, *supra*, page 574.

Professor Cooley's treatise concludes to the same effect,

> " * * * If the tax is directly on the property itself, the tax is a property tax; but a tax is an excise tax rather than a property tax where it is not a tax on property * * * the obligation to pay an excise is based upon the voluntary action of the person in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, * * *." 1 Cooley, Taxation, *supra*, 4th ed., page 132, § 46.

2. *Commonly Accepted Definition of "Double Taxation" Precludes the Contention of Double Taxation Here.*

In any event, Professor Cooley's definition of "double taxation," approved and adopted by our State Supreme Court, thoroughly disposes of the plaintiffs' contention that double taxation will result from the tax in the case at bar.

The State Supreme

> " * * * To constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same state or government, (3) during the same taxing period, and (4) for the same purpose. There is no double taxation, strictly speaking, where (a) the taxes are imposed by different states, (b) one of the impositions is not a tax, (c) one tax is against property and the other is not a property tax, or (d) the double taxation is indirect rather than direct." 1 Cooley on Taxation, *supra*, pages 475, 476.

In *Supply Laundry Co. v. Jenner*, 178 Wash. 72, 34 P. (2d) 363, the question of double taxation was disposed of there (the case involved a portion of the business and occupation tax code and is quite similar to the case at bar) where a "B&O" tax paid by insurance agents was challenged on the grounds that agent commissions were calculated upon a percentage of premiums collected by their company. These funds had already been taxed in the form of

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a premium tax paid by their company, they contended; hence, double taxation results. The court rejected this contention, observing that " * * * An analogy may be found in the relation existing between wholesaler and retailer. The gross receipts of each may in the final analysis result from the sale of the same merchandise, yet this would furnish no logical ground for contending that there was double taxation." *Supply Laundry Co. v. Jenner, supra,* page 79.

VII

SUMMARY OF APPELLANTS' ARGUMENT

The United States Supreme Court has recognized the difficulty and the responsibility imposed upon state legislators for devising just and productive sources of revenue, and that this "challenges the wit of legislators." *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, at page 444:

" * * * Nothing can be less helpful than for courts to go beyond the extremely

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limited restrictions that the Constitution places upon the states and to inject themselves in a merely negative way into the delicate processes of fiscal policy-making. We must be on guard against imprisoning the taxing power of the states within formulas that are not compelled by the Constitution but merely represent judicial generalizations exceeding the concrete circumstances which they profess to summarize." (p. 445.)

"The Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax. A state is free to pursue its own fiscal policies, unembarrased by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society." *Wisconsin v. J. C. Penney Co.*, *supra*, p. 444.

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The foregoing statement seems most apropos here. As we have seen, the Washington Legislature was confronted with a difficult and demanding fiscal situation which had assumed emergency proportions. Its approach to the delicate processes of fiscal policy-making resulted in increased rates in some areas and also extensions of the tax base of the then existing tax structure of the state. The means employed in extension of the business and occupation tax to the business of renting and leasing real property had been utilized by the legislature many times since 1933. We think the classification adopted by the legislature is most reasonable. To hold otherwise would constitute not only permission for trial courts " * * * to go beyond the extremely limited restrictions that the Constitution * * * " imposes, but in the final analysis would amount to little more than substitution of the court's political opinion for that of the legislature as to whether social and eco-

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nomic conditions make necessary the application of the state's legitimate and recognized power of taxation to given areas within an existing tax structure.

Appellants submit that the trial court's construction of the act is such a "judicial generalization" exceeding the concrete circumstances of the case just as was cautioned against in *Wisconsin v. J. C. Penney Co., supra.* This is indicated by the trial court's repeated characterization of the act as "said provision for Tax on Rents." (Declaratory Judgement and Injunction Tr. 41). So also is it indicated by the trial court's sweeping condemnation of the act as violative of five sections and two amendments to the State Constitution as well as the 14th Amendment of the Federal Constitution.

The tax here is not a property tax, but is rather an excise tax. A different conclusion would be contrary to the long recognized definitions of "property taxes" and "excise taxes."

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Furthermore, it would be inconsistent with this court's construction of business and occupation taxes, real estate sales taxes, inheritance taxes and use taxes.

The trial court's construction of the act is inconsistent with a long line of authority establishing that the characterization of a tax must be made by reference to the "incidence" of the tax in question and that the "measure" of the tax is inconsequential. This court has held time and again that the incidence of the business and occupation tax is upon the privilege of "engaging in business."

In this respect, respondent will no doubt seek aid and comfort from the decision of *Jensen v. Henneford, supra.* Although it is felt that *Jensen v. Henneford* is distinguishable from the case at bar the decision there is so broadly generalized and is so inconsistent with other decisions of this court that Appellant respectfully requests that the court reconsider *Jensen v. Henneford* here.

Filed per Supreme

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Finally, we reiterate that the act is in no way incompatible with the Washington or Federal Constitution. The Due Process and Equal Protection questions may be reduced to one of the reasonableness of the classification here. But the respondents have not and can not show in what respect the action of the legislature was arbitrary, or capricious since there is every indication to the contrary.

Each of the respondents (except the *Apartment Operators Association* and *A. S. Stusser*) are engaging in business in Washington. They are each within the classification set forth in the act and are subject to the tax measured by the gross proceeds received by them. As to the *Apartment Operators Association* and *A. S. Stusser* no relief is indicated or permissible—they are not real parties in interest.

The Declaratory Judgement and Injunction entered by the trial court should be set

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aside with appropriate comment by this court accordingly.

Respectfully submitted,

JOHN J. O'CONNELL,
Attorney General,

JOHN W. RILEY,
Deputy Attorney General.

The Center Square

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APPENDIX A

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CHAPTER 5.
[S. B. 6]
Laws 1959, Ex'y Sess.

EXCISE TAXES—BUSINESS AND OCCUPATION, SALES, TOBACCO PRODUCTS.

An Act relating to revenue and taxation; amending section 5, chapter 389, Laws of 1955, as amended by section 1, chapter 3, Laws of 1959 extraordinary session (Engrossed House Bill No. 1) and RCW 82.04.040; amending section 48, chapter 389, Laws of 1955 as amended by section 4, chapter 3, Laws of 1959 extraordinary session. (Engrossed House Bill No. 1) and RCW 82.04.280; amending section 6, chapter 389, Laws of 1955, as last amended by section 1, chapter 279, Laws of 1957, and RCW 82.04.050; amending section 23, chapter 197, Laws of 1959 and RCW 82.04.390; amending section 1, chapter 91, Laws of 1953, as last amended by section 5, chapter 279, Laws of 1957, and RCW 82.04.296; amending section 5, chap-

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ter 28, Laws of 1951, second extraordinary session, as last amended by section 4, chapter 279, Laws of 1957, and RCW 82.08.150; amending section 49, chapter 389, Laws of 1955 and RCW 82.04.290; amending section 47, chapter 389, Laws of 1955 and RCW 82.04.270; amending section 14, chapter 197, Laws of 1959 and RCW 82.04.300; adding new sections to chapter 180, Laws of 1935, and to Title 82 RCW; and declaring an emergency with the effective date April 1, 1959, except for sections 10 through 21, which shall take effect July 1, 1959.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 5, chapter 389, Laws of 1955, as amended by section 1, chapter 3, Laws of 1959 extraordinary session (Engrossed House Bill No. 1) and RCW 82.04.040 are each amended to read as follows:

"Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any ac-

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tivity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

SEC. 2. Section 6, chapter 389, Laws of 1955, as last amended by section 1, chapter 279, Laws of 1957, and RCW 82.04.050 are each amended to read as follows:

"Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) other than a sale to one who (a) purchases for

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the purpose of resale as tangible personal property in the regular course of business, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property, or (c) purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsection (2), and 82.04.290.

The term "sale at retail" or "retail sale" shall include the sale of or charge made for

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tangible personal property consumed and/or for labor and services rendered in respect to the following: (a) The installing, repairing, cleaning, altering, imprinting, or improving of intangible personal property of or for consumers, excluding, however, services rendered in respect to live animals, birds and insects; (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therin or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture; (c) the sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or struc-

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tures, but shall not include the charge made for janitorial services; (d) the sale of or charge made for labor and services rendered in respect to automobile towing, armored car service and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (e) the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same.

The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any publicly owned street, place, road, high-

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way, bridge, or trestle which is used or to be used primarily for foot or vehicular traffic, nor shall it include sales of feed, seed, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects.

SEC. 3. Section 47, chapter 389, Laws of 1955 and RCW 82.04.270 are each amended to read as follows:

(1) Upon every person except persons taxable under subsection (1) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent.

(2) The tax imposed by this section is levied and shall be collected from every person en-

The Center Square

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gaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales: *Provided*, That the tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying one-quarter of one percent the value of the article so distributed as of the time of such distribution: *Provided*, That persons engaged in the activities described in this subsection shall not be liable for the tax imposed if by proper invoice it can be shown that they have purchased such property from a wholesaler who has paid a business and occupation tax to the state upon

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the same articles. This proviso shall not apply to purchases from manufacturers as defined in RCW 82.04.110. The tax commission shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers: *Provided further*, That delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

SEC. 4. Section 48, chapter 389, Laws of 1955 as amended by section 4, chapter 3, Laws of 1959 extraordinary session (Engrossed House Bill No. 1) and RCW 82.04.280 are each amended to read as follows:

Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals or magazines; (2) building, repairing or improving any

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publicly owned street, place, road, highway, bridge or trestle which is used, or to be used, primarily for foot or vehicular traffic including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, bridge or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire; (4) operating a cold storage warehouse, but not including the rental of cold storage lockers; (5) the renting or leasing of real property; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one-quarter of one percent.

SEC. 5. Section 49, chapter 389, Laws of 1955 and RCW 82.04.290 are each amended to read as follows:

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Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.260, 82.04.270 and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of one percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The additional tax imposed in RCW 82-.04.296 shall not apply to persons or activities taxable under this section.

SEC. 6. Section 1, chapter 91, Laws of 1953, as last amended by section 5, chapter 279, Laws of 1957, and RCW 82.04.296 are each amended to read as follows:

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From and after the first day of May, 1955, there is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed by this chapter, other than those activities taxed pursuant to RCW 82.04.260, an additional tax in the amount of sixty percent of the tax payable under this chapter: *Provided*, That from April 1, 1959 until July 1, 1961 the additional tax imposed under this section shall be in the amount of seventy-six percent of the tax payable under this chapter. To facilitate collection of this additional tax, the tax commission is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the exact amount of the additional tax hereby imposed.

SEC. 7. Section 14, chapter 197, Laws of 1959 and RCW 82.04.300 are each amended to read as follows:

RCW 82.04.300:

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This chapter shall apply to any person engaging in any business activity taxable under RCW 82.04.230, 82.04.240, 82.04.250, 82.04.260, 82.04.270 and 82.04.280 other than those whose value of products, gross proceeds of sales, or gross income of the business is less than three hundred dollars per month: *Provided*, That where one person engages in more than one business activity and the combined measures of the tax applicable to such businesses equal or exceed three hundred dollars per month, no exemption or deduction from the amount of tax is allowed by this section.

This chapter shall apply to any person engaging in any business activity taxable under RCW 82.04.290 other than those whose value of products, gross proceeds of sales, or gross income of the business is less than thirty-six hundred dollars per year: *Provided*, That where one person engages in more than one business activity and the combined measures of tax applicable to

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such business equals or exceeds thirty-six hundred dollars, no exemption or deduction from the amount of tax is allowed by this section.

Any person claiming exemption under the provisions of this section may be required to file returns even though no tax may be due: *Provided, further,* That the tax commission may allow exemptions, by general rule or regulation, in those instances in which quarterly, semi-annual, or annual returns are permitted. Exemptions for such periods shall be equivalent in amount to the total of exemptions for each month of a reporting period.

SEC. 8. Section 23, chapter 197, Laws of 1959 and RCW 82.04.390 are each amended to read as follows:

This chapter shall not apply to gross proceeds derived from the sale of real estate. This however shall not be construed to allow a deduction of amounts received as commissions from the sale of real estate, nor as fees, handling

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charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions.

SEC. 9. Section 5, chapter 28, Laws of 1951, second extraordinary session, as last amended by section 4, chapter 279, Laws of 1957, and RCW 82.08.150 are each amended to read as follows:

* * *

SEC. 22. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

SEC. 23. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1959 except sections 10 through 21, which shall take effect July 1, 1959.

Passed the Senate March 26, 1959.
Passed the House March 26, 1959.
Approved by the Governor March 30, 1959.

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APPENDIX B

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Art. I, Sec. 3, Washington Constitution

"*Personal Rights.* No person shall be deprived of life, liberty, or property, without due process of law."

Art. I, Sec. 12, Washington Constitution

"*Special Privileges and Immunities Prohibited.* No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

Art. I, Sec. 23, Washington Constitution

"*Bill of Attainder, Ex Post Facto Law, Etc.* No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."

Art. I, Sec. 29, Washington Constitution

"*Constitution Mandatory.* The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

Art. I, Sec. 32, Washington Constitution

"*Fundamental Principles.* A frequent recurrence to fundamental principles is essential

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to the security of individual right and the perpetuity of free government."

Fourteenth Amendment, Washington Constitution

"Article 7 is amended by striking out all of sections 1, 2, 3 and 4, inserting in lieu thereof the following, to be known as section 1:

"Art. 7, Sec. 1. *Taxation.* The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided*, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to

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the amount of three hundred ($300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner."

Seventeenth Amendment, Washington Constitution

"Art. 7, Sec. 2. *Forty Mill Limit.* Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation shall be fifty per centum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term 'taxing district' for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only * * *"

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Fourteenth Amendment, Sec. 1, Federal Constitution

"*Citizenship Rights Not to Be Abridged by States.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Center for Law

TJM10-00489
PRR-2026-0158

Nick Brown
ATTORNEY GENERAL OF WASHINGTON
Revenue and Finance Division
PO Box 40123 ● Olympia, WA 98504-0123 ● (360) 753-5515

M E M O R A N D U M

DATE: March 7, 2025

TO: Washington Governor Bob Ferguson, Washington State Department of Revenue, Office of Financial Management

FROM: Andrew Krawczyk, Assistant Attorney General

SUBJECT: **Proposed Tax on Financial Intangible Assets (FIAT) Over $50 Million.**

The Center Square

Brief Description:

The Legislature is considering a 1% property tax on certain intangible assets worth over $50 million. It also provides a credit for similar taxes paid to another state.

Questions Presented:

- Whether this tax violates the constitutional uniformity requirement because of the $50 million threshold? Short Answer: It is difficult to predict the outcome, but it is a realistic possibility for a Court to find that it violates uniformity.
- If the Legislature were to cap the tax (e.g. $10 million), would that raise additional legal concerns? Short Answer: Yes, it increases the chance FIAT would be found to violate uniformity.
- Are there legal concerns related to the financial assets being taxed twice because of the capital gains tax? Short Answer: No.
- Other legal concerns? Short Answer: a credit for similar taxes paid to another state could also be found to violate uniformity.

Legal Analysis:

It is difficult to say how Washington courts would answer your questions concerning constitutional uniformity of the FIAT and the idea of a $10 million tax cap. There are unresolved reasonable arguments both for and against the constitutionality of the FIAT. The provisions that pose the greatest risk are the $50 million threshold exemption and the credit for similar taxes paid to another state.

By way of background, the Legislature has plenary authority in matters of taxation except as limited by the constitution. *Belas v. Kiga*, 135 Wn.2d 913, 919–20, 959 P.2d 1037 (1998). The primary limitations with respect to property taxes are the uniformity and levy rate restrictions in Article VII, sections 1 and 2 of the state Constitution. The FIAT does not raise any concerns with respect to the levy rate restriction but does pose concerns regarding uniformity.

Initially, the uniformity requirement in Article VII placed stringent limitations on the authority of the state and local governments, barring any property tax that was nonuniform and allowing exemptions from taxation only when set out in the constitutional text. *See e.g.*, *State v. Daniel*, 17 Wash. 111, 117, 49 P. 243 (1897). That changed in 1930 with the ratification of Amendment 14, which broadened the power of the Legislature in two significant ways.

First, it limited the uniformity requirement to property "within the same class." This means a defined class of taxable property must be assessed on an equal basis and at an equal tax rate. *Belas*, 135 Wn.2d at 923. Thus, the Legislature now had authority to define classes of property and tax different classes at different rates. *State ex rel. Mason Cnty. Logging Co. v. Wiley*, 177 Wash. 65, 70, 31 P.2d 539 (1934). The one caveat is that real property must all be in a single class.

Second, Amendment 14 expressly authorized the Legislature to exempt property from taxation "by general law." *Belas*, 135 Wn.2d at 929. Thus, an exemption no longer had to be expressly stated in the constitution but could be enacted through the legislative process. Consistent with this change, the Legislature exempted intangible personal property from the property tax. Laws of 1931, ch. 96, § 1. The property tax code now contains numerous additional exemptions. *See* RCW ch. 84.36.

There remains, however, an unanswered question with respect to the Legislature's power to enact property tax exemptions by general law. Namely, is that power limited to a "full" exemption or can the Legislature enact a partial exemption? As discussed below, there are reasoned arguments on both sides of that debate.

Does the proposed FIAT violate the Article VII uniformity requirement because of the $50 million threshold?

There is no dispute that the Legislature can entirely exempt property from taxation without violating the uniformity requirement. *See generally, State v. Wooster*, 163 Wash. 659, 664–65, 2 P.2d 653 (1931) (affirming constitutionality of total exemption). However, no case law directly addresses whether the Legislature can partially exempt personal property from taxation without a

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constitutional amendment.[1] A partial exemption means that a portion of the exempt unit of property still has some tax levied against; it does not refer to the division of property into smaller taxable units. *See e.g., City of Kennewick v. Benton County.*, 131 Wn.2d 768, 775, 935 P.2d 606 (1997) (fully exempting a city's 49 percent ownership interest in a property).

It is also worth noting that when the Legislature has enacted partial exemptions, it has done so only after an amendment to Article VII permitting the exemption. Amendment 47, for example, preceded the Legislature enacting a nonuniform tax preference for low-income retired persons. Wash. Const. art. VII, sec. 10; RCW 84.36.379-389. Another example is the personal property tax preference found in RCW 84.36.110(2), which, in part, allows families to deduct $15,000 from the taxable value of certain household tangible personal property. This preference was preceded by Amendment 3 (1900) (authorizing the preference); Amendment 81 (1988) (increasing the threshold to $3,000); and Amendment 98 (2006) (increasing the threshold to $15,000). Here the $50 million threshold in the FIAT bill resembles the preference in RCW 84.36.110(2), although the threshold of exempt and taxable value is much larger ($50 million as opposed to $15 thousand). In any event, the $50 million exemption in the FIAT could be considered a partial exemption, and if not preceded by an amendment to Article VII, a court might conclude that it fails the uniformity requirement.

Even if partial exemptions are not permitted without constitutional amendment, proponents of the FIAT could argue that the $50 million threshold can be interpreted and applied as a total exemption. The FIAT provides that the exemption is "up to" $50 million, which is applied by exempting only whole assets up to the maximum allowed,[2] instead of a tax deduction which reduces $50 million from the total value of taxable assets and causing partial taxation.

It is difficult to reliably forecast how Washington courts would ultimately resolve these uniformity issues. If challenged, the FIAT will be presumed constitutional and proponents have some good arguments for defending it, however, the presence of this exemption creates a realistic possibility FIAT will be found to violate the requirements of Article VII section 1.

If the Legislature were to cap the tax (e.g. $10 million), would that raise additional legal concerns?

Yes, this likely depends in part on how the cap is written, but generally a cap on total tax liability would increase the chance of the FIAT violating Article VII, section 1. In addition to the partial

[1] The issue of a partial exemption has come up in at least one case, but the Court resolved the dispute on different grounds. *Belas*, 135 Wn.2d at 935, 942 (value averaging formula was not enacted as an exemption from taxation, value averaging formula results in nonuniform taxes).

[2] For example, a person with two assets, each indivisible and valued at $30 million, would only be able to claim the exemption on one whole $30 million asset. Allowing the second $30 million asset to be exempt would cause the claimed asset to exceed the "up to" threshold by effectively reducing the tax liability of the second asset to $10 million.

exemption issues discussed above, a property tax preference that comes into operation after tax liability is imposed likely violates uniformity. *See Cameron*, 90 Wash. at 414–15 (finding that the method of applying the $300 personal property deduction after the property tax ratio was applied was unconstitutional). However, *Cameron* was decided before Amendment 14, so the answer to this question is now uncertain. Additionally, this proposal starts to resemble "tax bracketing," and it is unclear to what extent that is permitted using the discretion to create different classes of personal property and exemptions after Amendment 14.

Are there legal concerns related to the financial assets being taxed twice because of the capital gains tax?

There is no legal bar against imposing the FIAT on assets that, when sold, may also be subject to the capital gains tax. The two taxes have entirely different incidents. The capital gains tax is an excise tax imposed on a transaction - the sale or exchange of qualifying capital assets. RCW 82.82.040; *see Quinn v. State*, 1 Wn.3d 453, 478-83, 526 P.3d 1 (2023) (discussing the taxable incident). The FIAT, by contrast, is an annual tax on the value of taxable asset owned by Washington residents. Section 3. The fact that the state imposes an excise tax on the sale of property, and a property tax on the value of that same property prior to sale, raises no legal concerns.

Other legal concerns.

Section (7) provides a credit "equal to the amount of any similar tax legally imposed on, and paid by, the person to another state for the same tax year." This provision was enacted to address commerce clause concerns of multiple state taxation. It is unclear, at this point, if it would ever apply because a state would need to pass a similar scheme, a taxpayer would need an asset subject to both taxes, and the taxpayer would have to be entitled to take the credit against their Washington liability; however, if it did apply it reduces the ultimate tax paid on a Washington taxable asset and thus results in nonuniform taxation. Accordingly, it poses the same concerns and uncertainties identified above for the $50 million threshold as well as the additional concern of coming into operation after tax liability is imposed.

While there would still be some litigation uncertainty because of the novel issues the FIAT presents, an easier to defend approach to achieve the policy goals in sections (6) subsection (1) and (7) would be to make them complete exemptions. For example, the Supreme Court describes three classes of exemptions, including an exemption which "is defined by some characteristic of the property owner (i.e., low-income, retired or disabled)." *Belas*, 135 Wn.2d at 931. Accordingly, the Legislature could completely exempt the property of a person who had less than $50,000,000 in taxable assets. The property of a person who had more than $50 million in taxable assets would pay the tax on all taxable assets unless a different exemption applies.

Tax Research Center Source

This memo is based on the latest versions of the FIAT presented to us. Any changes to the FIAT should be carefully reviewed by our office to ensure no additional problems with the constitutional requirements don't emerge. This is not an official opinion of the Attorney General's Office and is intended only as general guidance.

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Friday, February 20, 2026 7:47 AM
To: Zalesky, Chuck (ATG)
Subject: FW: ACP: Millionaire Income Tax Bill

Importance: High

FYI. The questions re the marriage penalty are below.

From: Kilduff, Chris <Chris.Kilduff@leg.wa.gov>
Sent: Thursday, February 19, 2026 3:11 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Cc: Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: ACP: Millionaire Income Tax Bill
Importance: High

[EXTERNAL]

ACP:

Dan,

Noah is hopefully enjoying some good time away so am forwarding this request your way. We have a couple of emergent questions to vet if you (and maybe Chuck?) can connect with me and our Chief of Staff via phone today or tomorrow. Kindly see below. Looping in Adam too.

Thank you!

Christine (Chris) Kilduff – Speaker's Attorney
Washington State House of Representatives
Office: 360/786.7174 Cell: 253/720.2192

From: Kilduff, Chris
Sent: Thursday, February 19, 2026 3:01 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov> <noah.purcell@atg.wa.gov>
Cc: Meyers, Dominique <Dominique.Meyers@leg.wa.gov>
Subject: ACP: Millionaire Income Tax Bill
Importance: High

Noah, Do you have time for a call today or tomorrow with Dom and me?

The Center Square

We are hoping to run a couple of emergent questions by you.

First, we wanted to check in re: any equal protection and privileges and immunities issues around the standard deduction for singles v. spouses/DP's in section 311 of the bill.

Also, we wanted to discuss the use of the term individuals (See definition Sec 101 (4)) and the stated intent of the bill, particularly Sec 1 (9) and 12(a) and how that aligns with the combined standard deduction of $1 mil for spouses/DP's in Sec. 311.

Thanks

Christine (Chris) Kilduff – Speaker's Attorney
Washington State House of Representatives
Office: 360/786.7174 Cell: 253/720.2192

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, February 18, 2026 1:59 PM
To: Zalesky, Chuck (ATG)
Subject: FW: DSHS technical concern with 6346

Chuck,

L&P is asking for our input on the proposed language below. I highlighted a few edits and one comment. Do you have anything else to add?

Dan

From: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Sent: Wednesday, February 18, 2026 11:59 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Cc: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Subject: FW: DSHS technical concern with 6346

[EXTERNAL]

Hi Dan,

DSHS has asked to develop language to include in ESSB 6346 that allows for income tax refund garnishment in support child support as required in 42 U.S. Code § 666. Given the time constraints of this request and the strong desire to codify something this year, Exec. decided to take the approach of providing for garnishment in statute but developing the process through rulemaking.

Can you please review the language below and let us know your feedback by 3pm tomorrow (2/19)? Our deadline to provide this language is COB 2/19, so we welcome any proposed solutions to concerns you identify. I've included the email string leading to this request below for more background in the event it proves helpful.

> New Section. Section 712 CHILD SUPPORT ENFORCEMENT: *[This would be codified as a new section in a new chapter under Title 82 along with the other income tax sections created in the bill]*
>
> (1) The department of social and health services and the department of revenue are authorized to enter into an agreement whereby the department of revenue may garnish a refund for excess payment of tax properly due under this chapter by a taxpayer for the purpose of child support owed by the same taxpayer, and remit such amount to the state's child support registry.
>
> (2) The authority over child support administration, decisions regarding the~~y~~ identity of child support obligors, the amount child support obligors owe, due process for all parties [Comment: not sure what this includes. Could be more specific.], and issuing final administrative garnishment orders, must remain with the department of social and health services.
>
> (3) A final administrative garnishment order~~s~~ sent to the department of revenue under this section is limited to ordering the amount of the obligor's refund to be transferred to the child support

TJM10-00497
PRR-2026-0158

registry. Such order sent to the department of revenue may not order? any other demand for action by the department of revenue without both prior approval of a court of competent jurisdiction and proper notice required for all court proceedings seeking additional relief.

(4) The department of revenue is ~~must~~ not ~~be~~ required to defend any claim against the garnishment of a refund under this section except against a claim that the department of revenue improperly carried out its obligations under a final administrative garnishment order or related court instruction, or both.

(5) The department of social and health services and department or revenue may adopt rules as may be necessary to administer this section pursuant to their rule making authority.

(6) Nothing in section may be construed as permitting the department of revenue from disclosing return or tax information outside what is authorized under RCW 82.32.330.

Thanks!
Jack

From: Brumbaugh, Jack (DOR)
Sent: Wednesday, February 18, 2026 6:31 AM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Subject: RE: DSHS technical concern with 6346

FWIW, I would also have concerns around sharing language that hasn't been fully vetted by the divisions (including the IGO) and possibly the AGO. This response from DHSH makes me think the IGO really need to get involved.

> It makes sense to figure out between the two agencies (in the next few years) a way for DOR to send DCS the names and SSNs of individuals who pay the millionaire's tax so we can match them to paying parents in our caseloads, determine if the paying parent is behind in their child support, and so forth. If DOR can winnow the names they send to us down to those who are due (or have applied) for a refund of the income tax, so much the better. Again, following the principle of matching the smaller data set to the bigger one.

The Center Square

From: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Sent: Tuesday, February 17, 2026 8:13 PM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>; Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>
Subject: Fw: DSHS technical concern with 6346

J&J,

OFM said that if we can get the language right now as as opposed to next session, let's try for it. Can we discuss at huddle tomorrow whether we think, based on DSHS's responses to our concerns, we think we can turn revisions around very quickly? (And obviously, we'd still have subsequent sessions to finetune.) If a rush job is not realistic, then we can just stick to Plan A of addressing the language fully with them in the interim.

Thanks,
Steve

From: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>
Sent: Friday, February 13, 2026 3:25:20 PM
To: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>; Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>; Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>; Turnbaugh, Monica (DSHS/ESA/DCS) <Monica.Turnbaugh@dshs.wa.gov>
Subject: RE: DSHS technical concern with 6346

Thank you, Steve.

I appreciate this feedback and in response, my DCS colleagues in ESA have provided the below green answers. Some of the amendatory language was based on assumptions made by DCS based on federal tax offset procedures and Oregon's procedures. We are happy to work with you on any adjustments to language.

Jon Noski / Senior Director of Legislative Affairs
Washington State Department of Social and Health Services
jon.noski@dshs.wa.gov

From: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Sent: Friday, February 13, 2026 12:00 PM
To: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>; Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>; Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>
Subject: Re: DSHS technical concern with 6346

Jon et al.,

I understand that DSHS is keen to get language in 6346, and so to that end, DOR does not want to be a hurdle. However, I want to be clear that DOR has concerns with DSHS's language and that in return for not holding up efforts now to work on it, we would like to reconvene with DSHS in the interim to talk about refining the language. I'm sure there will be no shortage of opportunity to revise the tax on income next year.

Some immediate things that jumped out at us:

- On the first page, (2) outlines a plan "to refer the case to the department of revenue." DOR is not equipped to handle child support cases. DOR is willing to facilitate the transfer of obligor money to the child support registry upon request from DSHS. However, DOR does not want to adjudicate to whom and how much child support is granted.

In no way is Division of Child Support asking DOR to work child support cases, only to do the one enforcement action: offset state income tax refunds of the names/SSNs we send to them. As noted in the meeting we had a few days ago, DCS expects the Venn Diagram of paying parents who owe back support and people due a refund under the millionaire's tax to be pretty small.
In any offset scheme, there is going to need to be a match between DCS cases and folks who paid the millionaire's tax and of those, who is due a refund. Otherwise, DCS will just be shooting in the dark, which won't be efficient for either agency. The match could happen on the DOR side, or it could come on the DCS side.

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TJM10-00499
PRR-2026-0158

For example, in the federal tax refund offset program (FTRO), DCS sends data on ALL qualifying cases to the federal Office of Child Support Enforcement (OCSE), who do a data match on their end with taxpayers who are due a refund. OCSE then send DCS the offset dollars and DCS distributes those monies to the appropriate child support case or cases. (In the case of FTRO, DCS has the smaller data set being sent to be matched with a much bigger data set. Plus, the IRS is very protective of their data.

It makes sense to figure out between the two agencies (in the next few years) a way for DOR to send DCS the names and SSNs of individuals who pay the millionaire's tax so we can match them to paying parents in our caseloads, determine if the paying parent is behind in their child support, and so forth. If DOR can winnow the names they send to us down to those who are due (or have applied) for a refund of the income tax, so much the better. Again, following the principle of matching the smaller data set to the bigger one.

- On the first page, (4) amends the DSHS statute, but within the DSHS statute orders DOR to block parents from applying withholding amounts to future taxes owed. Again, that places DOR in the position of adjudicating disputes. DOR would like to limit its participation to transferring funds to the child support registry after DSHS has already made a final determination of the identity of the obligor and the specific amount to transfer.

The provision about not applying refunds to future taxes in the amendatory language mimics Oregon's statutes, based on their laws that allow the taxpayer to check a box and have any refund applied to next year's income tax liability. If the person has been certified to Oregon Department of Revenue by the Oregon Department of Justice as owing back child support, they do not have that option. The refund must be offset for back child support rather than applied to next year's tax liability. If Washington DOR is not allowing folks to apply any refunds to future tax liability, then that can be stricken.

- On the second page, (2) places the responsibility on DOR to decide which parent is entitled to what share of the withholding money. DOR cannot adjudicate child support disputes. DOR will agree to transfer money after a final decision by, and upon request from, DSHS.

Since the bill allows joint filers, DCS has been operating under the assumption there would be a way for the person's spouse to say a portion of the state tax refund should not be offset to pay any of their spouse's separate obligations, such as past due child support. The provisions in the amendatory language are about the taxpayer's current spouse, who (usually) is not the person who is named the custodial parent/payee on the child support case.

The IRS allows the "injured spouse" to claim a share of a refund, and the amendatory language modeled Oregon's similar "injured spouse" process for their state income tax refund offset. Washington is a community property state, so we assume it would be a straight 50% of the refund that the injured spouse could claim. (That's how injured spouse for federal tax refund offset is calculated for Washington filers.)

Ideally, taxpayers file for injured spouse allocation at the same time they file their federal tax return, but often they don't and the injured spouse claim comes after DCS already has possession of the offset dollars. Federal rules allow us to hold a joint refund up to 180 days, in case of a late filing. Injured spouse allocation impacts the amount of the federal offset DCS can distribute to the paying parent's child support case or cases. The IRS claws back the injured spouse's portion, which has much less impact on DCS and the parent who is supposed to receive support if the offset dollars are still in the 180 day hold period.

Example: Chris Doe owes Blake Q. Public back child support. Chris pays the millionaire's tax with spouse Pat. Chris and Pat are due a refund. Pat files the state income tax equivalent of injured spouse. DOR lets DCS know that Pat filed an injured spouse claim. DCS is able to code our case in time before any money goes out the door while whatever injured spouse process in place at the time goes through its paces.

DCS is asking that in instances similar to the Doe/Public example above, where the current spouse has filed an "injured spouse" claim for part of the refund that would otherwise come to DCS as a state income tax refund offset, to let DCS know so we can code our cases appropriately so we don't unintentionally send money out the door to the child support payee and then have to try to collect it back from the child support payee as a receivable.

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If no injured spouse claim process is planned, we could strike that portion.

- On the second page, (2) requires DOR to serve notice on parents regarding the application by the other spouse for half of the withholding. Service of process, and all due process, should be handled by DSHS.

DCS is not asking DOR to determine what the paying parent owes in back child support, nor how those funds would be distributed to the paying parent's case or cases. DCS would give DOR a number, and DOR would send DCS either the amount requested, or the entire refund, whichever is less. This is the purpose of the administrative review mentioned on page 1, subsection 2.
Through whatever data match process our two agencies develop, DOR tells DCS that Chris Doe has filed the millionaire's tax. DCS records show Chris Doe owes $20,000. DCS sends the advance written notice. Chris Doe asks for an administrative review and provides proof of $9500 in payments of which DCS had no prior knowledge. DCS adjusts the debt on the case accordingly. DCS sends to DOR: Chris Doe, SSN XXX-XX-XXXX, $10,500. If Chris is eligible for a refund of $8000, DOR would offset $8000 and send it to DCS to be distributed to Chris's child support case.

- The proposal does not address the handling of out-of-state child support orders.

Whether the order was issued by a court in a different jurisdiction is not relevant to this bill, only that the debt is enforceable. Any debt that DCS certifies to DOR would be enforceable because the order was issued in Washington and contains the appropriate enforcement language (as required by RCW 26.23.050), we have served a Notice of Support Debt and Demand for Payment under RCW 74.20A.040 directing all payments to the Washington State Support Registry, or we have registered the order for enforcement under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

Alternatively, we might suggest adding a section to the bill authorizing DSHS and DOR to work on a process:

> New Section. Section 712
> CHILD SUPPORT ENFORCEMENT: The department of social and health services and the department of revenue are authorized to enter into an agreement whereby the department of revenue may garnish taxpayer withholding for the purpose of child support, and remit that revenue to the state's child support registry. Each department is granted rulemaking authority to implement this plan. The department of social and health services must retain all authority over child support administration, decisions regarding child support obligors, how much those obligors owe, due process for all parties, and issuing final administrative orders. Garnishment orders sent to the department of revenue are limited to ordering the amount of the obligor's withholding to transfer to the child support registry. Administrative garnishment orders sent to the department of revenue may order no other action by DOR without prior approval of a court, with notice required for all court proceedings seeking additional relief.

Not sure if that has enough specificity to it to check whatever box DSHS needs to check with the feds on this front.

Thanks for allowing us to weigh in,

Steve Ewing
Legislative & External Affairs Liaison
Washington State Department of Revenue
o: (360) 534-1545
c: (360) 742-7310
e: SteveE2@dor.wa.gov

New: Resources for lawmakers and legislative staff:
dor.wa.gov/legislative-resources

Public Records Center Software

From: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>
Sent: Thursday, February 12, 2026 5:19 PM
To: Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>
Cc: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Subject: DSHS technical concern with 6346

Debbie, Sheri, Grace, and Anna.

ESA has provided the attached language and following information for me to share regarding SB 6346. If our amendatory language is adopted there will be an indeterminate fiscal impact related to the costs of implementation. These would likely include forms and potential database changes, making sure this new collection source is distributed properly. We expect the group of paying parents who would be impacted is small, which limits implementation and administrative costs somewhat (e.g., no anticipated need for automation for initial implementation), but we still need to have the skeleton of the program in place to do things in a more manual fashion.

ESA has been in contact with DOR, also copied on this email, to share their perspective.

Please let us know if you have any questions.

Sincerely,
Jon

Jon Noski / Senior Director of Legislative Affairs
Washington State Department of Social and Health Services
jon.noski@dshs.wa.gov

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Thursday, December 11, 2025 8:54 AM
To: Jensen, Dan (ATG)
Subject: FW: High-earners income tax legal analysis - ACP

Hi Dan.

SGO had only a few edits, which I incorporated into the final version. [I also renamed the final version to take out "income tax"]. F:\ACTIVE\Cases_Zalesky\L&P Advice\MemoToGovReTaxProposal.docx

I am out until this afternoon. But if you want to review and send this morning, that works for me.

My thought is we send it to Beau and Kristin as a pdf, not as a Word document. Also, if sent as a pdf, we should initial to signify final version. [You can initial on my behalf].

If you have questions/concerns, I should be back by 1:30 or so.

Chuck.

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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 10, 2025 6:09 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thank you for the great memo and for making those edits. Minor additional comments from me and Peter in the attached. If these look okay to you, please go ahead and make them and send it on to Kristin. Thanks!

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, December 5, 2025 9:26 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>

Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks Noah and Peter.

We accepted all your edits, and added additional analysis. I'm attaching the latest draft, and a Compare version showing the edits. If you have other edits or comments, let us know.

Chuck.

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 3, 2025 5:29 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thanks so much for this. It is very well done. Peter and I have both reviewed it and included some comments/suggestions here. In general, I agree that it makes sense to keep this more high level and not a full treatise on the income tax case law. But both Peter and I think it would be good to give a brief summary of our own analysis of the arguments that the prior case law is incorrect and harmful, rather than relying solely on citing the intervenor's briefing. I've suggested where to do that in the attached. Please let us know if you have questions or concerns about any of our edits, and thanks for your great work on this.

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 11:21 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Good morning, Noah and Peter.

Attached for your review is the draft response to Beau's questions regarding a legal challenge to the proposed high-earner income tax. We kept the analysis fairly simple. As you may remember, Andrew Krawczyk prepared a detailed memo last legislative session regarding uniformity concerns with a proposed wealth tax. But here we felt that a deep dive into the uniformity issue was not needed since the proposed tax would almost certainly exceed the 1% levy limit in Article VII, Section 2. Thus, we presume that the Governor's Office is more interested in our view as to whether the Supreme Court would overrule its prior "income = property" line of cases.

I am also attaching advice I recently provided to the Department on a similar question that also originated from the Governor's Office.

The Center Square

We will wait for your edits before finalizing. Also, let us know if any questions or concerns.

Chuck Zalesky
Assistant Attorney General
(360) 586-0756

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, November 12, 2025 10:56 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

Chuck,

I touched base with Noah about this on Monday. He is asking that REV do the initial draft and then send to the SGO (Noah and Peter) for their input.

Do you have capacity to do the initial draft? I am hoping that we can get something to Noah and Peter in early December so this is not a rush. If you do not, I can draft but I would need your input. I would like to review it before you send to the SGO.

Thanks,

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Saturday, October 18, 2025 8:40 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

TJM10-00505
PRR-2026-0158

Hi Dan,

It was good talking with you on Thursday. As we discussed, here's my best sense of what a proposal might look like for your analysis:

High-earners income tax

- Applies to Adjusted Gross Income (AGI) of $1 million per year or more
- 5% tax rate for AGI between $1-5 million
- 10% tax rate for AGI over $5 million
- Individuals below the $1 million threshold don't owe any taxes
- Follows federal income tax rules (e.g. definitions, deductions)

My questions:

- Would this withstand a legal challenge?
- If the tax were to only have one rate (i.e. 5% for income over $1 million), would that matter for the legal analysis (vs a tiered rate structure)?

I'm happy to set-up a meeting and discuss this further if helpful.

Thanks, -Beau

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

External Email

Beau,

Including Noah in the conversation. No, we have not done any written analysis of any specific proposal for this session. We are happy to do one now but it would be helpful to know more specifics regarding what is being requested or the options that the Governor's Office would like us to evaluate.

Happy to talk more about this over the phone or in a meeting if that would be easier.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

The Center Square

This e-mail may contain attorney work-product and confidential information subject to the attorney-client privilege. Please do not distribute this e-mail without my permission. If it appears from the context or otherwise that you have received this e-mail in error, please notify me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Tuesday, October 14, 2025 12:20 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>
Subject: High-earners income tax legal analysis - ACP

[EXTERNAL]

Attorney client privilege

Hi Dan and Kristin,

Some legislators are discussing the concept of a high-earners income tax (e.g. 3% on income over $1 million). Has the AG's Office done any analysis on the legal risks (e.g. uniformity) and chance of something like this being upheld in court? If not, would it be possible to get that analysis? It's not urgent, but would be helpful to have it before the legislative session if possible.

Thanks, -Beau

Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government
564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Thursday, December 4, 2025 1:06 PM
To: Jensen, Dan (ATG)
Subject: FW: High-earners income tax legal analysis - ACP
Attachments: IncomeTaxMemoDraft2a(PBG and NGP edits)).docx

I accepted the SGO edits and added additional analysis. Let me know if you want to review before I send it to Noah and Peter for their final review. F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft3a.docx

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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 3, 2025 5:29 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thanks so much for this. It is very well done. Peter and I have both reviewed it and included some comments/suggestions here. In general, I agree that it makes sense to keep this more high level and not a full treatise on the income tax case law. But both Peter and I think it would be good to give a brief summary of our own analysis of the arguments that the prior case law is incorrect and harmful, rather than relying solely on citing the intervenor's briefing. I've suggested where to do that in the attached. Please let us know if you have questions or concerns about any of our edits, and thanks for your great work on this.

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 11:21 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Good morning, Noah and Peter.

Attached for your review is the draft response to Beau's questions regarding a legal challenge to the proposed high-earner income tax. We kept the analysis fairly simple. As you may remember, Andrew Krawczyk prepared a detailed memo last legislative session regarding uniformity concerns with a proposed wealth tax. But here we felt that a deep dive into the uniformity issue was not needed since the proposed tax would almost certainly exceed the 1% levy limit in Article VII, Section 2. Thus, we presume that the

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PRR-2026-0158

Governor's Office is more interested in our view as to whether the Supreme Court would overrule its prior "income = property" line of cases.

I am also attaching advice I recently provided to the Department on a similar question that also originated from the Governor's Office.

We will wait for your edits before finalizing. Also, let us know if any questions or concerns.

Chuck Zalesky
Assistant Attorney General
(360) 586-0756

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, November 12, 2025 10:56 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

Chuck,

I touched base with Noah about this on Monday. He is asking that REV do the initial draft and then send to the SGO (Noah and Peter) for their input.

Do you have capacity to do the initial draft? I am hoping that we can get something to Noah and Peter in early December so this is not a rush. If you do not, I can draft but I would need your input. I would like to review it before you send to the SGO.

Thanks,

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Saturday, October 18, 2025 8:40 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>

TJM10-00509
PRR-2026-0158

The Center Square

Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

Hi Dan,

It was good talking with you on Thursday. As we discussed, here's my best sense of what a proposal might look like for your analysis:

High-earners income tax

- Applies to Adjusted Gross Income (AGI) of $1 million per year or more
- 5% tax rate for AGI between $1-5 million
- 10% tax rate for AGI over $5 million
- Individuals below the $1 million threshold don't owe any taxes
- Follows federal income tax rules (e.g. definitions, deductions)

My questions:

- Would this withstand a legal challenge?
- If the tax were to only have one rate (i.e. 5% for income over $1 million), would that matter for the legal analysis (vs a tiered rate structure)?

I'm happy to set-up a meeting and discuss this further if helpful.

Thanks, -Beau

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

External Email

Beau,

Including Noah in the conversation. No, we have not done any written analysis of any specific proposal for this session. We are happy to do one now but it would be helpful to know more specifics regarding what is being requested or the options that the Governor's Office would like us to evaluate.

Happy to talk more about this over the phone or in a meeting if that would be easier.

The Center Square

TJM10-00510
PRR-2026-0158

Dan Jensen
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PO Box 40123
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(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Tuesday, October 14, 2025 12:20 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>
Subject: High-earners income tax legal analysis - ACP

[EXTERNAL]

Attorney client privilege

Hi Dan and Kristin,

Some legislators are discussing the concept of a high-earners income tax (e.g. 3% on income over $1 million). Has the AG's Office done any analysis on the legal risks (e.g. uniformity) and chance of something like this being upheld in court? If not, would it be possible to get that analysis? It's not urgent, but would be helpful to have it before the legislative session if possible.

Thanks, -Beau

Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government
564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, December 24, 2025 11:46 AM
To: Zalesky, Chuck (ATG)
Subject: FW: House income tax draft--Attorney-client privileged
Attachments: 2026 E0075-2 FiscalEstimate.docx; IT Draft (Nov 2025).docx

Chuck,

Here are some thoughts that I have about the draft legislation:

- Tax rate – Section 301. I presume the intention is to impose a 10% tax on all individuals, estates, and trusts. This section could be read as saying that the 10% rate only applies to joint returns and surviving spouses.
- Standard Deduction – Section 407. I assume this was a drafting error, but those who file as heads of household at the federal level will owe the tax on all income over $22k whereas everyone else will owe tax on amounts over $1M or $2M, depending on how they file. You could probably lump head of household filers with individual filers because this federal filing status is meant to benefit taxpayers with dependents who, likely, won't have income that would impact this standard deduction unless they have a significant trust fund.
- Section 501(e). May want to clarify whether this extends to just members of the armed forces or if it includes independent contractors as well. Ultimately, this is a policy call. I am mostly pointing out an area where there could be ambiguity.
- Appeals – Section 901. Because the bill incorporated RCW 82.32.160 and 170 via Section 808, the edits in Section 901 are not necessary. Those appeals would already come to the BTA under (1)(a) via RCW 82.03.190.
- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists.

Let me know what you think. Thanks for looking at this before I send to Noah.

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Sr. Assistant Attorney General
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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: House income tax draft--Attorney-client privileged

Thank you all for reviewing the Senate draft. Attached is the House version. I welcome your thoughts.

TJM10-00512
PRR-2026-0158

From: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Sent: Monday, December 8, 2025 4:57 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

Hi Sen Pedersen and Noah –

Attached is a high-earners income tax that OPR has prepared for our deliberations. Interested in your thoughts on the mechanics of it relative to the Senate draft that Sen Pedersen shared last week, for discussion some time soon. Thanks,

Joe Fitzgibbon

The Center Square

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG); Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: FW: House income tax draft--Attorney-client privileged
Attachments: 2026 E0075-2 FiscalEstimate.docx; IT Draft (Nov 2025).docx

Thank you all for reviewing the Senate draft. Attached is the House version. I welcome your thoughts.

From: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Sent: Monday, December 8, 2025 4:57 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

Hi Sen Pedersen and Noah –

Attached is a high-earners income tax that OPR has prepared for our deliberations. Interested in your thoughts on the mechanics of it relative to the Senate draft that Sen Pedersen shared last week, for discussion some time soon. Thanks,

Joe Fitzgibbon

The Center Square

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Thursday, January 15, 2026 5:07 PM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG); Gonick, Peter B. (ATG)
Subject: FW: millionaire tax draft--Attorney-client privileged
Attachments: S-3846.4.pdf; S-3846.4.docx

Hi all,

Could I bug you to review this by COB next Tuesday and let me know if you have any feedback or questions?

Thanks!
Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Thursday, January 15, 2026 4:23 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Subject: millionaire tax draft

[EXTERNAL]

Hi Noah –

Attached please find a first joint House/Senate draft of the mechanical sections of the proposed millionaire tax. We welcome your review and comments. We're hoping to collect feedback by Monday, 1/26 to be able to consider incorporating changes into the introduction version of the bill. Obviously, that will not be the last opportunity for changes. We have not included an intent section yet, but do have your previous suggested language there and anticipate using that as a starting point.

I have shared the draft with the Governor's office, OFM and DOR. Please let me and/or Rep. Fitzgibbon know if you have any questions about the process or substance of the proposal. We look forward to working with you on perfecting the bill.

Best wishes, Jamie

Senator Jamie Pedersen
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pronouns: he, him, his

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Executive Legislative Assistant
Sam Hendrickson
sam.hendrickson@leg.wa.gov

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Wednesday, December 10, 2025 3:55 PM
To: Purcell, Noah Guzzo (ATG)
Cc: Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: FW: OFM/GOV/AGO/DOR re: Tax Issue
Attachments: RE: High-earners income tax legal analysis - ACP

We have the draft ready to finalize. Just waiting for any final edits from you and Peter. See attached email (with copy of draft memo and red-line comparison to prior draft).

Let us know how you'd like to proceed.

Chuck.

From: Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Sent: Wednesday, December 10, 2025 3:32 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: OFM/GOV/AGO/DOR re: Tax Issue

[EXTERNAL]

Hi Noah, Dan, and Chuck,

Thanks again for the briefing last week. I have in my notes that you were going to follow up with a written memo this week; is that still something that's forthcoming?

Thank you,
Kristin

Kristin Beneski
564-250-1553

-----Original Appointment-----
From: Warren, Kim (GOV) <Kim.Warren@GOV.wa.gov>
Sent: Tuesday, December 2, 2025 10:55 AM
To: Warren, Kim (GOV); Esquibel, Shane (GOV); Purcell, Noah Guzzo (ATG); Jensen, Dan (ATG); Zalesky, Chuck (ATG); Chapman-See, Katherine (OFM); Driver, Debbie (GOV); Plaistowe, Franklin (GOV); Beneski, Kristin (GOV); Williams, Robyn (OFM); Knutson, Rachel (OFM); Leaders, Amber (OFM); Jennrich, Timothy (DOR)
Subject: OFM/GOV/AGO/DOR re: Tax Issue
When: Friday, December 5, 2025 9:30 AM-10:00 AM (UTC-08:00) Pacific Time (US & Canada).
Where: Microsoft Teams Meeting

The Center Square

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Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Monday, February 9, 2026 10:05 AM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG)
Subject: FW: PSSB 6346
Attachments: S-4858.2.pdf; Compare-PSSB 6346.docx

Could you two please have a look at this revised version and send me any feedback by EOD Wednesday so that I can get it back to the Legislature? Thank you!

Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, February 9, 2026 10:03 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: PSSB 6346

[EXTERNAL]

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Sunday, February 8, 2026 10:46 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: PSSB 6346

Hi Sen. Pedersen –
Attached is the proposed substitute. I will get it posted to the EBB.

For the revised city/county distribution language, I had to do a little bit of cleanup; however, the distribution framework made sense, so I think the revised language works as intended.

I've attached a compare version so you can see the changes in the PSSB compared to the original bill.

Regards,
Jeff

The Center Square

TJM10-00519
PRR-2026-0158

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Monday, December 8, 2025 12:15 PM
To: Zalesky, Chuck (ATG); Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: FW: research and drafting request; attorney-client privileged and confidential
Attachments: 2026 T9190-1 T FiscalNote.docx; Pedersen-AGI.docx

Could you all please review and let me know your thoughts? Thanks.

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, December 6, 2025 7:37 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Hi Noah –

Here is the draft of the millionaire tax bill. I welcome your thoughts and comments about what will give us the best shot to have Culliton overruled. Let me know if you would like to set up a time to chat about this.

Best wishes, Jamie

Senator Jamie Pedersen
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jamie.pedersen@leg.wa.gov
pronouns: he/him

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Legislative Assistant

The Center Square

TJM10-00520
PRR-2026-0158

Elizabeth Calvillo Dueñas
elizabeth.calvilloduenas@leg.wa.gov

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, December 2, 2025 3:34 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Sen. Pedersen –
Attached is the updated draft. I've also attached the DOR revenue estimate. DOR assumes an effective date in 2028 instead of 2027 because of the time it will take to implement the bill. I've updated the dates in the draft accordingly. Hopefully, DOR will provide language feedback within the next week, at which point I will run the draft through the CRO. The new revenue distribution language is in section 3.

Three outstanding items:

1. Touch base on how you want to structure the tax imposition language in section 4 in light of a potential court challenge;
2. Bill title; and
3. Intent language.

Please let me know if you have any questions, changes, and/or if you would like to set up a time to discuss in more detail.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

The Center Square

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, December 2, 2025 11:41 AM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

Thanks for checking back. For initial target practice, I was actually thinking 10% to cities and 10% to counties (reducing GF to 60%). But that part of the bill will definitely be the subject of a lot of discussion and debate at every stage. It's the other parts that are most important to start getting socialized. Let me know if you have any other questions. Any idea when we will have the numbers back from DOR?

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, December 2, 2025 11:20 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
When you get a moment, could you please confirm the distribution of revenues:

- 70% to GF;
- 10% to fund state property tax relief;
- 10% to fund the working families tax credit; and
- 10% to cities/counties.

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, November 26, 2025 3:49 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff – I look forward to seeing both. Jamie

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Monday, November 24, 2025 4:35 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
I just checked with DOR. The fiscal note will hopefully be done next week. DOR is also reviewing the language, which should be completed in early December. The language I sent the Department several weeks ago did not include the distribution provisions. I will send an updated draft with the distribution language next Monday or Tuesday.

Have a wonderful Thanksgiving as well!

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, November 24, 2025 3:37 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

I wanted to check back and see whether you had any update on the fiscal note from DOR, and when you think you might have a next draft with the language that we discussed a few weeks ago.

Hope all is well with you; best wishes for a wonderful Thanksgiving!

Jamie

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elizabeth.calvilloduenas@leg.wa.gov

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 2:19 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Sen. Pedersen –
Yes, 10:30am to 11:30am on Friday works great for both Matt and me. Would you like me to send a Teams invite?

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 2:13 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

Unfortunately, Thursday is packed for me. On Friday, I am open from 10:30am-12:30pm – would a time in that window work?

Thanks, Jamie

Senator Jamie Pedersen
Majority Leader
43rd Legislative District

jamie.pedersen@leg.wa.gov
pronouns: he/him

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elizabeth.calvilloduenas@leg.wa.gov

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:53 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
I think the discussion might take close to an hour and I have a bunch of meetings scattered throughout the day tomorrow. Do you by chance have any availability on Thursday?

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:11 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff! Lots of issues I had not thought of there. I have several questions and comments, so would love to have a chance to meet. I think it would be good to have Matt there too, if that is OK. Any chance you have availability tomorrow? I'm open 9-10am; 11am-2pm; and 2:30-4:30pm. If not, let me know and we can look further out.

Best, Jamie

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Majority Leader
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jamie.pedersen@leg.wa.gov
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elizabeth.calvilloduenas@leg.wa.gov

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The Center Square

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 10:14 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Attached is a preliminary draft. I've started a list of discussion questions/topics, which I'm continuing to compile. Let me know if you have any availability in the next week or two to discuss. Once you are good with the draft, I will send it to DOR for an estimate.

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, October 18, 2025 3:31 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

We had a good discussion of the concept at our retreat this past weekend, so I think it is time to start drafting.

I like following the capital gains approach on couples (i.e. they have to split the $1 million exemption regardless of filing status).

Please let me know if there is any other guidance that you need from me.

Best, Jamie

Senator Jamie Pedersen
Majority Leader
43rd Legislative District
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pronouns: he/him

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To subscribe to my online newsletter, please sign up here. To send any comments, or to learn more please visit my website.

The Center Square

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Friday, September 5, 2025 11:18 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Below are some brief, initial thoughts in red. As I think of additional points for your consideration, I will periodically send those to you as well.

Also, I will be out of the office for the next two weeks. However, I will be able to follow up on any additional questions/research that you may have as soon as I get back. Also, if you think this concept is likely to be introduced, I should probably start formulating a draft by October. If you could let me know by the end of September, it would be greatly appreciated.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, August 27, 2025 9:16 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: research and drafting request

Hi Jeff –

I hope that your summer has been great. I need your help with development of an idea that I am working on for next session.

The basic concept would be a "millionaire excise tax", which would be a new tax on federal adjusted gross income received by individuals (not businesses; I would not expect to touch B&O taxes at this point) in excess of $1 million each year.

Questions/requests:

1. I'd like to use federal AGI as the base so that it is as easy to calculate and enforce as possible – does that create a delegation problem? As a starting point, an open-ended reference to federal tax law (rolling conformity) would likely present a delegation problem. However, structured in a manner that allows DOR to periodically update the federal tax code reference under certain well-defined conditions such as a "de minimis" impact on state revenues with additional sideboards would probably avoid significant delegation concerns. However, because of the broader legal considerations likely to arise, it might make sense to start with static conformity where the state code ties to the federal tax code as existing on a specific date without automatic updates. As some additional context, the state capital gains tax does provide a mechanism where the date for the IRC reference can be updated without legislation. The state law allows DOR by rule to specify a later date in a manner

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consistent with the capital gains tax law. However, DOR has not updated the reference yet, i.e., it is still based on the date specified in the original enacting legislation. I've reached out to DOR to get their thoughts on what considerations they think would go into a possible update.

2. What are my options for handling the different federal filing statuses (single, married filing jointly)? I think it will be important politically to be able to say that it applies only to income above $1 million and that income below that is fully exempt. Generally, in most states with income taxes, the standard deduction for married couples filing jointly is typically double the amount for single or married filing separate status. However, the standard exclusion is much lower in these states. This proposal could use our state capital gains tax approach where spouses and state-registered domestic partners receive a total, combined exclusion of $270K regardless of filing status. In other words, under this concept, if a married couple filed separately, the $1M exclusion would be divided between the two tax returns.

1. Do you have any other suggestions for how to keep the bill (a) as short and easy to understand as possible and (b) as cheap for DOR to administer as possible? Basing the state tax on the federal return to the largest extent possible will certainly help reduce DOR admin/implementation costs. Also, the $1M exclusion will narrow the scope of the impacted taxpayers considerably further reducing administrative costs. As a very rough estimate, using a uniform $1M threshold for all returns regardless of filing status, the proposal would impact roughly 20,000 taxpayers out of approximately 3.5 million.

2. I'd like to start with a rate of 9.99%, with a dollar-for-dollar credit for capital gains taxes paid. Can you get an estimate for how much money that would raise? As a rough estimate, about $3B in revenue would have been generated in 2025 under a very basic scenario where all tax returns – single and joint - are eligible for a $1M exclusion and the tax pivots directly from federal AGI. In other words, the 9.99% rate is applied to the portion of a taxpayer's federal AGI above $1M. This rough estimate reflects an offset for the state capital gains tax; however, the amount has not been reduced by a credit for WA residents working in Oregon (or other states) and paying Oregon (or other states) income taxes. For example, a WA resident would show all income on a WA return but receive a credit for the portion of income subject to Oregon's income tax. This same taxpayer would file a nonresident return with Oregon only showing the wage income earned in Oregon. With a $1M threshold, I don't think there would be a significant impact for out-of-state credits.

3. I'd like to leave open the possibility that we could allocate part of the stack (maybe up to 2% each) to county and city governments. If you decide to proceed with having this proposal drafted, I'll make sure to include placeholder language for an allocation for cities/counties.

4. I expect that the bill will get challenged in court. I would like to force the Washington Supreme Court to reconsider its caselaw that considers income to be property. Do you have any other suggestions about how to bolster the argument that this would be an excise tax and not a property tax? With the capital gains tax and its specific focus on the sale of capital assets, a lot of people were reasonably confident it would be construed as an excise tax because of its transactional nature. As a counter example, a wealth tax, while impacting similar financial assets, is clearly a type of property tax. Along similar lines, a tax based on employment activity, as measured by wages/salaries, would seem to fall within the excise tax bucket. However, dividend and interest income is more complicated because those revenues result directly from property ownership, somewhat conflating matters. However, one option would be to structure the tax for these revenues based on the idea of engaging in investment activity. In short, it might make sense to specify the triggering activity in the draft for each type of income subject to tax to bolster the argument that the disparate forms of revenue captured within AGI and subject to the state tax are based on specific triggering activities, a fundamental hallmark of an excise tax.

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5. I'd like to understand where that rate would put us relative to the rates in other US jurisdictions (particularly our major blue-state economic competition, such as CA, MA, IL, NY, CO, and VA, as well as neighboring states such as ID and OR) for income at that scale. Attached is a spreadsheet with state income tax rates.

6. Are there any lessons from previous income tax attempts that I should take into account? I will ponder this one and follow up. I worked on some of the proposals by Jim McIntire many years ago as well as the original version of the capital gains tax by Rep. Jinkins about 14 years ago. However, a lot has changed in terms of the legal landscape as well as the statutory landscape with the state capital gains tax (and working families' credit, which is very similar to the federal EITC).

7. Are there any other suggestions that you have for how to proceed with this concept? Another option would be to work from Sen. Frame's payroll tax proposal last year but change the legal incidence of the tax from the employer to the employee. As some context, wages and salaries account for roughly 2/3 of federal AGI. Capital gains contribute around 5-10%. Therefore, this approach would capture most of the revenue that would be obtained from a more traditional income tax (and the capital gains tax is already in place). Because it would be narrowly focused on high-earner employment activity, it might be potentially easier to argue it is an excise tax and it would also capture the faster wage growth associated with high income individuals. (The latter point would of course also be true under the more traditional income tax approach.) On the flip side, the tax would, by its nature, disregard interest, dividend, and other types of income. Also, I think an effort to truly force the WA Supreme Court to reconsider its caselaw would necessitate the use of a broader AGI-type tax that includes revenue items like dividends and interest. Lastly, there is a 1950s court case (Cary v. Bellingham), where the state supreme court invalidated an employee excise tax imposed by the city of Bellingham. The key issue centered around the city's authority to require employees to secure an annual license. In other words, the focus, in my opinion, was more on the licensing aspect versus the excise tax element. For now, I just wanted to raise the issue for future consideration.

Please let me know if you have any other clarifying questions or need further direction from me. I appreciate your help with this!

Best, Jamie

Senator Jamie Pedersen
Majority Leader
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PRR-2026-0158

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE:	December 1, 2025
TO:	The Office of Governor Bob Ferguson
FROM:	Dan Jensen, Sr. Assistant Attorney General Chuck Zalesky, Assistant Attorney General
SUBJECT:	**Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income. The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

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In our view, the proposal would almost certainly be characterized by the courts as a broad-based income tax, not an excise tax like the state's B&O and capital gains taxes. That would place the tax squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[1] While those state constitutional provisions apply only to property taxes, they have been used to invalidate broad-based income taxes on the theory that such a tax falls directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, if a court were to follow the current constitutional case law, the

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proposed tax would be struck down for the same reasons as prior broad-based income taxes imposed over the years.

If the tax had only one rate, and that rate did not exceed the one percent levy limit in article VII, section 2 of the state Constitution, a court might conclude that the tax satisfies all article VII requirements. However, in our view, because of the likelihood that such a tax will exceed one percent, there is a significant risk that such a tax would violate the uniformity requirements of article VII, section 1. We can provide more analysis of the uniformity risk if requested. However, our presumption is that the proposed tax would be imposed at a rate exceeding one percent. Therefore, with respect to both of your questions, to withstand a legal challenge the Washington Supreme Court would likely need to overrule its prior precedent pertaining to broad-based income taxes.[2]

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. However, to date arguments seeking to overrule cases invalidating prior Washington income taxes have found little success.

The first case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State argued that depression era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single sentence, stating that it was "unwilling … to recede from the position announced it its repeated decisions. *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n v. Chase*, 157 Wash. 351 (1930); *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191).

More recently, a group that intervened in the capital gains tax case argued that prior cases equating income to property were wrongly decided and should be overruled. *Quinn v. State*, 1 Wn.3d 453, 469-70 (2023). The Court did not directly address the argument, concluding instead that the capital gains tax "is an excise tax under Washington law." *Id*. at 470. Consequently, the Court "decline[d] to reexamine *Culliton* [*v. Chase*] because article VII's uniformity and levy limitations on property taxes do not apply" to excise taxes. *Id*. Nevertheless, the Court did limit *Culliton* and its prior income tax cases to broad-based net income taxes that apply "to the taxpayer's aggregate net income … untethered to any specific taxable activity" other than "receipt of income itself." *Id*. at 477.[3]

[2] Lower courts would be obligated to follow the current law, meaning that the tax would almost certainly be invalidated on state constitutional grounds by the superior court and Court of Appeals. Thus, the ultimate outcome of a legal challenge to the proposed tax would turn on whether the Supreme Court will overrule its prior precedent.

[3] The Court also criticize the "flawed" decision in *Apartment Operators*. *Quinn*, 1 Wn.3d at 475.

Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, the briefing filed by the intervenors made sound legal arguments in support of that result. In light of those arguments, there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income = property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000.000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

We trust that you will find this useful. The foregoing discussion is not an official opinion of the Office of the Attorney General. The opinions expressed herein are those the authors, Dan Jensen, Sr. Assistant Attorney General and Chuck Zalesky, Assistant Attorney General.

The Center Square

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE:	December 1, 2025
TO:	The Office of Governor Bob Ferguson
FROM:	Dan Jensen, Sr. Assistant Attorney General Chuck Zalesky, Assistant Attorney General
SUBJECT:	**Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income. The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
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In our view, the proposal would almost certainly be characterized by the courts as a broad-based income tax, not an excise tax like the state's B&O and capital gains taxes. That would place the tax squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[1] While those state constitutional provisions apply only to property taxes, they have been used to invalidate broad-based income taxes on the theory that such a tax falls directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, if a court were to follow the current constitutional case law, the

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proposed tax would be struck down for the same reasons as prior broad-based income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, there would still be some risk that a court would conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1. In our view, this is a close question with no clear answer. We would be happy to provide a more robust analysis of the uniformity risk if requested.

However, our presumption is that the proposed tax would be imposed at a rate exceeding one percent, which would violate the levy limit imposed by article VII, section 2. Therefore, with respect to both of your questions, to withstand a legal challenge the Washington Supreme Court would likely need to overrule its prior precedent pertaining to broad-based income taxes.[2]

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. However, to date arguments seeking to overrule cases invalidating prior Washington income taxes have found little success.

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Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE:	December 1, 2025
TO:	The Office of Governor Bob Ferguson
FROM:	Dan Jensen, Sr. Assistant Attorney General Chuck Zalesky, Assistant Attorney General
SUBJECT:	**Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income. The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
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Court case law would very likely strike down the tax for the same reasons as prior income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, it would still likely be struck down by lower courts, for two reasons. First, unless the rate were 1% or lower, the tax would violate the levy limit imposed by article VII, section 2, assuming it is characterized as a property tax. Second, while less certain, lower courts might also conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1.

Therefore, with respect to both of your questions, to withstand a legal challenge, the Washington Supreme Court would likely need to overrule its prior precedent pertaining to income taxes.

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. Moreover, while there have been two cases where the Supreme Court was asked to overrule its "income is property" line of cases, it has yet to carefully address the argument.

The first case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State forcefully argued that depression era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single sentence, stating that it was "unwilling … to recede from the position announced in its repeated decisions. *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n v. Chase*, 157 Wash. 351 (1930); *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191). The court provided no further analysis.

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The Center Square

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 1, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Sr. Assistant Attorney General
Chuck Zalesky, Assistant Attorney General

SUBJECT: **Constitutionality of "high earner" tax**

The Center Square

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However, our presumption is that the proposed tax would be imposed at a rate exceeding one percent, which would violate the levy limit imposed by article VII, section 2. Therefore, with respect to both of your questions, to withstand a legal challenge the Washington Supreme Court would likely need to overrule its prior precedent pertaining to broad-based income taxes.[3]

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. Moreover, while there have been two cases where the Supreme Court was asked to overrule its "income is property" line of cases, it has yet to carefully address the argument.

The first case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State forcefully argued that depression era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single

[2] Article VII, section 1 of the state constitution permits the legislature to exempt property from taxation "by general laws." The Supreme Court in *Culliton v. Chase* did not address the legislative power to create a tax exemption. The Court did, however, imply that income is a single class of property and the legislature is constitutionally prohibited from imposing a tax on income with a graduated rate structure because a graduated tax is not uniform. *Culliton*, 174 Wash. at 378. *See also id.* at 382 (Justice Mitchell's concurring opinion directly stating that income constitutes a single class of property). That part of *Culliton* seems at odds with the plain language of Article VII, section 1, which provides that ***real property*** shall be one class of property but does not prohibit the legislature from making separate classifications of personal or intangible property. Justice Blake make this point in his dissenting opinion in *Culliton*, where he expressed the view that even if income is property subject to article VII's uniformity requirement, the state constitution gives the legislature discretion to create classifications upon which the tax can apply differently. *See id.* at 389, 401. It is difficult to forecast how our current Supreme Court would resolve the apparent mismatch between the plain language of article VII section 1 and the holding in *Culliton* that suggested that the legislature is constitutionally barred from enacting multiple classifications relating to "income." (*I.e.*, barred from creating classes upon which income is taxed at different rates).

[3] Lower courts would be obligated to follow the current law, meaning that the tax (if imposed at a rate exceeding one percent) would almost certainly be invalidated on state constitutional grounds by the superior court and Court of Appeals. Thus, the ultimate outcome of a legal challenge to the proposed tax would turn on whether the Supreme Court will overrule its prior precedent.

Not for Court Square

sentence, stating that it was "unwilling … to recede from the position announced it its repeated decisions. *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n v. Chase*, 157 Wash. 351 (1930); *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191). The court provided no further analysis.

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Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, the briefing filed by the intervenors made sound legal arguments in support of that result. In light of those arguments, there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income = property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000.000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

We trust that you will find this useful. The foregoing discussion is not an official opinion of the Office of the Attorney General. The opinions expressed herein are those the authors, Dan Jensen, Sr. Assistant Attorney General and Chuck Zalesky, Assistant Attorney General.

Evergreen Square

[4] The Court also criticize the "flawed" decision in *Apartment Operators*. *Quinn*, 1 Wn.3d at 475.

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE:	December 1, 2025
TO:	The Office of Governor Bob Ferguson
FROM:	Dan Jensen, Sr. Assistant Attorney General Chuck Zalesky, Assistant Attorney General
SUBJECT:	**Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income. The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
- Would it matter if the tax applied only a single rate versus a tiered rate structure?

In our view, the proposal would almost certainly be characterized by lower Washington courts as a property tax, not an excise tax like the state's B&O and capital gains taxes. That would place the tax squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[1] While those state constitutional provisions apply only to property taxes, they have been used to invalidate past income taxes on the theory that such taxes fall directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, lower courts applying the current Washington Supreme

[1] Article VII, section 1 provides, "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only." Article VII, section 2 provides that "the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percent of the true and fair value of such property in money."

Court case law would very likely strike down the tax for the same reasons as prior income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, it would still likely be struck down by lower courts, for two reasons. First, unless the rate were 1% or lower, the tax would violate the levy limit imposed by article VII, section 2, assuming it is characterized as a property tax. Second, while less certain, lower courts might also conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1.

Therefore, with respect to both of your questions, to withstand a legal challenge, the Washington Supreme Court would likely need to overrule its prior precedent pertaining to income taxes.

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. Moreover, while there have been two cases where the Supreme Court was asked to overrule its "income is property" line of cases, it has yet to carefully address the argument.

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The Center Square

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 1, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Sr. Assistant Attorney General
Chuck Zalesky, Assistant Attorney General

SUBJECT: **Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income. The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
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In our view, the proposal would almost certainly be characterized by lower Washington courts as a property tax, not an excise tax like the state's B&O and capital gains taxes. That would place the tax squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[1] While those state constitutional provisions apply only to property taxes, they have been used to invalidate past income taxes on the theory that such taxes fall directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, lower courts applying the current Washington Supreme

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[2] The Court also criticized the "flawed" decision in *Apartment Operators*. *Quinn*, 1 Wn.3d at 475.

Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, the briefing filed by the intervenors made strong legal arguments in support of that result. In light of those arguments, there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income = property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000.000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

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The Center Square

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 5, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Sr. Assistant Attorney General
Chuck Zalesky, Assistant Attorney General

SUBJECT: **Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income (AGI).[1] The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
- Would it matter if the tax applied only a single rate versus a tiered rate structure?

In our view, the proposal would almost certainly be characterized by lower Washington courts as a property tax, not an excise tax like the state's B&O and capital gains taxes. This is so because the tax is imposed on the mere receipt of income, not on an identifiable, bona fide in-state activity or transaction. Consequently, the proposed tax would fall squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[2] While those state constitutional provisions apply only to property taxes, they have been used to invalidate past income taxes on

[1] "Adjusted gross income" is a federal income tax term that means gross income minus certain adjustments. States commonly impose income taxes that start with a taxpayer's federal adjustment gross income before imposing their own adjustments.

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the theory that such taxes fall directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, lower courts applying the current Washington Supreme Court case law would very likely strike down the tax for the same reasons as prior income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, it would still likely be struck down by lower courts, for two reasons. First, unless the rate were 1% or lower, the tax would violate the levy limit imposed by article VII, section 2, assuming it is characterized as a property tax. Second, while less certain, lower courts might also conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1.[3] Similarly, lower courts might find that other aspects of the tax, other than the AGI exemption amount, create a non-uniform tax on property.[4]

Therefore, with respect to both of your questions, to withstand a legal challenge, the Washington Supreme Court would likely need to overrule its prior precedent pertaining to income taxes.

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. And one circumstance where the Court has overruled precedent is "when the legal underpinnings of [the] precedent have changed or disappeared altogether." *W. G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66 (2014).

With respect to the "income is property" line of cases, that precedent has been criticized as superficial and based on legal underpinnings that either never existed or that have dramatically changed. For example, the Court in *Culliton* claimed that "[t]he overwhelming weight of judicial authority is that 'income' is property and a tax upon income is a tax on property." 174 Wash. at

[3] Article VII, section 1 of the state constitution permits the legislature to exempt property from taxation "by general laws." Thus, there is a reasonable argument that the legislature, consistent with Article VII, can exempt the first $1,000,000 of an individual's annual AGI. The Supreme Court in *Culliton v. Chase* did not address the legislative power to create a tax exemption. Instead, the Court held that the legislature was constitutionally prohibited from imposing a tax on income with a graduated rate structure because a graduated tax is not uniform. *Culliton*, 174 Wash. at 378. *Accord*, *Jensen v. Henneford*, 185 Wash. at 220 (holding that the personal net income tax of 1935 violated Article VII's uniformity requirement because, among other reasons, it included a surtax that created a graduated rate structure).

[4] As an example, in *Jensen v. Henneford*, the Supreme Court concluded that the personal net income tax of 1935 violated the uniformity requirement not only as a result of the surtax, but also because the tax granted "an unmarried man . . . a credit of one thousand dollars" while granting "a married man … a credit of twenty-five hundred dollars." 185 Wash. at 222. In short, uniformity applies both to the rate imposed and to the base that is being taxed.

374. But that statement was not accurate in 1933 when *Culliton* was decided, and since then it has become an undisputed fact that other state courts overwhelmingly conclude the opposite—that income taxes are not property taxes. Further, the general definition of "income" is not compatible with the general definition of "property." Income is something that accrues over a period of time, while property is generally considered an asset or right that is possessed at a given time. *See generally* Hugh D. Spitzer, *A Washington State Income Tax—Again?*, 16 U. Puget Sound L. Rev. 515, 570 (1993) (explaining that income is best characterized as "something in motion, something that can either cease moving and itself become an income-producing asset (i.e., 'property') or that can alternatively be consumed and disappear.").

Similarly, the Court in *Culliton* arguably misconstrued the earlier case of *Aberdeen Savings & Loan Association v. Chase*, 157 Wash. 351 (1930), claiming that *Aberdeen* had "definitely decided in this state that an income tax is a property tax." *Culliton*, 174 Wash. at 376. But *Aberdeen* was decided on federal equal protection grounds and the Court's analysis was not dependent on characterizing the tax as a property tax. 157 Wash. at 373-74. The *Aberdeen* Court expressly declined to address the taxpayer's uniformity argument. *Id*. at 374. Moreover, even with respect to the federal equal protection analysis, *Aberdeen* relied largely on a Lochner-era decision from the United States Supreme Court that the High Court subsequently overruled. *Id*. at 361-62 (analyzing *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389 (1928), *rev'd Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973)).[5]

These and other shortcomings of the *Culliton* decision create strong arguments that the case was incorrectly decided. Further, there is a sound argument that *Culliton* and cases applying its holding are harmful. A decision may be harmful for various reasons, but the "common thread" is the "decision's detrimental impact on the public interest." *State v. Barber*, 170 Wn.2d 854, 865 (2011). Here, the Court's decision in *Culliton* imposed an unnecessary constitutional constraint on the Legislature's taxing authority by barring graduated individual and corporate income taxes, which has led to a highly regressive state tax system that requires low- and moderate-income earners to pay a significantly greater share of their income in taxes than high-income households. *See* RCW 82.87.010 (legislative finding pertaining to the capital gains excise tax). These facts and circumstances could reasonably convince our Supreme Court that *Culliton* has detrimentally impacted the public interest.

While there are compelling reasons why the Supreme Court might overrule its "income is property" line of cases, it is worth noting that the Court has declined to do so on at least three occasions. The first was in *Jensen v. Henneford*, decided in January 1936, three years after *Culliton*. The State had argued that several cases decided after *Culliton* had undercut the

[5] The Court in *Quaker City Cab* held that a gross receipts tax on transportation companies operating in Pennsylvania violated the equal protection clause because it only applied to corporations, not individuals or partnerships engaged in the same business activity. The Court overruled that decision in *Lehnhausen* as "a relic of a bygone era" and incompatible with "the narrow confines of judicial review." 410 U.S. at 365.

rationale of that decision. 185 Wash. at 216-17. The Supreme Court rejected the argument, finding that none of the intervening decisions cited by the State had "receded from [the Court's] former emphatic declaration that, under our constitution, income is property, and that an income tax is a property tax." *Id*. at 217.

The second case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State forcefully argued that depression era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single sentence, stating that it was "unwilling . . . to recede from the position announced in its repeated decisions." *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n*; *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191). The court provided no further analysis.

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Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, there are strong legal arguments in support of that result, as discussed above. In light of those arguments, we believe there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income is property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000.000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

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The Capitol Square

Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 5, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Sr. Assistant Attorney General
Chuck Zalesky, Assistant Attorney General

SUBJECT: **Constitutionality of "high earner" tax**

The Center Square

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These and other shortcomings of the *Culliton* decision create strong arguments that the case was incorrectly decided. Further, there is a sound argument that *Culliton* and cases applying its holding are harmful. A decision may be harmful for various reasons, but the "common thread" is the "decision's detrimental impact on the public interest." *State v. Barber*, 170 Wn.2d 854, 865 (2011). Here, the Court's decision in *Culliton* imposed an unnecessary constitutional constraint on the Legislature's taxing authority by barring graduated individual and corporate income taxes, which has led to a highly regressive state tax system that requires low- and moderate-income earners to pay a significantly greater share of their income in taxes than high-income households. *See* RCW 82.87.010 (legislative finding pertaining to the capital gains excise tax). These facts and circumstances could reasonably convince our Supreme Court that *Culliton* has detrimentally impacted the public interest.

While there are compelling reasons why the Supreme Court might overrule its "income is property" line of cases, it is worth noting that the Court has declined to do so on at least three occasions. The first was in *Jensen v. Henneford*, decided in January 1936, three years after *Culliton*. The State had argued that several cases decided after *Culliton* had undercut the

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The second case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State forcefully argued that Depression-era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single sentence, stating that it was "unwilling . . . to recede from the position announced in its repeated decisions." *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n*; *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191). The court provided no further analysis.

More recently, a group that intervened in the capital gains tax case argued that prior cases equating income to property were wrongly decided and should be overruled. *Quinn v. State*, 1 Wn.3d 453, 469-70 (2023). The Court did not directly address the argument, concluding instead that the capital gains tax "is an excise tax under Washington law." *Id*. at 470. Consequently, the Court "decline[d] to reexamine *Culliton* because article VII's uniformity and levy limitations on property taxes do not apply" to excise taxes. *Id*. Nevertheless, the Court did describe *Culliton* and its prior income tax cases as limited to taxes that apply "to the taxpayer's aggregate net income … untethered to any specific taxable activity" other than "receipt of income itself." *Id*. at 477.[6]

Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, the briefing filed by the intervenors made strong legal arguments in support of that result, arguments summarized above. In light of those arguments, we believe there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income is property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000,000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

We trust that you will find this useful. The foregoing discussion is not an official opinion of the Office of the Attorney General. The opinions expressed herein are those of the authors, Dan Jensen, Sr. Assistant Attorney General and Chuck Zalesky, Assistant Attorney General.

[6] The Court also criticized the "flawed" decision in *Apartment Operators*. *Quinn*, 1 Wn.3d at 475.

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Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 5, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Sr. Assistant Attorney General
Chuck Zalesky, Assistant Attorney General

SUBJECT: **Constitutionality of "high earner" tax**

The Center Square

You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income (AGI).[1] The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
- Would it matter if the tax applied only a single rate versus a tiered rate structure?

In our view, the proposal would almost certainly be characterized by lower Washington courts as a property tax, not an excise tax like the state's B&O and capital gains taxes. This is so because the tax is imposed on the mere receipt of income, not on an identifiable, bona fide in-state activity or transaction. Consequently, the proposed tax would fall squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[2] While those state constitutional provisions apply only to property taxes, they have been used to invalidate past income taxes on

[1] "Adjusted gross income" is a federal income tax term that means gross income minus certain adjustments. States commonly impose income taxes that start with a taxpayer's federal adjustment gross income before imposing their own adjustments.

[2] Article VII, section 1 provides, "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only." Article VII, section 2 provides that "the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percent of the true and fair value of such property in money."

the theory that such taxes fall directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, lower courts applying the current Washington Supreme Court case law would very likely strike down the tax for the same reasons as prior income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, it would still likely be struck down by lower courts, for two reasons. First, unless the rate were 1% or lower, the tax would violate the levy limit imposed by article VII, section 2, assuming it is characterized as a property tax. Second, while less certain, lower courts might also conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1.[3] Similarly, lower courts might find that other aspects of the tax, other than the AGI exemption amount, create a non-uniform tax on property.[4]

Therefore, with respect to both of your questions, to withstand a legal challenge, the Washington Supreme Court would likely need to overrule its prior precedent pertaining to income taxes.

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. And one circumstance where the Court has overruled precedent is "when the legal underpinnings of [the] precedent have changed or disappeared altogether." *W. G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66 (2014).

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REVENUE AND FINANCE DIVISION
7/1/2022

No. 100769-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRIS QUINN, an individual; CRAIG LEUTHOLD, an individual; SUZIE BURKE, an individual; LEWIS and MARTHA RANDALL, as individuals and the marital community comprised thereof; RICK GLENN, an individual; NEIL MULLER, an individual; LARRY and MARGARET KING, as individuals and the marital community comprised thereof; and KERRY COX, an individual,

Respondents,

v.

STATE OF WASHINGTON; DEPARTMENT OF REVENUE, an agency of the State of Washington; VIKKI SMITH, in her official capacity as Director of the Department of Revenue,

Appellants,

EDMONDS SCHOOL DISTRICT, TAMARA GRUBB, ADRIENNE STUART, MARY CURRY, and WASHINGTON EDUCATION ASSOCIATION,

Intervenors.

APRIL CLAYTON, an individual; KEVIN BOUCHEY, an individual; RENEE BOUCHEY, an individual; JOANNA CABLE, an individual; ROSELLA MOSBY, an individual; BURR MOSBY, an individual; CHRISTOPHER SENSKE, an

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individual; CATHERINE SENSKE, an individual; MATTHEW SONDEREN, an individual; JOHN McKENNA, an individual; WASHINGTON FARM BUREAU, WASHINGTON STATE TREE FRUIT ASSOCIATION, WASHINGTON STATE DAIRY FEDERATION,

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INTERVENORS' OPENING BRIEF

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I. INTRODUCTION

Washington has long had the most regressive tax system in the country, in which low-income and middle-income Washingtonians pay a disproportionate share of their income in state taxes compared to residents with high incomes. To help remedy this problem and to provide essential investments in K-12 education and early learning, the Legislature enacted a seven percent tax on the sale or exchange of certain long-term capital assets like stocks and bonds. The revenues from this tax will provide significant funding for public education in Washington. Under this Court's long-standing precedent, the capital gains tax is an excise tax, not a tax on property. As such, the tax is not subject to the uniformity and levy limit requirements found in Washington Constitution article VII. The trial court erred in ruling otherwise.

Should this Court nevertheless rule that the capital gains tax is an income tax (which it is not), the Court should still uphold the tax. This Court's cases holding that an income tax is

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a property tax were wrong when decided and they are wrong now. The weight of judicial authority at the time, and today, holds that an income tax is not a property tax. The time has come to overturn unsound and outdated legal authority that erroneously held income taxes unconstitutional.

Plaintiffs' remaining constitutional challenges to the capital gains tax fail because the tax implicates no protected privilege or immunity, reasonable grounds exist for the deductions and exemptions provided by the Legislature even if it did, and the tax is fairly apportioned and non-discriminatory. For all of these reasons, this Court should reverse the trial court and uphold the capital gains tax.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error.

1. The trial court erred in granting Plaintiffs' motion for summary judgment invalidating Engrossed Substitute Senate Bill 5096 ("ESSB 5096") under article VII, sections 1 and 2 of the Washington Constitution.

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2. The trial court erred in denying the State's motion for summary judgment requesting summary dismissal of Plaintiffs' constitutional challenges under article VII, sections 1 and 2 and article I, section 12 of the Washington Constitution and the dormant Commerce Clause of the U.S. Constitution.

B. Issues Pertaining to Assignments of Error.

1. The capital gains tax applies to the sale or exchange of capital assets. Under this Court's established precedent, which holds that a tax on the sale, transfer, or use of property is an excise tax, is the capital gains tax an excise tax that is not subject to the limitations in article VII, sections 1 and 2 of the Washington Constitution?

2. Plaintiffs argued below that the capital gains tax violates the Washington Constitution's Privileges and Immunities Clause, but they identified no privilege or immunity protected under article I, section 12 and, regardless, reasonable grounds exist for the distinctions drawn by the Legislature in granting exemptions and deductions to the tax. Given its ruling

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that the capital gains tax imposes a property tax prohibited under article VII, sections 1 and 2, the trial court did not reach this claim. If this Court reverses and rules in favor of the State and Intervenors on Plaintiffs' article VII claim, should the Court reject Plaintiffs' Privileges and Immunities claim as a matter of law?

3. Plaintiffs argued below that the capital gains tax violates the dormant Commerce Clause of the U.S. Constitution, but they also admitted that the tax can be applied consistent with the Commerce Clause in many circumstances. Regardless, the activity taxed has a substantial nexus with Washington, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the State. Given its ruling that the capital gains tax imposes a property tax prohibited under article VII, sections 1 and 2, the trial court did not reach this claim. If this Court reverses and rules in favor of the State and Intervenors on Plaintiffs' article VII claim, should the Court reject Plaintiffs' dormant Commerce Clause claim as a matter of

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law?

4. Prior case law holding that income is "property" is incorrect and harmful. The legal underpinnings of those decisions were always flawed and have now entirely disappeared, as recognized by the vast majority of other states and by the U.S. Supreme Court. If this Court affirms the trial court's ruling that the capital gains tax is a tax on income, should the Court overturn its prior holdings and conclude that income is not "property" for tax uniformity and limitation purposes under article VII, sections 1 and 2 of the Washington Constitution?

III. STATEMENT OF THE CASE

A. The Capital Gains Tax Funds Important Public Education Investments by Taxing the Sale or Exchange of Capital Assets.

Substantial funding is crucial to carry out the State's "paramount duty" to fund education. Const. art. IX, § 1. Among other things, such funding goes toward salaries for educators, counselors, nurses, and social workers; materials, supplies, and operating costs; special education programs and services; and

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necessary capital projects. CP 56–57, 67–68, 73–74, 79–80.[1] While the State has made substantial progress in recent years toward funding public education, funding challenges remain. *See* CP 56, 68, 74, 80. This is all the more evident in the wake of the COVID-19 pandemic and resulting disruptions to Washington's public education system, including decreased enrollment and increased need for virus prevention and mitigation protocols and behavioral health services.[2]

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[1] The Clerk's Papers cited herein pertain to Douglas County Superior Court Cause No. 21-2-00075-09.

[2] *See* Wash. Student Achievement Council, *Facing Learning Disruption: Examining the Effects of the COVID-19 Pandemic on K-12 Students* (2021), https://wsac.wa.gov/sites/default/files/2021-03-30-COVID-Learning-Disruption-Report.pdf?utm_medium=email&utm_source=govdelivery (last visited June 28, 2022); Wash. State Dep't of Health, *Requirements and Guidance to Mitigate COVID-10 Transmission in K-12 Schools, Child Care, Early Learning, Youth Development, and Day Camp Programs* (2022), https://doh.wa.gov/sites/default/files/2022-03/821-165-K12SchoolsChildCare.pdf (last visited June 28, 2022); Dahlia Bazzaz, *As Washington State Public Schools Lost Students During Pandemic, Home-Schooled Population Has Boomed*, Seattle Times (Nov. 26, 2021), https://www.seattletimes.com/seattle-news/education/as-

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Meanwhile, Washington's tax system is the "most regressive in the nation because it asks those making the least to pay the most as a percentage of their income." RCW 82.87.010; *see also* CP 550-52 (section of Brief of Amici Curiae Mary Ann Warren et al., describing multiple studies that confirm the regressive nature of Washington's tax code). Under Washington's existing tax code, low-income families pay at least six times more in taxes as a percentage of household income than high-income earners, and middle-income families pay two to four times more. RCW 82.87.010; *see also* CP 551. The current tax scheme results in low- and middle-income residents paying a disproportionate share of the cost of state government and services compared to residents with high incomes.

To address these challenges, the Legislature adopted ESSB 5096, imposing a seven percent tax on the sale or exchange

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washington-state-public-schools-lost-students-during-pandemic-home-schooling-population-has-boomed/ (last visited June 28, 2022).

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of certain long-term capital assets beginning January 1, 2022. RCW 82.87.040(1). The Legislature's stated purpose for the tax is twofold.

First, the tax will advance the State's paramount duty to amply fund educational opportunities by "invest[ing] in the ongoing support of K-12 education and early learning and child care." RCW 82.87.010. Revenue from the tax is dedicated to Washington's Education Legacy Trust Account ("ELTA") and the Common School Construction Account ("CSCA"). RCW 82.87.030. Each year, the first $500 million collected from the tax will be deposited into the ELTA. RCW 82.87.030(1)(a). Funds from the ELTA "may be used only for support of the common schools [(i.e., K-12 public schools)], and for expanding access to higher education through funding for new enrollments and financial aid, early learning and childcare programs, and other educational improvement efforts." RCW 83.100.230. Any revenue above $500 million each year is dedicated to the CSCA. RCW 82.87.030(1)(b). This account assists school districts with

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capital projects, such as the building or renovation of school facilities. In the first six years, the Washington State Department of Revenue forecasts that the law will generate over $2.5 billion for these important and required public education investments.[3]

Second, the tax is intended to "mak[e] material progress toward rebalancing the state's tax code." RCW 82.87.010. As a step toward making the tax code fairer to working people, the law aims to impose a tax on those with a greater ability to pay. The tax applies only to sales or exchanges of long-term capital assets, RCW 82.87.040(1), defined as capital assets held for more than a year. RCW 82.87.020(6). The Legislature provided numerous exemptions, such as for real estate transfers and assets held in retirement accounts. It also provided generous deductions, including a standard deduction of $250,000 as well

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[3] *See* Fiscal Note, ESSB 5096, *available at* https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=63363 (last visited June 28, 2022).

as a qualified family-owned small business deduction. *See* RCW 82.87.050 - .070.

In light of these generous exemptions and deductions, the capital gains tax will be paid almost exclusively by the wealthiest Washington residents, and then only on the voluntary sale of non-exempt capital assets. The Department of Revenue estimates that approximately 7,000 individuals, or less than one in every thousand Washingtonians, will owe the tax in the first year.[4]

B. The Trial Court Rules the Capital Gains Tax Unconstitutional.

Plaintiffs filed two separate lawsuits (later consolidated) seeking to invalidate the capital gains tax. Plaintiffs alleged the tax violates article VII, sections 1 and 2 (uniformity and levy limit requirements for property taxes), article I, section 12 (privileges and immunities), and article I, section 7 (privacy rights) of the Washington Constitution, as well as the dormant Commerce Clause of the United States Constitution. CP 16–24,

[4] *See* Fiscal Note, *supra* n. 3.

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607–25. The Edmonds School District, Tamara Grubb (a teacher), Adrienne Stuart (a parent), Mary Curry (an early learning and childcare provider), and the Washington Education Association ("WEA") (collectively, "Education Parties") intervened in the case as defendants in support of the capital gains tax's constitutionality. CP 112–13, 136–40.

On cross-motions for summary judgment,[5] the trial court ruled that the capital gains tax is an unconstitutional property tax. In doing so, the trial court did not apply this Court's longstanding precedent distinguishing excise taxes from property taxes. *See, e.g., Morrow v. Henneford,* 182 Wash. 625, 630–31, 47 P.2d 1016 (1935); *Mahler v. Tremper*, 40 Wn.2d 405, 407–10, 243

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[5] Plaintiffs did not pursue their article I, section 7 claim on summary judgment. Education Parties joined in the State's merits briefing on Plaintiffs' remaining constitutional challenges and submitted supplemental briefing arguing that if the trial court deemed the capital gains tax an income tax rather than an excise tax, this Court's cases deeming income "property" are incorrect, unfounded, and should not be followed. *See* CP 307–23, 399–406, 661–83, 790–93, 801–03, 812–25.

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P.2d 627 (1952); *see also* CP 308–16, 671–79, 813–19 (citing and discussing cases). Rather, the trial court characterized the tax as an income tax and then relied on this Court's cases holding that "income is property" for constitutional purposes. *See* CP 867–69 (citing *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933), *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936), and *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951)). The trial court thus concluded:

> ESSB 5096 is properly characterized as an income tax pursuant to *Culliton*, *Jensen*, *Power* and other applicable Washington caselaw, rather than as an excise tax as argued by the State. As a tax on the receipt of income, ESSB 5096 is also properly characterized as a tax on property pursuant to that same caselaw.

CP 872.

Finally, the trial court ruled the capital gains tax violates the uniformity and limitation requirements in article VII, sections 1 and 2 of the Washington Constitution, in that it imposes a seven percent tax on capital gains over $250,000 but no tax on gains below that threshold, and exceeds the maximum annual property

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tax rate of one percent. *See* CP 872, 873–78. The court thus granted Plaintiffs' motion for summary judgment and denied the State's motion. CP 872, 876.

Having ruled the tax "invalid" on article VII grounds, the trial court did not address Plaintiffs' remaining constitutional challenges. CP 872.

The State and Education Parties timely appealed and seek direct review by this Court.

IV. ARGUMENT

The capital gains tax is an excise tax, not an income or property tax, and as such the restrictions on property taxes in article VII do not apply. Nor does the tax violate the state Privileges and Immunities Clause or the federal dormant Commerce Clause. This Court should reverse and uphold the tax.

Even if the Court rules that the capital gains tax is an income tax (which it is not), there is an alternative ground on which the Court should uphold the tax. Plaintiffs' central arguments are based on this Court's line of cases from the 1930s

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holding that income is property for constitutional taxation purposes. Those cases were wrong when decided, are wrong now, and should not be relied upon in determining the validity of the capital gains tax. Accordingly, even if the tax is an income tax, the Court should still hold that it is not a tax on property for purposes of Washington Constitution article VII.

A. Standard of Review.

This Court reviews a grant or denial of summary judgment de novo. *Garfield Cnty. Transp. Auth. v. State*, 196 Wn.2d 378, 386, 473 P.3d 1205 (2020). Statutes like ESSB 5096 are presumed constitutional, and the party challenging a statute "must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution." *Island Cnty. v. State*, 135 Wn.2d 141, 146–47, 955 P.2d 377 (1998). For the reasons set forth in the State's Opening Brief and herein, Plaintiffs fail to do so. The Court should reverse the trial court and uphold the capital gains tax.

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B. The Capital Gains Tax Is a Valid Excise Tax, and Plaintiffs' Remaining Constitutional Claims Fail.

Education Parties hereby join in the State's arguments as to the nature and constitutionality of the capital gains tax. For the reasons stated in the State's Opening Brief, the capital gains tax is a valid excise tax not subject to article VII's restrictions on property taxes. Nor does the tax violate the Washington Constitution's Privileges and Immunities Clause or the federal dormant Commerce Clause. This Court should reverse the trial court, uphold the capital gains tax against Plaintiffs' article VII challenge, and reject Plaintiffs' remaining constitutional claims.

C. Even If This Court Rules the Capital Gains Tax Is a Tax on Income, Such a Tax Is Not a Tax on Property: *Culliton* and Progeny Should Be Overturned.

Even if this Court agrees with the trial court that the capital gains tax is a tax on income (which it should not), the case does not end there. Rather, resolution of the tax's validity depends on the answer to a threshold question: What is the proper characterization of a tax on income? Whether an income tax need comply with constitutional restrictions on property taxes depends

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on the validity of this Court's line of cases characterizing income as "property." As discussed below, those cases should be overturned. An income tax is best characterized as a form of excise tax or, alternatively, another kind of non-property tax (i.e., a *sui generis* tax). Either way, it is not a tax on property. Article VII's limitations on property taxes do not apply.

1. *Stare Decisis* Does Not Apply If the Prior Cases Were Incorrect and Harmful or Their Legal Underpinnings Have Disappeared.

Education Parties acknowledge that this Court previously has held that income is "property" and thus broad-based income taxes are "property taxes." *See, e.g., Culliton*, 174 Wash. at 373–79; *Jensen*, 185 Wash. at 215–17. But "'stare decisis is neither a straightjacket nor an immutable rule; it leaves room for courts to balance their respect for precedent against insights gleaned from new developments, and to make informed judgments as to whether earlier decisions retain preclusive force.'" *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (quoting *Carpenters Local Union*

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No. 26 v. U.S. Fid. & Guar. Co., 215 F.3d 136, 142 (1st Cir. 2000)). Accordingly, "[r]ules of law, like governments, should not be changed for light or transient causes; but, when time and events prove the need for a change, changed they must be." *State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665–66, 384 P.2d 833 (1963) (reversing precedent interpreting state debt limit under Const. art. VIII, §§ 1, 3).

This Court has identified two circumstances in which it will reconsider prior decisions. First, the Court will reconsider precedent "when the legal underpinnings of [the] precedent have changed or disappeared altogether." *W.G. Clark Constr. Co.*, 180 Wn.2d at 66 (overturning federal preemption cases due to evolving U.S. Supreme Court precedent and national shift in preemption jurisprudence); *see also State v. Allen*, 192 Wn.2d 526, 533–43, 431 P.3d 117 (2018) (overturning prior rule that double jeopardy does not apply to aggravating circumstances in light of subsequent decisions of the U.S. Supreme Court). Second, the Court will reject prior holdings upon a clear showing

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that an established rule is incorrect and harmful. *State v. Abdulle*, 174 Wn.2d 411, 415, 275 P.3d 1113 (2012). "An opinion can be incorrect when it was announced, or it can become incorrect because the passage of time and the development of legal doctrines undermine its bases." *Id.* at 415–16. And "[t]he meaning of 'incorrect' is not limited to any particular type of error"; this Court has recognized that a decision may be incorrect if it is inconsistent with the Court's precedent, the state Constitution or statutes, or public policy considerations, or "if it relies on authority to support a proposition that the authority itself does not actually support." *State v. Barber*, 170 Wn.2d 854, 864, 248 P.3d 494 (2011).

Both of these circumstances apply to this Court's prior cases holding income is property and, thus, those cases should be overturned.

2. Article VII of the Washington Constitution Was Amended in 1930 to Ensure Intangible Assets No Longer Evaded Taxation.

This Court's 1933, divided 5-4 ruling in *Culliton* struck

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down a statewide graduated income tax initiative overwhelmingly approved by the people in 1932.[6] The historical and social context leading up to the 1932 income tax initiative—including, in 1930, a constitutional amendment intended to expand the Legislature's taxing authority—is relevant to understanding the flaws in *Culliton*'s reasoning.

As originally adopted with the ratification of the Washington Constitution in 1889, article VII, sections 1 and 2 provided in relevant part:

> All property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. . . .
>
> The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its

[6] *See* Results of 1932 General Election, Initiative to the People 69, *available at* https://www.sos.wa.gov/elections/results_report.aspx?e=102&c=&c2=&t=&t2=5&p=&p2=&y (last visited June 28, 2022).

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property . . . .

For the first forty years of Washington's statehood, the State relied primarily on real property taxes to support government services. *Culliton*, 174 Wash. at 385–87 (Blake, J. dissenting). At the time, this system of taxation worked because most people's wealth was kept in real property, and "the value of tangible property was great and the cost of government little." *Id.* at 385. But economics soon began to shift. Increasingly, "wealth was going into intangibles, into stocks, bonds, securities of various sorts—indicia of property which could easily elude the search of the tax collector." *Id.* At the same time, the cost of government increased greatly and property values began to collapse, resulting in an onerous tax burden on real estate. *Id.* at 386; *see also* Hugh D. Spitzer, *A Washington State Income Tax—Again?*, 16 U. Puget Sound L. Rev. 515, 523–24 (1993). By 1929, the problem was so acute that the Legislature created a commission to investigate the issue. *Culliton*, 174 Wash. at 387. The commission performed an exhaustive study of Washington

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taxation and ultimately recommended both a graduated personal income tax and a business income tax to provide property tax relief. Spitzer, 16 U. Puget Sound L. Rev. at 527.

In 1930, Washington voters passed Amendment 14 to the Constitution to capture intangible property in the definition of "property" and allow for different rates of taxation between classes of property. Const. amend. XIV; *see also State v. Wooster*, 163 Wash. 659, 663–64, 2 P.2d 653 (1931) (evasion of taxation by owners of intangibles (classified as "credits") was one of "the evils sought to be eradicated and abolished" by Amendment 14). Amendment 14 "entirely swept away" the older, more restrictive version of article VII quoted above and replaced it with a new section 1 providing in relevant part:

> The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. *The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership*. . . .

Const. art. VII, § 1 (emphasis added); *Wooster*, 163 Wash. at

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662.

This Court explained the effect of the constitutional amendment as follows: "[T]he Legislature, freed from the former limitations, may now determine what property shall be taxed, the different rates upon which different classes of property shall be taxed, and what property shall pay no tax at all, subject only to the limitations found in the new constitutional provisions." *Wooster*, 163 Wash. at 663 (contrasting Amendment 14 to the Constitution's prior uniformity provision). As supporters of the (ultimately successful) amendment noted in the 1930 Voter's Pamphlet, the measure was based on a simple principle: "Every fair man should be willing to pay towards the cost of government, whether his money is invested in land, merchandise, bonds, or stocks."[7] By adding a definition of property that expressly included intangible property ("everything, whether tangible or

[7] *See* Voter's Pamphlet, November 4, 1930 Election, *available at* https://www.sos.wa.gov/_assets/elections/voters'%20pamphlet%201930.pdf (last visited June 28, 2022).

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intangible, subject to ownership") and providing for classification of property, it became "possible to tax bonds and stocks . . . at moderate rates . . . ." *Id.*[8]

"At the time of the 1930 amendment's passage, many of its supporters believed that the new classification authority would allow the state to impose personal and corporate income taxes." Don Burrows, *The Economics and Politics of Washington's Taxes From Statehood to 2013* 131 (2013).[9] Indeed, groups that favored income taxes were among the strongest supporters of Amendment 14. *Id.* With this understanding, in 1931, the Legislature passed a personal, graduated income tax and a business income tax to create revenue streams that did not rely on real property taxes. *See*

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[8] *See also id.* (1930 Voter's Pamphlet discussing the unfairness of property taxation where "[s]tocks and bonds . . . escape altogether under our present system" and noting that "[t]he dog tax brings in more revenue than is received from all of the bonds and stocks owned in the state").

[9] This book is available online at https://guides.lib.uw.edu/ld.php?content_id=59560797 (last visited June 28, 2022).

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Spitzer, 16 U. Puget Sound L. Rev. at 527–28. After the governor vetoed both measures, the people enacted the personal income tax by initiative in 1932. *Id.*; *see also* Laws of 1933, ch. 5.[10]

3. The Primary Case Law Relied on for *Culliton*'s Holding That "Income is Property" Was Incorrect and Unfounded, and Its Underpinnings Have Disappeared.

In *Culliton*, this Court struck down the 1932 income tax initiative as a violation of recently-amended article VII, reasoning that income is property under Amendment 14's definition of "property"; taxes must be uniform within each class of property; income constitutes a single class of property; and therefore a graduated income tax violates the uniformity requirement. 174 Wash. at 373–77. The Court's holding was based in significant part on the mistaken proposition that the question of whether income constituted a form of property under

[10] For a detailed history of Washington's income tax movement in the late 1920s, culminating in the 1932 initiative campaign, see Phil Roberts, *A Penny for the Governor, A Dollar for Uncle Sam: Income Taxation in Washington* 56–99 (2002).

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article VII had already been considered and decided. *See id.* at 376 ("It has been definitely decided in this state that an income tax is a property tax, which should set the question at rest here."). The sole authority cited in support of this statement was *Aberdeen Savings & Loan Association v. Chase* ("*Aberdeen*"), 157 Wash. 351, 289 P. 536, 290 P. 697 (1930). But *Aberdeen* did not so hold. And to the extent *Aberdeen* relied on federal case law for the proposition that an income tax may be a property tax for purposes of the U.S. Constitution, that federal case law has since been overruled by the U.S. Supreme Court.

Aberdeen struck down a 1929 law that imposed a "tax measured by income upon banks and financial corporations," under which savings and loans paid a different corporate income tax than commercial banks and other competitors. 157 Wash. at 353, 360–61. The law was challenged on several grounds, including that it violated the Equal Protection Clause of the U.S. Constitution and the then-existing uniformity provision in article VII of the Washington Constitution. *Id.* at 357. The *Aberdeen*

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Court struck down the law as a violation of Equal Protection based almost exclusively on *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389, 48 S. Ct. 553, 72 L. Ed. 927 (1928), a *Lochner*-era case[11] in which the U.S. Supreme Court held that a tax on certain cab companies but not on other entities conducting the same business violated Equal Protection. *Id.* at 361–64, 373–74.[12] The *Aberdeen* Court did not examine the characteristics of property or income under Washington law and expressly declined to decide whether the tax "violates the uniform taxation provisions of the Constitution of the state of Washington, or other provisions thereof." *Id.* at 361, 373–74.

The State and the legislatively-created Advisory Tax Commission, as *amici curiae*, petitioned this Court for rehearing in *Aberdeen* and its companion cases. Spitzer, 16 U. Puget Sound

[11] *Lochner v. New York*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905), *overruled by Ferguson v. Skrupa*, 372 U.S. 726, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963).

[12] *Aberdeen* also held that a provision of the 1929 law that taxed interest income from government securities violated federal law. *Id*. at 365–74.

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L. Rev. at 550–51. They argued that *Aberdeen* potentially could be misread as deciding additional constitutional issues, impacting the legality of future taxes. *Id.* In denying rehearing, this Court confirmed the limited scope of its holding, stating that the decision "should not be construed as determining any question which was not before the court" and was based solely on "the decisions of the Supreme Court of the United States [(*Quaker City Cab*)]," which treated the tax at issue as attempting "to establish a property and not an excise or corporation franchise tax." *Wash. Mut. Savings Bank v. Chase*, 157 Wash. 351, 392, 290 P. 697 (1930).

Accordingly, to the extent *Aberdeen* treated an income tax as a property tax, it was only for federal Equal Protection Clause purposes pursuant to the U.S. Supreme Court's decision in *Quaker City Cab*.[13] In 1973, the U.S. Supreme Court expressly

[13] The same was true in the companion case to *Aberdeen*, *Burr v. Chase*, 157 Wash. 393, 396, 289 P. 551 (1930) ("The opinion of the Supreme Court of the United States in the case of *Quaker City Cab Co. v. Pennsylvania* . . . is even more exactly in point

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overruled *Quaker City Cab*, deeming it "a relic of a bygone era." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973). As such, not only does *Aberdeen* fail to support *Culliton*'s holding that income is property for *state* constitutional purposes, the legal underpinnings of *Aberdeen* (and therefore *Culliton*) have been overruled and are no longer valid.

Further, the U.S. Supreme Court, on which the *Aberdeen* Court relied, has consistently rejected the characterization of an income tax as a property tax. As far back as 1916, the Court explained that a prior, influential decision striking down a federal income tax as a "direct" tax on property for federal constitutional apportionment purposes (*Pollock v. Farmers' Loan & Trust Co.,* 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (1895)), did not hold that income taxes are property taxes: "[T]he conclusion reached in the Pollock Case did not in any degree involve holding that

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in this case than it was in the case of *Aberdeen Savings & Loan Association* . . . .").

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income taxes generically and necessarily came within the class of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such . . . ." *Brushaber v. Union Pac. R. Co.*, 240 U.S. 1, 16–17, 36 S. Ct. 236, 60 L. Ed. 493 (1916). And the U.S. Supreme Court has explicitly rejected the concept articulated in *Pollock*, and subsequently relied on by this Court in *Jensen*, that a tax on income is inherently the same as a property tax.[14] *Graves v. People of State of N.Y. ex rel. O'Keefe*, 306 U.S. 466, 480, 59 S. Ct. 595, 83 L. Ed. 927 (1939) ("The present [state income] tax . . . applie[s] to salaries at a specified rate. . . . It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from the funds of the government, either directly or indirectly. The theory, which once won a qualified approval, that a tax on

[14] *See Jensen*, 185 Wash. at 222 (so holding and citing *Pollock*).

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income is legally or economically a tax on its source, is no longer tenable . . . .").[15]

Culliton's mischaracterization of *Aberdeen*—and implicit acceptance of the (now obsolete) U.S. Supreme Court authority on which *Aberdeen* relied—has profoundly impacted subsequent decisions. The erroneous statement that it is well-settled that "income is property" has been repeated throughout Washington's income tax case law since the 1930s without any substantive analysis of the nature of an income tax. *See, e.g.*, *Jensen*, 185 Wash. at 216–17 (invalidating personal income tax framed as privilege tax and relying on *Culliton* for the premise that "income is property, and that an income tax is a property tax"); *Petroleum Nav. Co. v. Henneford*, 185 Wash. 495, 496–97, 55 P.2d 1056 (1936) (rejecting corporate income tax framed as a privilege tax based on *Aberdeen*, *Culliton*, and *Jensen*);

[15] *See also S. Carolina v. Baker*, 485 U.S. 505, 515–25, 108 S. Ct. 1355, 99 L. Ed. 2d 592 (1988) (confirming that *Pollock* has been overruled in its entirety).

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Power, Inc., 39 Wn.2d at 195–97 (similarly rejecting corporate net income tax framed as an excise tax). As demonstrated above, because *Culliton*'s statement of the law was incorrect and unfounded, and because the bases on which *Aberdeen* was decided have since disappeared, this Court should revisit the question with a fresh view toward the true nature of an income tax. *See infra*, Section IV.D.

4. *Culliton*'s Statement that the Majority of Courts Characterized Income as Property was Incorrect and Unfounded.

In addition to mischaracterizing *Aberdeen*, the *Culliton* Court also mistakenly stated—without citation to authority—that "[t]he overwhelming weight of judicial authority is that 'income' is property and a tax upon income is a tax upon property." 174 Wash. at 374. To the contrary, by the 1930s the majority of courts held that an income tax is *not* a property tax. In compiling his exhaustive treatise on state taxation, Professor Wade Newhouse researched every state's income tax laws and cases. Wade J. Newhouse, *Constitutional Uniformity and Equality in State*

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Taxation (1984). Professor Newhouse notes that nationwide the issue of how to characterize an income tax "came to a boil from 1922 through 1936"—the exact timeframe in which this Court decided *Culliton* and *Jensen*. *Id.* at 2020. Professor Newhouse concludes:

> Overall, for all the bitter controversy of the 1920s and the 1930s, in the end there were only five state courts which actually ruled negatively on income taxes under the uniformity limitations, with that negative position either abandoned or modified in three of them, *leaving only two state courts seemingly standing by their strict uniformity interpretations with respect to income taxes: Washington and Pennsylvania*.
> . . .
> *A majority of those courts reviewed above have characterized the income tax as a 'nonproperty' tax. Without determining its precise nature in relation to all those other various kinds of taxes which are not property taxes, it was ruled not to be a tax upon property.*

Id. at 2021, 2029 (emphasis added); *see also Mills v. State Bd. of Equalization*, 33 P.2d 563, 564–65 (Mont. 1934) (rejecting *Culliton*'s "overwhelming weight of judicial authority" statement and referring to an article concluding that by 1933 the

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opinions were "preponderantly" in favor of the view that an income tax was a non-property tax); Newhouse, *Constitutional Uniformity and Equality in State Taxation* 1991–92 (discussing *Mills*' rejection of *Culliton*). Washington's treatment of an income tax as a property tax was and remains an outlier.

The approach that Illinois' highest court took in dealing with the exact issue presented here provides a blueprint for rejecting *Culliton*'s mischaracterization regarding the weight of authority. In 1932, the Illinois Supreme Court invalidated an income tax under Illinois' constitutional restrictions on property taxes, holding that "income is property" based on *Pollock* and a mistaken claim that the "overwhelming weight of judicial authority" so held. *Bachrach v. Nelson*, 182 N.E. 909, 914–15 (Ill. 1932) (quotations omitted). In 1969, the Illinois Supreme Court reversed that holding, noting that *Pollock* was no longer good law. *Thorpe v. Mahin*, 250 N.E.2d 633, 634–36 (Ill. 1969). The *Thorpe* Court further stated: "The court in *Bachrach* also implied that the 'overwhelming weight of judicial authority'

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holds that an income tax is a property tax. We have reviewed the many State cases dealing with this question and find the weight of authority to be that an income tax is not a property tax." *Id*. at 635 (citation omitted). Tellingly, *Bachrach*'s (now overruled) misstatement of law was part of the briefing before this Court in *Culliton*, and likely is what *Culliton* relied on for its own nearly identical "weight of judicial authority" statement. *See* Br. of Amici Curiae Allen et al. at 9–10, *Culliton*, 174 Wash. 363 (No. 24491); Br. of Respondents Culliton at 7–10, *Culliton*, 174 Wash. 363 (No. 24491); Br. of Respondents McKale's, Inc. et al. at 60–61, *Culliton*, 174 Wash. 363 (No. 24491); *see also* Spitzer, 16 U. Puget Sound L. Rev. at 558 & n.282. *Culliton*'s statement regarding the weight of judicial authority was not accurate. Washington should follow Illinois' lead and correct this error.

5. *Culliton*'s Characterization of Income Based on the Constitutional Definition of "Property" Was Erroneous.

The *Culliton* Court also relied on what it characterized as the "peculiarly forceful constitutional definition" of property in

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Amendment 14 to the Washington Constitution—"everything, whether tangible or intangible, subject to ownership"—and reasoned that "[i]ncome is either property . . . or no one owns it." 174 Wash. at 374; Const. amend. XIV. That conclusion is erroneous. It ignores entirely that Amendment 14's definition of property was intended to allow taxation of stocks, bonds, and other intangible property that had, until that point, evaded taxation. *See supra*. And the Constitution's definition of property as "everything . . . subject to ownership" does not answer the relevant question, it simply raises it: Is income subject to ownership?

The nature of income is not that of a static asset subject to ownership that can be kept or sold, such as land (tangible property) or stocks and bonds (intangible property). Rather, income is better characterized as "something in motion, something that can either cease moving and itself become an income-producing asset (i.e., 'property') or that can alternatively be consumed and disappear." Spitzer, 16 U. Puget Sound L. Rev.

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at 570; *see also Waring v. City of Savannah*, 60 Ga. 93, 99–100 (1878) ("[N]et income, after expenses are paid, becomes property when invested, or if it be money lying in a bank, or locked up at home. But, to call it property when it is all consumed as fast as it arises—going on the back, or in the stomach, or in carriages and horses (which are taxed), or in travel and frolic—to call such income, so used, property, would seem to be a perversion of terms."); *Sims v. Ahrens*, 271 S.W. 720, 732 (Ark. 1925) ("The word 'income' as used for taxation purposes involves time as an essential element in its measurement or definition, and thus differs from capital, which commonly means the amount of wealth which a person has on a fixed date." (quotation omitted)); *Miles v. Dep't of Treasury*, 199 N.E. 372, 378 (Ind. 1935) ("Income implies accruals over a period of time, while property implies possession at a given time.").

Courts have adopted this understanding of income in discussing the nature of an income tax. The U.S. Supreme Court articulated this concept to distinguish between property and

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income in *State of N.Y. ex rel. Cohn v. Graves*, 300 U.S. 308, 314, 57 S. Ct. 466, 81 L. Ed. 666 (1937): "[A taxpayer's] income may be taxed, although he owns no property, and his property may be taxed, although it produces no income. *The two taxes are measured by different standards, the one by the amount of income received over a period of time, the other by the value of the property at a particular date*. Income is taxed but once; the same property may be taxed recurrently." (Emphasis added).[16] And in *Sims*, the Supreme Court of Arkansas, in holding an income tax was not a property tax, explained that "because of [income's] *fluctuating and indeterminate nature, during this period and process of its making*, [it] has not yet become an investment or an increment to the permanent wealth or property

[16] This Court favorably cited and quoted *Cohn* for a different proposition last year. *See Wash. Bankers Ass'n v. State*, 198 Wn.2d 418, 450, 495 P.3d 808 (2021) ("'Taxes are what we pay for civilized society . . . [.]' A[n apportioned] tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.'").

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of the individual who has to pay the tax . . . .” 271 S.W. at 732 (emphasis added).

This concept also finds support in the common meaning of the term “income.” The leading English-language dictionary defines “income” as “1: a coming in: entrance, influx . . . 2: a gain or recurrent benefit usually measured in money that derives from capital or labor . . . .” Webster’s Third New Int’l Dict. 1143. One does not own a “coming in” or “gain” until after it is realized as an asset. This contrasts with the pertinent dictionary definition of “property,” which is “something owned or possessed . . . something to which a person or business has a legal title . . . .” *Id.* at 1818.[17] Contrary to the *Culliton* Court’s characterization of Washington’s constitutional definition as

[17] *See also* Merriam-Webster Dictionary, *available at* merriam-webster.com/dictionary (defining “income” as “a gain or recurrent benefit usually measured in money that derives from capital or labor” or “the amount of such gain received in a period of time,” and “property” as “something owned or possessed,” “the exclusive right to possess, enjoy, and dispose of a thing **:** OWNERSHIP,” or “something to which a person or business has a legal title”).

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"peculiarly forceful," 174 Wash. at 374, it appears to mirror this standard dictionary definition closely. *See* Const. art. VII, § 1 ("The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership.").

Further, as noted above, Amendment 14's definition of "property" was passed in 1930 in response to widespread concern that wealth was increasingly being moved from real property (taxed) to intangible property (not taxed) and, thus, escaping taxation. That concern does not support characterizing income as property, as income is not an asset into which wealth can be transferred. Indeed, such a characterization would be contrary to the intent of the people in passing Amendment 14, which was to *expand* the ability to tax, not limit it. *See supra*.

Common definitions of "intangible property" further support the conclusion that income is not property. Webster's defines "intangible property" as "property having no physical substance apparent to the senses: incorporeal property . . . often

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evidenced by documents (as stocks, bonds, notes, judgments, franchises) having no intrinsic value or by rights of action, easements, goodwill, trade secrets." Webster's at 1173. Similarly, Black's defines "intangible property" as "Property that lacks a physical existence. Examples include stock options and business goodwill." Black's Law Dictionary (11th ed. 2019). Income is not listed as an example in either definition. The definitions instead reflect property in which wealth can be kept or transferred.

In sum, income is not property in the common or constitutional sense. *Culliton*'s conclusion to the contrary was erroneous.

6. Categorizing Income as Property Harms Low- and Moderate-Income Residents and State Efforts to Adequately Fund Services.

Not only is the conclusion reached in *Culliton* and progeny incorrect and unfounded (for the reasons stated above), it has and continues to cause significant harm to the State and its residents. A decision may be "harmful" for any number of reasons, but the

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"common thread" is the "decision's detrimental impact on the public interest." *Barber*, 170 Wn.2d at 865. For example, this Court has found prior precedent harmful where it undermined the principles underlying legislation and risked offending separation of powers, *see id.* at 871–73; where it was "unnecessarily complex and difficult for courts to apply" and undermined and weakened the deterrent effect of tort law, *see Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 419–20, 150 P.3d 545 (2007); where it threatened to deprive crime victims of restitution contrary to more recent changes in constitutional and statutory law, *see State v. Devin*, 158 Wn.2d 157, 168, 170–71, 142 P.3d 599 (2006); and where it would have destroyed the public benefit in the best use of the State's trust lands, *see In re Rights to Use of Waters of Stranger Creek*, 77 Wn.2d 649, 657, 466 P.2d 508 (1970).

Washington's long-standing adherence to the incorrect and unfounded statements in *Culliton* is detrimental to the public interest in equitable taxation. Just last year, this Court upheld a

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progressive tax on financial institutions that "asked the wealthy few to contribute more to funding essential services and programs to the benefit of all Washingtonians," citing favorably U.S. Supreme Court authority acknowledging the merits of income taxes: "'A[n apportioned] tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.'" *Wash. Bankers Ass'n*, 198 Wn.2d at 444, 450 (quoting *Cohn*, 300 U.S. at 313); *see also Texas Co. v. Cohn*, 8 Wn.2d 360, 386–87, 112 P.2d 522 (1941) (listing "the equalization of the burdens of taxation" as a "lawful taxing policy of the state"); *Town of Tekoa v. Reilly*, 47 Wash. 202, 208–09, 91 P. 769 (1907) (upholding exemptions to a street poll tax that, if imposed on the exempted groups "without regard to property or ability to pay," would have been "unjust and oppressive in the extreme").

In outlawing graduated income taxes in Washington, the *Culliton* line of cases has prevented distributing the burdens of

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government among those who are privileged to enjoy its benefits. As the Legislature recognized in enacting the capital gains tax, Washington thus has the most regressive tax structure in the nation, with our low- and moderate-income earners paying a significantly greater share of their income in taxes than high-income households. RCW 82.87.010; *see also* CP 550–52. Raising new revenue within the existing tax structure exacerbates harm to low- and moderate-income earners and limits the State's ability to meet increasing demand for services, particularly in the area of education funding. *See* RCW 82.87.010; CP 50, 74, 80. *Culliton* and its progeny have created and increased this harm, and should not be followed.

D. An Income Tax Is Best Understood as an Excise Tax and Should Be Upheld as Such.

For the reasons discussed above, even if this Court concludes the capital gains tax is an income tax, it should reject *Culliton* and hold the tax is not a tax on property. Rather, as the overwhelming weight of authority holds, an income tax is best understood as a form of excise tax. Numerous courts have so

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held. *See, e.g., Brushaber*, 240 U.S. at 17 (recognizing that an income tax is "in its nature an excise entitled to be enforced as such"); *Hale v. Iowa State Bd. of Assessment & Review*, 302 U.S. 95, 104–05 & n.7, 58 S. Ct. 102, 82 L. Ed. 72 (1937) (observing that "[t]he question as to the nature of [an income] tax has come up repeatedly under state constitutions requiring taxes upon property to be equal and uniform, or imposing similar restrictions. Many, perhaps most, courts hold that a net income tax is to be classified as an excise."); *Thorpe*, 250 N.E.2d at 635–36 (discussing *Hale* and other authorities on the nature of an income tax); *Dooley v. City of Detroit*, 121 N.W.2d 724, 728–30 (Mich. 1963) (same; concluding city income tax was an excise).

Underlying these cases is the concept that an income tax is not a tax on the income itself, but rather is a means to share equitably the cost of providing government benefits among residents. In *Cohn*—which this Court quoted favorably in

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Washington Bankers as noted above[18]—the U.S. Supreme Court explained:

> That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. . . . A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received. These are rights and privileges which attach to domicil within the state. To them and to the equitable distribution of the tax burden, the economic advantage realized by the receipt of income and represented by the power to control it, bears a direct relationship.

300 U.S. at 312–13; *see also Reynolds Metal Co. v. Martin*, 107 S.W.2d 251, 258 (Ky. 1937) (an income tax is "a contribution exacted from those domiciled or doing business in the state for the purpose of defraying the expenses of government, the

[18] *Wash. Bankers Ass'n*, 198 Wn.2d at 450.

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contribution being measured by the ability of the taxpayer to pay, which in turn is determined by the extent of his income. He is required to pay this tax because he is domiciled or doing business in the state, and so enjoys the protection of government, the right to earn a living, to receive, keep, and expend, income, and to be safe in his property and pursuit of happiness.").[19] As these cases suggest, such an excise tax is commonly referred to as a privilege or benefit tax, which is quintessentially an excise tax.

Indeed, this Court has long upheld excises taxes as valid privilege taxes measured by income. In *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 407, 25 P.2d 91 (1933), this Court held that a tax imposed on business activity, as measured by a business's gross proceeds of sales or gross income, was an excise

[19] *See also Hattiesburg Grocery Co. v. Robertson*, 88 So. 4, 5–6 (Miss. 1921) (same); *Kopp v. Baird*, 313 P.2d 319, 321–22 (Idaho 1957) (same); *Vilas v. Iowa State Bd. of Assessment & Review*, 273 N.W. 338, 340 (Iowa 1937) (same); *Ryan v. Commonwealth*, 193 S.E. 534, 537–38 (Va. 1937) (same); *Miles*, 199 N.E. at 378–79 (same); *Dooley*, 121 N.W.2d at 730 (same for city income tax).

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tax and not a tax on property. The Court stated the tax "does not concern itself with income which has been acquired, but only with the privilege of acquiring, and that the amount of the tax is measured by the amount of the income in no way affects the purpose of the act or the principle involved." *Id.* The Court explained that laws and courts are created by government "for the protection of human rights, the rights of property and to prevent the weak or credulous from becoming the helpless victims of the force or fraud of the strong and the cunning." *Id.* at 406. As a result, "every citizen is now measurably safe in pursuing any gainful occupation with *the expectation that he will be by the state fully protected and made secure in his property investment, and also in his gains therefrom. This is the privilege*, far above mere property, which it is now sought to tax to the end that it may *pay in some part its fair share of the cost to the state of its creation and continuance*." *Id.* at 406–07 (emphasis added). This reasoning mirrors the rationale articulated by courts that recognize an income tax is a privilege excise tax based on

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domicile and its attendant benefits to the taxpayer. *See supra*.

There is no reasonable distinction between a privilege tax on a business based on income and a privilege tax on individual residents based on income. State laws and infrastructure allow residents to pursue their livelihoods and lives secure in the knowledge that they and their property are protected. An income tax does nothing more than ensure that residents, like businesses, pay their fair share of the State's cost of creating and maintaining that protective infrastructure.

Indeed, in *Supply Laundry Co. v. Jenner*, 178 Wash. 72, 74–75, 78, 34 P.2d 363 (1934), this Court upheld the 1933 occupation tax as applied to public employees earning salaries of more than $200 per month, among others. Thus, in at least one context this Court already has recognized that taxing income above certain thresholds is a permissible privilege excise tax.

The *Jensen* Court's contrary holding that an income tax is not an excise tax should be overturned. *Jensen* attempted to distinguish *Stiner* and *Supply Laundry Co*. by stating that those

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cases involved a tax on a privilege granted or permitted by the State (engaging in business activities), whereas an income tax imposed on individuals does not. 185 Wash. at 218. But as demonstrated above, the governmental benefits and protections that provided the grounds for upholding the B&O tax on resident businesses in *Stiner* apply equally to individual residents.

Further, the cases *Jensen* cites in support of its holding do not stand for the proposition that an income tax is something other than an excise tax. In one such case, *McFeely v. Commissioner of Internal Revenue*, 296 U.S. 102, 107, 56 S. Ct. 54, 80 L. Ed. 83 (1935), the U.S. Supreme Court stated that the time a person starts to own property is when he or she acquires it. Nothing in the case purported to equate income and property, or even suggested that income is owned as one would own a piece of land. The same is true in the other cases cited in *Jensen*—they all involve taxes on real or personal property, and none relate to income taxes. *See Dawson v. Kentucky Distilleries & Warehouse Co*., 255 U.S. 288, 293–95, 41 S. Ct. 272, 65 L.

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Ed. 638 (1921) (tax on ownership of whiskey in bonded warehouses at the time it is removed); *Thompson v. Kreutzer*, 72 So. 891, 891–92 (Miss. 1916) (tax on timber lands); *In re Opinion of the Justices*, 94 N.E. 1043, 1044 (Mass. 1911) (taxes on real estate and personal property).

In sum, to the extent this Court rules the capital gains tax is a tax on income, the overwhelming consensus is that income taxes are excise taxes based on the privilege of receiving public governmental benefits, not property taxes. *Jensen*'s holding that an income tax is not an excise tax is grounded in the same errors as *Culliton* and should no longer be followed.

E. An Income Tax Could Also Be Characterized as *Sui Generis*.

Some jurisdictions do not classify income taxes as either excise taxes or property taxes; instead, they treat income taxes as a unique category. One court stated: "In many ways such a tax is sui generis. It imposes a tax on the net income or revenue which passes into or through a man's hands within a prescribed period, a large share of which never finds permanent investment." *Reed*

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v. Bjornson, 253 N.W. 102, 105 (Minn. 1934); *see also Owen v. Fletcher Sav. & Trust Bldg. Co.*, 189 N.E. 173, 177 (Ind. 1934) ("An income tax is distinguished from other forms of taxation, in that it is not levied upon property nor upon the operation of a trade, or business, or subjects employed therein, nor upon the practice of a profession, the pursuit of a trade or calling, but upon the acquisitions of the taxpayer arising from one or more of these sources or from all combined. It is not a tax on property, and a tax on property does not embrace income."); *State ex rel. Haggart v. Nichols*, 265 N.W. 859, 876 (N.D. 1935) (Morris, J., concurring) ("Income as a tax subject is sui generis."); Robert C. Brown, *The Nature of the Income Tax*, 17 Minn. L. Rev. 127, 143–45 (1933) (analyzing income tax cases and urging that income taxes be treated as *sui generis*); Spitzer, 16 U. Puget Sound L. Rev. at 559-61 (discussing Professor Brown's alternate *sui generis* approach and noting that "had it been adopted by Washington's court, [it] would have enabled the justices to consider the income tax on its own legal merits").

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This is an alternative and reasonable characterization that this Court could adopt. Indeed, the Court has already recognized this concept in the local taxation authority context, noting that local "taxation must fall into one of three categories: property, income, or excise taxes." *Watson v. City of Seattle*, 189 Wn.2d 149, 167, 401 P.3d 1 (2017) (citing Wash. State Dep't of Revenue, *Tax Reference Manual* 3 (Jan. 2010)). Income taxes can be considered their own category apart from property and excise taxes. Either way, an income tax is not a property tax and constitutional uniformity requirements do not apply.

V. CONCLUSION

The capital gains tax is a valid excise tax on the sale or exchange of long term capital assets. Plaintiffs' state and federal constitutional challenges to the tax fail under well-settled law. But in the event this Court holds the tax is an income tax, the Court's cases holding income is property for tax purposes rest on faulty premises. Rather, an income tax is either a form of excise tax or a *sui generis* tax not subject to article VII's limitations on

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property taxes. This Court should reverse the trial court and hold that the capital gains tax is valid.

This document contains 9,430 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 30th day of June, 2022.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused a true copy of the foregoing document to be served via the Washington State Appellate Portal's e-filing service and electronic mail to the following parties by agreement:

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Dated this 30th day of June, 2022, at Seattle, Washington.

/s/ Cathy Hendrickson
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Tracey Taylor 786-7152
House Committee on Finance
November 06, 2025 (01:47: PM)

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AN ACT Relating to ---;

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

PART I
GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** INTENT.

PART II
DEFINITIONS

NEW SECTION. **Sec. 201.** INTRODUCTORY. Unless the context clearly requires otherwise, the definitions in sections 202 through 212 of this act apply throughout this title.

NEW SECTION. **Sec. 202.** ADJUSTED GROSS INCOME. "Adjusted gross income" means adjusted gross income as determined under the internal revenue code.

NEW SECTION. **Sec. 203.** DEPARTMENT. "Department" means the state department of revenue.

NEW SECTION. **Sec. 204.** FEDERAL BASE INCOME. "Federal base income" means:

(1) For individuals, adjusted gross income;

(2) For estates and trusts, taxable income as determined for estates and trusts consistent with subtitle A, chapter I, subchapter J of the internal revenue code.

NEW SECTION. **Sec. 205.** INDIVIDUAL. "Individual" means a natural person.

NEW SECTION. **Sec. 206.** INTERNAL REVENUE CODE. "Internal revenue code" means the United States internal revenue code of 1986 and amendments thereto, as existing and in effect on January 1, 2018.

NEW SECTION. **Sec. 207.** PERSON. "Person" includes individuals, partnerships, firms, companies, fiduciaries, estates, trusts, and any other group or combination acting as a unit, but does not include corporations.

NEW SECTION. **Sec. 208.** RESIDENT. (1) "Resident" includes an individual who:

(a) Has resided in this state for the entire tax year; or

(b) Is domiciled in this state unless the individual:

(i) Maintains no permanent place of abode in this state; and

(ii) Maintains a permanent place of abode elsewhere; and

(iii) Spends in the aggregate not more than thirty days in the tax year in this state; or

(c) Is not domiciled in this state, but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the tax year in this state unless the individual establishes to the satisfaction of the director of revenue

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that the individual is in the state only for temporary or transitory purposes; or

(d) Claims the state of Washington as the individual's tax home for federal income tax purposes.

(2) A resident estate means an estate of which a personal representative was appointed by a Washington court or an estate administration of which is carried on in this state.

(3) A resident trust means a trust whose situs as determined by RCW 11.96A.030 is within the state of Washington.

NEW SECTION. **Sec. 209.** S CORPORATION. "S corporation" means an S corporation as defined in section 1361 of the internal revenue code.

NEW SECTION. **Sec. 210.** TAXABLE INCOME. "Taxable income" means federal base income as modified under sections 401 through 503 of this act.

NEW SECTION. **Sec. 211.** TAXABLE YEAR. "Taxable year" means the taxpayer's taxable year as defined under the internal revenue code.

NEW SECTION. **Sec. 212.** TAXPAYER. "Taxpayer" means a person receiving income subject to tax under this title.

NEW SECTION. **Sec. 213.** DEFINITION OF TERMS GENERALLY. Except as provided in sections 201 through 212 of this act, any term used in this title has the same meaning as when used in a comparable context in the internal revenue code.

PART III

DETERMINATION OF TAX

NEW SECTION. **Sec. 301.** TAX IMPOSED—RATES. (1) A tax is imposed on all taxable income of resident individuals, estates, and trusts and on all individuals, estates, and trusts deriving income from sources

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in Washington for each taxable year based on the type of return filed and the amount of income in accordance with this section.

(2) For every married individual who makes a single return jointly with his or her spouse and for every surviving spouse, the tax is ten percent of taxable income.

NEW SECTION. **Sec. 302.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident individual, estate, or trust is allowed a credit against the tax imposed under this title for the amount of any income tax imposed by another state or foreign country, or political subdivision of the state or foreign country, on income taxed under this title, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes imposed by the other jurisdiction on net income from sources within that jurisdiction; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this title before application of credits allowable by this title, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total adjusted gross income as modified by this title. The fraction may never be greater than one.

(2) If, in lieu of a credit similar to the credit allowed under subsection (1) of this section, the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the director is authorized to enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

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NEW SECTION. **Sec. 303.** DUAL RESIDENCE. If an individual is regarded as a resident both of this state and another jurisdiction for state personal income tax purposes, the department must reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence, if the other taxing jurisdiction allows a similar reduction. The reduction must equal the lower of the two taxes applicable to the income taxed twice, multiplied by a fraction. The numerator of the fraction is the tax imposed by this state on the income taxed twice. The denominator of the fraction is the tax imposed by both jurisdictions on the income taxed twice. The fraction must never be greater than one.

NEW SECTION. **Sec. 304.** BUSINESS AND OCCUPATION TAX CREDIT. (1) There is allowed a credit against the tax imposed by this title in the amount of the state of Washington business and occupation tax paid by the taxpayer in the tax year subject to the limitation of subsection (2) of this section.

(2) The credit may not exceed the smaller of:

(a) The amount of business and occupation tax paid; or

(b) The amount of tax of the taxpayer imposed by this title before the application of credits allowed by this title, multiplied by a fraction:

(i) The numerator is the amount of the taxpayer's adjusted gross income attributable to activities subject to business and occupation tax; and

(ii) The denominator is the taxpayer's adjusted gross income as modified by this title. The fraction may never be greater than one.

NEW SECTION. **Sec. 305.** PUBLIC UTILITY TAX CREDIT. (1) There is allowed a credit against the tax imposed by this title in the amount of the state of Washington public utility tax paid by the taxpayer in the tax year subject to the limitation of subsection (2) of this section.

(2) The credit may not exceed the smaller of:

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(a) The amount of public utility tax paid; or

(b) The amount of tax of the taxpayer imposed by this title before the application of credits allowed by this title, multiplied by a fraction:

(i) The numerator is the amount of the taxpayer's adjusted gross income attributable to activities subject to public utility tax; and

(ii) The denominator is the taxpayer's adjusted gross income as modified by this title. The fraction may never be greater than one.

NEW SECTION. **Sec. 306.** CAPITAL GAINS EXCISE TAX CREDIT. (1) There is allowed a credit against the tax imposed by this title in the amount of the state of Washington capital gains excise tax paid by the taxpayer in the tax year subject to the limitation of subsection (2) of this section.

(2) The credit may not exceed the smaller of:

(a) The amount of capital gains excise tax paid; or

(b) The amount of tax of the taxpayer imposed by this title before the application of credits allowed by this title, multiplied by a fraction:

(i) The numerator is the amount of the taxpayer's adjusted gross income attributable to activities subject to capital gains excise tax; and

(ii) The denominator is the taxpayer's adjusted gross income as modified by this title. The fraction may never be greater than one.

NEW SECTION. **Sec. 307.** CARRYFORWARDS AND CARRYBACKS. The amount of tax credits received by any taxpayer under sections 302, 304, 305, and 306 of this act may not exceed the total amount of tax due, and no carryback or carryforward of any unused excess credits is allowed.

PART IV

TAXABLE INCOME MODIFICATIONS

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NEW SECTION. **Sec. 401.** INTRODUCTORY. In computing taxable income, modifications must be made to the taxpayer's federal base income as required under sections 301 through 410 of this act, unless the modification has the effect of duplicating an item of income or deduction.

NEW SECTION. **Sec. 402.** STATE AND LOCAL OBLIGATIONS. To federal base income, add income which has been excluded under section 103 of the internal revenue code in computing federal base income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 403.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION, PUBLIC UTILITY TAXES. To federal base income, add:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal base income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 404.** NET OPERATING LOSS. There is allowed as a deduction from federal base income the amount of net operating loss as allowed in section 172 of the internal revenue code. The calculation of the loss amount must reflect the modifications to federal base income as provided in this title and a net operating loss deduction may include a loss carried forward to the tax year but may not include a loss carried back from a future year.

NEW SECTION. **Sec. 405.** CARRYOVERS. To federal base income, add amounts which have been deducted in computing federal base income to the extent the amounts have been carried over from taxable years ending before the effective date of this title.

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NEW SECTION. **Sec. 406.** FEDERAL OBLIGATIONS. From federal base income, deduct, to the extent included in federal base income, income derived from obligations of the United States which this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal base income.

NEW SECTION. **Sec. 407.** STANDARD DEDUCTION—PERSONAL EXEMPTION. There is allowed from federal base income the following standard deduction. The standard deduction for an individual is:

(1) In the case of a joint return or a surviving spouse, two million dollars;

(2) In the case of the head of a household, twenty-two thousand dollars;

(3) In the case of an individual who is not married and who is not a surviving spouse or head of a household and in the case of a married individual filing a separate return, one million dollars.

NEW SECTION. **Sec. 408.** ADJUSTMENT OF DEDUCTIONS AND EXEMPTIONS FOR NONRESIDENTS. The deductions from federal base income allowed under section 407 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deductions by a fraction. The numerator of the fraction is the individual's adjusted gross income attributable to sources within the state of Washington. The denominator of the fraction is the individual's gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 409.** TAX RETURNS FOR FRACTIONAL YEAR. (1) If the first taxable year of any taxpayer with respect to which a tax is

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imposed by this title ends before December 31st of the calendar year in which this title becomes effective, the taxable income for the fractional taxable year is the taxpayer's taxable income for the entire taxable year, adjusted by one of the following methods, at the taxpayer's election:

(a) The taxable income must be multiplied by a fraction. The numerator of the fraction is the number of days in the fractional taxable year. The denominator of the fraction is the number of days in the entire taxable year.

(b) The taxable income must be adjusted, in accordance with rules of the department, so as to include only such income and be reduced only by such deductions as can be clearly determined from the permanent records of the taxpayer to be attributable to the fractional taxable year.

(2) If an individual taxpayer's taxable income is adjusted under subsection (1) of this section, the deduction amounts allowed under section 407 of this act for the taxpayer must be reduced by multiplying the amount of the exemption by a fraction. The numerator of the fraction is the number of days in the taxpayer's fractional taxable year. The denominator of the fraction is the number of days in the entire taxable year.

NEW SECTION. **Sec. 410.** INDEX FOR INFLATION. For each tax year beginning after December 31, 2031, the standard deduction and the personal exemption deduction amounts under section 407 of this act must be adjusted by the department for inflation by multiplying the standard deduction amount of the previous tax year by the cost-of-living adjustment as determined under internal revenue code section 1(f)(3) through (5) for the calendar year in which the tax year begins. No adjustment may be made which decreases the standard deduction amount. If any adjustment increase is not a multiple of ten dollars, the increase must be rounded to the next lowest multiple of ten dollars.

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PART V

DIVISION OF INCOME, MODIFICATIONS, AND CREDITS

NEW SECTION. **Sec. 501.** APPORTIONMENT AND ALLOCATION OF INCOME. (1) For resident individuals, estates, and trusts, all income must be apportioned and allocated to this state.

(2) For nonresident individuals, estates, and trusts, income derived from sources within this state must be apportioned and allocated to this state. For purposes of this title:

(a) The adjusted gross income of a nonresident derived from sources within this state is the net amount of items of income, gain, loss, and deduction of the nonresident's federal adjusted gross income that are derived from or connected with sources in this state including any distributive share of partnership income and deductions, and any share of estate or trust income and deductions, including any unrelated business income of an otherwise exempt trust or organization.

(b) Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to the ownership or disposition of any interest in real or tangible personal property in this state, and a business, trade, profession, or occupation carried on within this state. The department must issue rules to provide consistency of this section with the excise tax provisions.

(c) Deduction with respect to expenses, capital losses, and net operating losses is based solely on income, gains, losses, and deductions derived from or connected with sources in this state but is otherwise determined in the same manner as the corresponding federal deduction except as provided in this title.

(d) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, constitutes income derived from sources within the state of Washington only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on within this state. However, distributed and undistributed

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income of an electing S corporation for federal tax purposes derived from or connected with sources within this state is income derived from sources within this state for a nonresident shareholder. A net operating loss of such corporation does constitute a loss or deduction connected with sources within this state for a nonresident shareholder.

(e) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

(f) If a business, trade, profession, or occupation is carried on partly within and partly without this state, the determination of net income derived or connected with sources within this state as provided in this section must be made by apportionment and allocation of chapter 82.56 RCW.

NEW SECTION. **Sec. 502.** PARTNERSHIPS AND S CORPORATIONS. (1) Partnerships are not subject to tax under this title. Partners are subject to tax in their separate or individual capacities.

(2) S corporations are not subject to tax under this title. Shareholders of S corporations are subject to tax in their separate or individual capacities.

(3) The taxable incomes of partners is computed by including a pro rata share of the modifications under sections 401 through 503 of this act and the credits allowed under sections 302, 304, and 305 of this act, if the modification or credit relates to the income of the partnership. Each partner's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the partner's distributive share of partnership income. The denominator of the fraction is the total partnership income. The fraction may never be greater than one.

(4) The taxable incomes of shareholders of S corporations must be computed by including a share of the modifications under sections 401 through 503 of this act and the credits allowed under sections 302, 304, and 305 of this act, if the modification or credit relates to the income of the S corporation. Each shareholder's share of a modification

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or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the shareholder's pro rata share of S corporation income. The denominator of the fraction is the total S corporation income. The fraction may never be greater than one.

(5) As used in this section:

(a) "S corporation income" includes both distributed and undistributed federal taxable income of the S corporation.

(b) "Pro rata share" means pro rata share as determined under section 1366(a) of the internal revenue code.

NEW SECTION. **Sec. 503.** ESTATES, TRUSTS, AND BENEFICIARIES. (1) The taxable incomes of estates, trusts, and beneficiaries thereof is computed by including a share of the modifications under sections 401 through 503 of this act and the credits allowed under sections 302, 304, 305 and 306 of this act.

Each taxpayer's share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the taxpayer's share of the distributable net income of the estate or trust. The denominator of the fraction is the total distributable net income of the estate or trust. The fraction may never be greater than one.

(2) As used in this section, "distributable net income" means distributable net income as defined in the internal revenue code. If an estate or trust has no federal distributable net income, the term means the income of the estate or trust which is distributed or is required to be distributed during the taxable year under local law or the terms of the estate or trust instrument.

(3) Any portion of a modification which is not included in calculating the taxable incomes of the beneficiaries must be included in calculating the taxable income of the trust or estate.

PART VI

WITHHOLDING—ESTIMATED TAX

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NEW SECTION. **Sec. 601.** EMPLOYER WITHHOLDING—REQUIREMENTS. (1) Every employer making a payment of wages or salaries earned in this state, regardless of the place where the payment is made, and who is required by the internal revenue code to withhold taxes, must deduct and withhold a tax as prescribed by the department by rule. The rules prescribed must reasonably reflect the annual tax liability of the employee under this title. Every employer making such a deduction and withholding must furnish to the employee a record of the amount of tax deducted and withheld from the employee on forms provided by the department.

(2) If the employee is a resident of this state and earns income from personal services entirely performed in another state which imposes an income tax on the income, and the employer withholds income taxes under the laws of the state in which the income is earned, the employer is not required to withhold any tax imposed by this title on the income if the laws of the state in which the income is earned allow a similar exemption for its residents who earn income in this state.

NEW SECTION. **Sec. 602.** LIABILITY OF EMPLOYER FOR TAX WITHHELD. Any person required to deduct and withhold the tax imposed by this title is liable to the department for the payment of the amount deducted and withheld, and is not liable to any other person for the amount of tax deducted and withheld under this title or for the act of withholding. The amount of tax so deducted and withheld must be held to be a special fund in trust for this state.

NEW SECTION. **Sec. 603.** CREDIT FOR TAX WITHHELD—HOW CLAIMED. The amount deducted and withheld as tax under sections 601 through 606 of this act during any taxable year must be allowed as a credit against the tax imposed for the taxable year by this title. If the liability of any individual for taxes, interest, penalties, or other amounts due the state of Washington is less than the total amount of the credit which the individual is entitled to claim under this section, the individual is entitled to a refund from the department in the amount

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of the excess of the credit over the tax otherwise due. If any individual entitled to claim a credit under this section is not otherwise required by this title to file a return, a refund may be obtained in the amount of the credit by filing a return, with applicable sections completed, to claim the refund. No credit or refund is allowed under this section unless the credit or refund is claimed on a return filed for the taxable year for which the amount was deducted and withheld.

NEW SECTION. **Sec. 604.** WITHHOLDING—EXEMPTION DECLARATIONS. An employee is entitled to use and an employer must use the withholding exemption declaration on file with the employer for federal income tax purposes. The department may redetermine the number of withholding exemptions to which any employee is entitled, and the department may require an additional withholding exemption declaration to be filed on a form prescribed by the department where the department finds that the exemption declaration filed for federal income tax purposes does not properly reflect the number of withholding exemptions to which the employee is entitled.

NEW SECTION. **Sec. 605.** WITHHOLDING—FAILURE TO PAY OR COLLECT—PENALTIES. (1) The tax required by this title to be collected by the employer must be deemed to be held in trust by the employer until paid to the department.

(2) In case any employer, or a responsible person within the meaning of internal revenue code section 6672, fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department, the employer or responsible person is, nevertheless, personally liable to the state for the amount of the tax. The interest and penalty provisions of chapter 82.32 RCW apply to this section.

NEW SECTION. **Sec. 606.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual, estate, or trust subject to taxation by this title which

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is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this title.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than five hundred dollars. The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax but do not apply to underpayments, as defined by the internal revenue code, if the tax remitted to the department is either ninety percent of the tax shown on the return or one hundred percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

PART VII

CRIMES

NEW SECTION. **Sec. 701.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this title or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this title who knowingly fails to collect, truthfully account for, or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART VIII

ADMINISTRATIVE PROVISIONS

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NEW SECTION. **Sec. 801.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this title is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this title is computed by a method of accounting which in the opinion of the department fairly reflects income.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this title.

NEW SECTION. **Sec. 802.** PERSONS REQUIRED TO FILE RETURNS. (1) All taxpayers must file with the department, on forms prescribed by the department, an income tax return for each tax year. Each person required to file a return under this title must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return.

(2) The department may by rule require that certain taxpayers file, on forms prescribed by the department, informational returns for any period. Each person required by rule to file an informational return must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the informational return.

(3) If an adjustment to a taxpayer's federal return is made by the taxpayer or the internal revenue service, the taxpayer must, within ninety days of the final determination of the adjustment by the internal revenue service or within thirty days of the filing of a federal return adjusted by the taxpayer, file with the department on forms prescribed by the department a corrected return reflecting the adjustments as finally determined. The taxpayer must pay any additional tax due resulting from the finally determined internal revenue service adjustment or a taxpayer adjustment without notice and assessment. Notwithstanding any provision of this title or any other title to the contrary, the period of limitation for the collection of the additional

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tax, interest, and penalty due as a result of an adjustment by the taxpayer or a finally determined internal revenue service adjustment must begin at the later of thirty days following the final determination of the adjustment or the date of the filing of the corrected return.

NEW SECTION. **Sec. 803.** DUE DATE FOR FILING A RETURN—EXTENSIONS—INTEREST AND PENALTIES. The due date of a return required to be filed with the department is the due date of the federal income tax return or informational return for federal income tax purposes. The department must have the authority to grant extensions of times by which returns required to be filed by this title may be submitted. The department must also have the authority to grant extensions of time to pay tax with regard to taxes imposed by this title. Interest at the rate as specified in RCW 82.32.050 accrues during any extension period and the interest and penalty provisions of chapter 82.32 RCW apply to late payments and deficiencies. Notwithstanding the limitation of RCW 82.32.090, in the case of the late filing of an informational return, there is imposed a penalty the amount of which is established by the department by rule. The penalty may not exceed fifty dollars per month for a maximum of ten months. RCW 82.32.105 applies to this section.

NEW SECTION. **Sec. 804.** JOINT RETURN. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this title unless one spouse is a resident and the other is a nonresident.

(2) If neither spouse is required to file a federal income tax return for the taxable year, a joint return may be filed under this title under the same conditions under which a joint return may be filed for purposes of the federal income tax.

(3) If the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this title.

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(4) If one spouse is a resident and the other is a nonresident, they must file separate returns under this title, unless they elect to determine their tax liabilities under this title on a joint return as if they were both residents, and:

(a) Their federal tax liability for the taxable year was determined on a joint federal return; or

(b) Neither spouse has filed a federal income tax return for the taxable year and they would be permitted to file a joint federal return for the taxable year.

(5) In any case in which a joint return is filed under this section, the liability of the husband and wife is joint and several, unless the spouse is relieved of liability under section 6013 of the internal revenue code.

NEW SECTION. **Sec. 805.** RECORDS—RETURNS. (1) Every taxpayer and every person required to deduct and withhold the tax imposed under this title must keep records, render statements, make returns, file reports, and perform other acts as the department requires by rule. Each return must be made under penalty of perjury and on forms prescribed by the department. The department may require other statements and reports be made under penalty of perjury and on forms prescribed by the department. The department may require any taxpayer and any person required to deduct and withhold the tax imposed under this title to furnish to the department a correct copy of any return or document which the taxpayer has filed with the internal revenue service or received from the internal revenue service.

(2) All books and records and other papers and documents required to be kept under this title are subject to inspection by the department at all times during business hours of the day.

NEW SECTION. **Sec. 806.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state

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and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this title.

NEW SECTION. **Sec. 807.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this title, all of the provisions of the internal revenue code relating to the following subjects apply to the taxes imposed under this title:

(a) Time of payment of tax deducted and withheld under sections 301 through 306 of this act;

(b) Liability of transferees;

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed filed.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this title.

NEW SECTION. **Sec. 808.** REFUNDS OF OVERPAYMENTS—OTHER ADMINISTRATIVE PROVISIONS. (1) The department must refund all taxes improperly paid or collected.

(2) The following sections apply to the administration of taxes imposed under this title: RCW 82.32.020, 82.32.050, 82.32.060, 82.32.070, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.120, 82.32.130, 82.32.140, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, and 82.32.380.

NEW SECTION. **Sec. 809.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this title. The rules, to the extent possible without being inconsistent with this title, must follow the internal revenue code and the regulations and rulings of the United States treasury department with

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respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue code and treasury department regulations and rulings, in whole or in part.

NEW SECTION. **Sec. 810.** ACCOUNTS INTO WHICH REVENUE IS DEPOSITED.

PART IX
APPEALS

Sec. 901. RCW 82.03.130 and 2005 c 253 s 7 are each amended to read as follows:

(1) The board ((~~shall have~~)) has jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department ((~~of revenue~~)) pursuant to RCW 84.48.075((~~: PROVIDED, That~~)).

(i) ((~~Said~~)) The appeal must be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

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(ii) The hearing before the board ((~~shall~~)) must be expeditiously held in accordance with rules prescribed by the board and ((~~shall~~)) takes precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW ((~~79.94.210~~)) 79.125.450.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(m) Appeals relating to income tax deficiencies and refunds, including penalties and interest, under Title 82A RCW (the new title created in section 1502 of this act).

(2) Except as otherwise specifically provided by law ((~~hereafter~~)), the provisions of RCW 1.12.070 ((~~shall~~)) apply to all notices of appeal filed with the board of tax appeals.

Sec. 902. RCW 82.03.140 and 2023 c 28 s 1 are each amended to read as follows:

(1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within 20 days from the date

of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein may be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1) (c), (d), (e), (h), (i), ((~~or~~)) (j), or (m), the director of revenue may, within 10 days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

(2) A responding party may file a cross appeal. In the event that appeals are taken by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding.

(4) In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of ((~~such~~)) the parties elects a formal hearing, a formal hearing ((~~shall~~)) must be granted.

PART X
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 1001. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are ((~~hereby~~)) exempt from any state, county, municipal, or other local tax and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section ((~~shall~~)) does not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1002. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever

whether the same be in actual possession of the person or be deposited or loaned and ((~~shall be~~)) are unassignable except as herein specifically provided.

(2) Subsection (1) of this section ((~~shall~~)) does not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1003. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to

the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, ((~~shall be~~)) is exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same ((~~shall be~~)) is exempt to the family as provided in this subsection. This subsection ((~~shall~~)) does not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1502 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, ((~~shall be~~)) is exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection ((~~shall~~)) does not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1502 of this act). This subsection ((~~shall~~)) permits benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided

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in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" ((~~shall~~)) does not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan ((~~shall be~~)) is deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection ((~~shall~~)) does not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1502 of this act). This subsection ((~~shall~~)) permits benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly

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provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6)(a) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section ((~~shall~~)) may be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but ((~~shall~~)) is not ((~~be~~)) required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution.

(b) For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan ((~~shall be~~)) is considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan ((~~shall~~)) does not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the

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nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan.

(c) For purposes of this subsection((~~, the term~~)):

(i) "Nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. ((~~As used in this subsection,~~))

(ii) An order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 1004. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter ((~~shall~~)) is not ((~~be~~)) transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, ((~~shall be~~)) is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section ((~~shall~~)) is not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter ((~~shall be~~)) are payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter ((~~shall~~)) may be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it

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prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1005. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter ((~~shall be~~)) are unassignable, and are hereby exempt from any state, county, municipal or other local tax, and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

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Deductions under (a) and (b) of this subsection ((~~shall~~)) (2) must be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section ((~~shall~~)) does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1006. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are ((~~hereby~~)) exempt from any state, county, municipal, or other local tax, and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and ((~~shall be~~)) are unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the

benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1007. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are ((~~hereby~~)) exempt from any state, county, municipal, or

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other local tax, and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and ((~~shall be~~)) are unassignable.

(2)(a) This section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section ((~~shall~~)) does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

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(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1008. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section ((~~shall~~)) does not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter ((~~shall be~~)) are payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1009. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the

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retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and ((~~shall be~~)) are unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children ((~~shall~~)) must be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section ((~~shall~~)) does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

Sec. 1010. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

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(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under ((~~the provisions hereof~~)) this section and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and ((~~shall~~)) are not ((~~be~~)) subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and ((~~shall be~~)) are unassignable except as herein specifically provided.

(2) Subsection (1) of this section ((~~shall~~)) does not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section ((~~shall not be deemed to~~)) does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1502 of this act), nor does it prohibit the department of retirement systems from complying with the tax withholding requirements of that title.

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NEW SECTION. **Sec. 1011.** RCW 6.15.025 (Exemption of pension or retirement plan benefits from execution for judgment for out-of-state income tax) and 1991 c 123 s 3 are each repealed.

PART XI
MISCELLANEOUS

NEW SECTION. **Sec. 1101.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1102.** CODIFICATION. Sections 101 through 810 of this act constitute a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1103.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2015 (this act), are enacted in a 2015 legislative session that do not take cognizance of chapter . . ., Laws of 2015 (this act), the code reviser must prepare a bill for introduction in the 2016 or 2017 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2015 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1104.** This act takes effect January 1, 2030.

--- END ---

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Mayer, Ellie (ATG)

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Friday, January 16, 2026 12:36 PM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG)
Cc: Brumbaugh, Jack (DOR); Jennrich, Timothy (DOR)
Subject: Legal review requested: "millionaire tax"
Attachments: S-3846.4.docx

Importance: High

[EXTERNAL]

Hi Dan and Chuck – Exec has asked me to reach out for a legal review of the attached draft proposal. As a head's up, when Senator Pedersen shared this with us, he indicated that he would also be sharing it with the AGO, so perhaps there is an opportunity to not reinvent the wheel.

Do you think you could share your thoughts by the end of the day on Wednesday, January 21st?

Thank you!

Jamie Samans
Assistant Director
Legislation & Policy

6400 Linderson Way SW | Tumwater, WA 98501
360/534-1541 | 360/280-6348 (cell)
Washington State Department of Revenue

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Friday, February 20, 2026 12:02 PM
To: Brumbaugh, Jack (DOR)
Cc: Jensen, Dan (ATG); Samans, James (DOR)
Subject: ESSB 6346 - apportionment

Hi Jack.

Dan and I had a quick conversation today with Chris Kilduff regarding a question she had about ESSB 6346. At the end of the conversation, I mentioned that I had a concern with section 405 which relates to apportionment of income from business activity. It is more of an administrative concern than a legal concern, so I thought I'd run it by you. It may be that the DOR feels that section is administrable as written. If so, you can disregard my comments below.

Section 405 requires nonresidents that receive income from sole proprietorships or pass-through entities to determine the Washington source income (including distributive share) based on an apportionment method modeled on the Uniform Division of Income for Tax Purposes Act. I haven't looked to see how closely section 405 is aligned to the UDITPA language in RCW 82.56.010 Article V. But at a more fundamental level, section 405 as currently written will require the owner to compute an apportionment factor different from the single-factor sales apportionment computation the entity is required to make under RCW 82.04.460, .462. That adds an administrative burden to individuals that need to compute this different apportionment method and, I presume, on the Department's ability to administer the tax.

Also, section 405 is not exactly clear with respect to whether the "taxpayer" is the owner or the entity. As one example, 405(2) requires classification of income as business or non-business. If the owner is a passive partner in a multistate partnership, that owner might reasonably conclude that his/her distributive share is "non-business" income; because it is with respect to the owner. But with respect to the entity, that same income could (likely will) qualify as business income. As I read section 405(2), it is not clear to me whether business / nonbusiness is determined at the entity or owner level.

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In my view, there is a simpler way to create a fair apportionment mechanism for income earned from a sole proprietorship or pass-through entity. It is not perfect, but worth some thought.

Essentially, the idea is to use the entities Washington apportionment percentage as computed under RCW 82.04.460, .462. For entities that file Washington B&O tax returns and the annual apportionment reconciliation, that factor should be known or knowable to the owner. For those entities that do not file Washington B&O tax returns, the owner will need to do a *pro forma* single-factor sales calculation, or something similar. So not a perfect fix as there is still some administrative burden on some owners. But the basic idea is that the owner's apportionment percentage is equal to the entity's apportionment percentage, which is in theory a more administrable approach.

If this is something L&P is interested in pursuing, I'd be happy to help in any way I can. Here is some language that can be used as a starting point.

> NEW SECTION. Sec. 405. GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including a sole proprietorship and any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.
>
> (2) In those circumstances were the nonresident receives income from a sole proprietorship or pass-through entity engaged in business in this state and that has filed excise tax returns with the state reporting an apportioned share of its gross income to the state for all or part of the entity's current or prior taxable year, the nonresident individual owner's Washington source income under this section is equal to the income received, including items of distributive share income and loss, multiplied by the entity's Washington apportionment factor for the current taxable year. PROVIDED, however, that if the entity's Washington apportionment factor for the current taxable year is not known or available to the nonresident owner, then that owner's Washington source income under this section is equal to the income received, including items of distributive share income and loss,

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multiplied by the entity's Washington apportionment factor for the immediately prior taxable year.

(3) In those circumstances where subjection (2) does not apply because the sole proprietorship or pass-through entity engaged in business in this state is not required to file excise tax returns with the state reporting an apportioned share of its gross income to the state in either the current or prior taxable year, the nonresident individual owner's Washington source income under this section is equal to the income received, including items of distributive hare income and loss, multiplied by the entity's pro forma Washington apportionment factor computed in accordance with RCW 82.04.462. The Department is authorized to implement rules for determining the pro forma Washington apportionment factor, consistent with this subsection (3).

(4) [definitions]

Let me know if you have questions, comments or concerns.

Chuck Zalesky
Senior Counsel
(360) 586-0756

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Nick Brown

ATTORNEY GENERAL OF WASHINGTON

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M E M O R A N D U M

DATE: December 11, 2025

TO: The Office of Governor Bob Ferguson

FROM: Dan Jensen, Senior Assistant Attorney General
Chuck Zalesky, Senior Counsel

SUBJECT: **Constitutionality of "high earner" tax**

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You have asked for an opinion regarding the constitutionality of legislation that would impose an annual Washington tax on individuals earning over $1,000,000 of adjusted gross income (AGI).[1] The general concept is that the new Washington tax would conform to the federal individual income tax with respect to definitions, exclusions, deductions, etc., with only limited modifications necessary to achieve the goals of the tax.

Specifically, you asked the following two questions:

- Would such a tax withstand a legal challenge?
- Would it matter if the tax applied only a single rate versus a tiered rate structure?

In our view, the proposal would almost certainly be characterized by lower Washington courts as a property tax, not an excise tax like the state's B&O and capital gains taxes. This is so because the tax is imposed on the receipt of income, not on some separate activity or transaction. Consequently, the proposed tax would fall squarely within the type of taxes that our Supreme Court has invalidated under the uniformity and levy limit requirements of article VII, sections 1 and 2, of the Washington Constitution.[2] While those state constitutional provisions apply only to property taxes, they have been used to invalidate past income taxes on the theory that such taxes

[1] "Adjusted gross income" is a federal income tax term that means gross income minus certain adjustments. States commonly impose income taxes that start with a taxpayer's federal adjusted gross income before imposing their own adjustments.

[2] Article VII, section 1 provides, "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only." Article VII, section 2 provides that "the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percent of the true and fair value of such property in money."

fall directly on "ownership, and therefore [on] the property (income) itself." *Jensen v. Henneford*, 185 Wash. 209, 219 (1936); *see also Culliton v. Chase*, 174 Wash. 363 (1933) (invalidating state income tax enacted under 1933 Initiative No. 69); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951) (invalidating 1951 "Corporate Excise Tax"). Thus, lower courts applying the current Washington Supreme Court case law would very likely strike down the tax for the same reasons as prior income taxes imposed over the years.

If the tax had only one rate as opposed to a tiered rate structure, it would still likely be struck down by lower courts, for two reasons. First, unless the rate were 1% or lower, the tax would violate the levy limit imposed by article VII, section 2, assuming it is characterized as a property tax. Second, while less certain, lower courts might also conclude that the $1,000,000 AGI threshold—separating individuals owing the tax from those that do not owe the tax—violates the uniformity requirement of article VII, section 1.[3] Similarly, lower courts might find that other aspects of the tax create a non-uniform tax on property.[4]

Therefore, with respect to both of your questions, to withstand a legal challenge, the Washington Supreme Court would likely need to overrule its prior precedent pertaining to income taxes.

The Supreme Court has consistently held that it will not "lightly set aside" its precedent, and the party seeking to have established precedent overruled must make a "clear showing [that] it is both incorrect and harmful." *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wn.3d 873, 885–86 (2025). This is a high bar, but not insurmountable. And one circumstance where the Court has overruled precedent is "when the legal underpinnings of [the] precedent have changed or disappeared altogether." *W. G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66 (2014).

With respect to the "income is property" line of cases, that precedent has been criticized as superficial and based on legal underpinnings that either never existed or that have dramatically changed. For example, the Court in *Culliton* claimed that "[t]he overwhelming weight of judicial

[3] Article VII, section 1 of the state constitution permits the legislature to exempt property from taxation "by general laws." Thus, there is a reasonable argument that the legislature, consistent with Article VII, can exempt the first $1,000,000 of an individual's annual AGI. The Supreme Court in *Culliton v. Chase* did not address the legislative power to create a tax exemption. Instead, the Court held that the legislature was constitutionally prohibited from imposing a tax on income with a graduated rate structure because a graduated tax is not uniform. *Culliton*, 174 Wash. at 378. *Accord*, *Jensen v. Henneford*, 185 Wash. at 220 (holding that the personal net income tax of 1935 violated Article VII's uniformity requirement because, among other reasons, it included a surtax that created a graduated rate structure).

[4] As an example, in *Jensen v. Henneford*, the Supreme Court concluded that the personal net income tax of 1935 violated the uniformity requirement not only as a result of the surtax, but also because the tax granted "an unmarried man . . . a credit of one thousand dollars" while granting "a married man … a credit of twenty-five hundred dollars." 185 Wash. at 222. In short, uniformity applies both to the rate imposed and to the base that is being taxed.

authority is that 'income' is property and a tax upon income is a tax on property." 174 Wash. at 374. But that statement was not accurate in 1933 when *Culliton* was decided, and since then it has become an undisputed fact that other state courts overwhelmingly conclude the opposite—that income taxes are not property taxes. Further, the general definition of "income" is not compatible with the general definition of "property." Income is something that accrues over a period of time, while property is generally considered an asset or right that is possessed at a given time. *See generally* Hugh D. Spitzer, *A Washington State Income Tax—Again?*, 16 U. Puget Sound L. Rev. 515, 570 (1993) (explaining that income is best characterized as "something in motion, something that can either cease moving and itself become an income-producing asset (i.e., 'property') or that can alternatively be consumed and disappear.").

Similarly, the Court in *Culliton* arguably misconstrued the earlier case of *Aberdeen Savings & Loan Association v. Chase*, 157 Wash. 351 (1930), claiming that *Aberdeen* had "definitely decided in this state that an income tax is a property tax." *Culliton*, 174 Wash. at 376. But *Aberdeen* was decided on federal equal protection grounds and the Court's analysis was not dependent on characterizing the tax as a property tax. 157 Wash. at 373-74. The *Aberdeen* Court expressly declined to address the taxpayer's uniformity argument. *Id*. at 374. Moreover, even with respect to the federal equal protection analysis, *Aberdeen* relied largely on a Lochner-era decision from the United States Supreme Court that was subsequently overruled. *Id*. at 361-62 (analyzing *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389 (1928), *rev'd Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973)).

These and other shortcomings of the *Culliton* decision create strong arguments that the case was incorrectly decided. Further, there is a sound argument that *Culliton* and cases applying its holding are harmful. A decision may be harmful for various reasons, but the "common thread" is the "decision's detrimental impact on the public interest." *State v. Barber*, 170 Wn.2d 854, 865 (2011). Here, the Court's decision in *Culliton* imposed an unnecessary constitutional constraint on the Legislature's taxing authority by barring graduated individual and corporate income taxes, which has led to a highly regressive state tax system that requires low- and moderate-income earners to pay a significantly greater share of their income in taxes than high-income households. *See* RCW 82.87.010 (legislative finding pertaining to the capital gains excise tax). These facts and circumstances could reasonably convince our Supreme Court that *Culliton* has detrimentally impacted the public interest.

While there are compelling reasons why the Supreme Court might overrule its "income is property" line of cases, it is worth noting that the Court has declined to do so on at least three occasions. The first was in *Jensen v. Henneford*, decided in January 1936, less than three years after *Culliton*. The State had argued that several cases decided after *Culliton* had undercut the rationale of that decision. 185 Wash. at 216-17. The Supreme Court rejected the argument, finding that none of the intervening decisions cited by the State had "receded from [the Court's] former emphatic declaration that, under our constitution, income is property, and that an income tax is a property tax." *Id*. at 217.

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The second case of note where the Supreme Court declined to overrule its income tax decisions was *Apartment Operators Association of Seattle v. Schumacher*, 56 Wn.2d 46 (1960). In that case the State forcefully argued that Depression-era cases holding that income is a type of property were incorrectly decided and should be overruled. The Court rejected the argument in a single sentence, stating that it was "unwilling . . . to recede from the position announced in its repeated decisions." *Id.* at 47 (referring to decisions in *Aberdeen Savings & Loan Ass'n*; *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; and *Power, Inc.*, 39 Wn.2d 191). The court provided no further analysis.

More recently, a group that intervened in the capital gains tax case argued that prior cases equating income to property were wrongly decided and should be overruled. *Quinn v. State*, 1 Wn.3d 453, 469-70 (2023). The Court did not directly address the argument, concluding instead that the capital gains tax "is an excise tax under Washington law." *Id*. at 470. Consequently, the Court "decline[d] to reexamine *Culliton* because article VII's uniformity and levy limitations on property taxes do not apply" to excise taxes. *Id*. Nevertheless, the Court did describe *Culliton* and its prior income tax cases as limited to taxes that apply "to the taxpayer's aggregate net income … untethered to any specific taxable activity" other than "receipt of income itself." *Id*. at 477.[5]

Although the Court in *Quinn* did not directly address the intervenors' contention that cases equating income to property should be overruled, the briefing filed by the intervenors made strong legal arguments in support of that result, many of which we have summarized above. In light of those arguments, we believe there is a reasonable chance—although far from a sure thing—that the Supreme Court would overrule its prior "income is property" precedent if the issue was directly and necessarily before it. We are, however, unable to place any meaningful "percentage" chance of that outcome. At best, we can state that there is a reasonable chance the proposed tax on individuals earning over $1,000,000 during the tax year would be upheld by our state Supreme Court if it were enacted into law.

We trust that you will find this useful. The foregoing discussion is not an official opinion of the Office of the Attorney General. The opinions expressed herein are those of the authors, Dan Jensen, Senior Assistant Attorney General and Chuck Zalesky, Senior Counsel.

[5] The Court also criticized the "flawed" decision in *Apartment Operators*. *Quinn*, 1 Wn.3d at 475.

AN ACT Relating to . . . ;

BE IT ENACTED . . .

NEW SECTION. **Sec. 1.** [INTENT SECTION]

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(2) “Employment” means personal service, of whatever nature, as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

(3) “Federal adjusted gross income” means adjusted gross income for an individual as provided under 26 U.S. Code Sec. 62 of the internal revenue code, with the following modifications:

(a) Long-term capital gains and long-term capital losses, as reportable for federal income tax purposes, are excluded from federal adjusted gross income;

(b) Income from any federal treasury bond, note, bill, or any other obligation of the United States, is excluded from federal adjusted gross income; and

(c) Income from any state or municipal bond, note, or bill, or any other obligation of any state or local municipality, or any territory or possession of the United States, is included in federal adjusted gross income, except as otherwise provided in this chapter.

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(4) “Individual” means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of the effective date of this act.

(6)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(7) “Pass-through entity” means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes.

(8) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(9) "Taxpayer" means an individual subject to tax under this chapter.

(10) “Washington adjusted gross income” means federal adjusted gross income as modified under this chapter.

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(11) “Washington source income” means the portion of federal adjusted gross income of a nonresident derived from or connected with:

(a) A business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state; or

(b) Employment within this state.

NEW SECTION. **Sec. 3.** DISTRIBUTION OF TAX REVENUES. (1) Taxes collected under this chapter shall be deposited as follows:

(a) Sixty percent to the state general fund;

(b) Ten percent to the working families tax credit support account created in section 22 of this act;

(c) Ten percent to the state property tax relief account created in section 23 of this act; and

(d) The remainder to the city and county funding stabilization account created in section 24 of this act.

(2) All interest and penalties collected under this chapter shall be deposited in the state general fund.

NEW SECTION. **Sec. 4.** IMPOSITION OF TAX. (1) Beginning January 1, 2028, an excise tax is imposed on employment, business, investment, and other activities that generate the actual or constructive receipt of income in the state of Washington. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington adjusted gross income.

(2) The tax levied in subsection (1) of this section is necessary for the support of the state government and its existing public institutions.

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(3) If an individual's Washington adjusted gross income is less than zero for a taxable year, no tax is due under this section and no such amount is allowed as a carryover for use in the calculation of that individual's Washington adjusted gross income, for any taxable year.

(4) The tax imposed in this section applies to the actual or constructive receipt of income by the taxpayer. The tax imposed under this section applies when the income is recognized by the taxpayer in accordance with federal tax law.

NEW SECTION. **Sec. 5.** DEDUCTIONS. In computing Washington adjusted gross income for a taxable year, a taxpayer may deduct from his or her federal adjusted gross income:

(1) A standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction shall be adjusted pursuant to section … of this act;

(2) Amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States; and

(3) Interest income from any bond or note, or any other obligation, issued by the state of Washington or any municipality of the state of Washington. For the purpose of this subsection (3) , “municipality” means a county, city, and any special purpose district, of the state of Washington.

NEW SECTION. **Sec. 6.** GENERAL RULES FOR ALLOCATING AND APPORTIONING INCOME FOR RESIDENTS AND NONRESIDENTS. For purposes

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of the tax imposed under this chapter, federal adjusted gross income is allocated and apportioned to Washington as follows:

(1) For Washington residents, all federal adjusted gross income is allocated and apportioned to Washington, except as otherwise modified under this chapter;

(2) For nonresidents, the portion of federal adjusted gross derived from Washington source income is allocated and apportioned to Washington as provided under:

(a) Section 10 for employment within this state;

(b) Section 11 of this act for nonresident members of a professional athletic team; and

(c) Section 12 for any adjusted gross income derived from a business, trade, or profession carried on in this state; and

NEW SECTION. **Sec. 7.** REPORT BY EMPLOYMENT SECURITY DEPARTMENT. By September 1, 2029, and September 1 of each year thereafter, the employment security department, using the tax and wage report submitted to the employment security department for unemployment insurance, must provide a report to the department of revenue specifying all employees with total wages, aggregated across all employers, exceeding $1,000,000 in the prior calendar year.

NEW SECTION. **Sec. 8.** TAX CREDIT FOR SIMILAR TAXES PAID TO ANOTHER STATE. (1) An individual is allowed a credit against the tax otherwise due under this chapter for the amount of any excise tax imposed on income earned by the individual on the basis of employment in another state or a business, trade, or profession carried on in another state, including another state's excise tax imposed on the distributive share of income

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of a pass-through entity, of which the individual is a shareholder, partner, or member.

(2) The credit authorized under this section is for federal adjusted gross income derived from sources in another state related to employment, business activities, or both, occurring within another state that would otherwise be subject to tax under this chapter for the same taxable year.

(3) The credit authorized under this section may not exceed the amount of tax that would otherwise be due under this chapter on the federal adjusted gross income of the taxpayer derived from sources in another state.

(4) To substantiate the credit allowed under this section, the taxpayer must submit a copy of any return or returns filed with such other state or any other documentation, as required by the department, establishing payment to the other state of any excise taxes on income.

(5) A credit is not allowed under this section if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this chapter.

(6) If an interest in a pass-through entity was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal income tax purposes.

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

(a) “Excise tax imposed on income” means a tax imposed on an individual or pass-through entity, which includes:

(i) A direct tax imposed upon the income for the taxable year of the individual or pass-through entity; and

(ii) Any other excise or franchise tax that is measured by the income for the taxable year of the pass-through entity.

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(b) "Measured by income for the taxable year of the pass-through entity" means that the base for the tax:

(i) Includes:

(A) Revenue from sales;

(B) Revenue from services rendered; and

(C) Income from investments; and

(ii) Permits a deduction for one or both of the following:

(A) The cost of goods, inventory or products with respect to revenue from sales; or

(B) The cost of services rendered with respect to revenue from services rendered.

(c) "State" means any state of the United States, the District of Columbia, or any possession or territory of the United States.

NEW SECTION. **Sec. 9.** GENERAL RULE FOR APPORTIONING NONRESIDENT WAGE INCOME TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of adjusted gross income derived from compensation for employment within the state of Washington, regardless of the location of the employer.

(2) Compensation for services performed by a nonresident as part of their employment shall be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation shall be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) Employers must maintain records sufficient to substantiate the allocation of income to this state and shall report such income to the department in a form and manner

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required by the department for employees that are reasonably assumed to be subject to the tax under this chapter.

NEW SECTION. **Sec. 10.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state shall be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to Washington that the department determines to be fair and equitable.

(3) The following definitions apply to this section unless the context clearly requires otherwise:

(a) “Compensation” means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) “Duty days” means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the

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professional athletic team competes or is scheduled to compete during the tax year.

(b) “Member of a professional athletic team” means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $10,000,000 in a tax year.

(4)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (4) shall include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made.

(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(5) The report must be filed with the department on or before April 15 following the year for which the report is being made or at another time as the department may require by rule.

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NEW SECTION. **Sec. 11.** APPORTIONING AND ALLOCATING WASHINGTON SOURCE INCOME FOR A NONRESIDENT BASED ON BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) Washington source income for a nonresident derived from a business, trade, or profession carried on in this state shall be apportioned and allocated based on a sales factor as described in subsections (2) and (4) of this section.

(2) The sales factor is a fraction, the numerator of which is the total sales of a pass-through entity or sole proprietorship apportioned to this state during the tax period, and the denominator of which is the total sales of the pass-through entity or sole proprietorship everywhere during the tax period.

(3) Sales of tangible personal property are apportioned to this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

(c) Sales, other than sales of tangible personal property, are apportioned to this state if:

(i) The income-producing activity is performed in this state; or

(ii) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

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(4) All other income of the taxpayer conducting a business, trade, or profession in Washington is allocated to this state using the total sales factor. "Total sales factor" means the total sales of tangible personal property and other income-producing activity apportioned to Washington, as determined under subsection (3) of this section, divided by the total sales of tangible personal property and other income-producing activity everywhere, as determined under subsection (3) of this section.

(5) If the allocation and apportionment provisions of subsections (2) through (4) of this section do not fairly represent the extent of a pass through entity's or sole proprietorship's business activity in this state, the taxpayer may petition the department, or the department may require, an alternate method of allocation and apportionment that may use:

(a) Separate accounting;

(b) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(c) The employment of any other reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

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NEW SECTION. **Sec. 12.** TAX IS IN ADDITION TO OTHER TAXES. The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same receipt of income, including the taxes imposed in, or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

NEW SECTION. **Sec. 13.** CREDIT FOR B&O TAXES. (1) Beginning in tax year 2028 with taxes due in 2029, to avoid taxing the same adjusted gross income under both the business and occupation tax and excise tax under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 RCW. The credit is equal to the amount of tax imposed under chapter 82.04 RCW on such gross income of the business.

(2) The credit under this section is earned in regards to income reportable for federal income tax purposes, and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 14.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

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(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income, but not limited to, form W-2, form 1099-INT, form 1099-DIV, 1099-NEC, 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the

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due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department

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for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taypayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taypayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (8), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

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(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (8) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the

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year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (8) of this section.

NEW SECTION. **Sec. 15.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow Title 26 U.S.C. Sec. 6015.

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(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 16.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

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NEW SECTION. **Sec. 17.** TAX EVASION. (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 18. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day

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of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 14 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from

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the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of

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misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 19. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of

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the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the

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filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

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(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 14 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

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Sec. 20. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the

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department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a

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deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

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(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW

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82.87.040. As used in this section, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If a taxpayer substantially underpays an estimated payment of tax imposed under section 4 of this act pursuant to section 14(3) of this act, there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under section 4 of this act. As used in this section, "substantially underpaid" means that an individual's estimated payment for taxes imposed under section 4 of this act was less than 80 percent of the actual tax due, and at least $1,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) or section 14(3) of this act and the confirmation of an extension of the filing due date required under RCW 82.87.110(5) or section 14(5) of this act.

Section. 21.

RCW 1.90.100

Personal income tax prohibition.

(1)Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

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(2) Subsection (1) of this section does not apply to the tax authorized in chapter . . . RCW (sections 1 through 17 and 22 through 24 this act).

NEW SECTION. **Sec. 22.** The working families tax credit support account is hereby created in the state treasury. All receipts specified under section 3(1)(b) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to fund the working families tax credit under RCW 82.08.0206.

NEW SECTION. **Sec. 23.** (1) The state property tax relief account is hereby created in the state treasury. All receipts specified under section 3(1)(c) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Moneys in the account must be transferred to the general fund to offset the estimated fiscal year impact from the state property tax relief provided in this section.

(2) By September 1, 2029, and by September 1 of each year thereafter, the state treasurer shall notify the department of the balance in the state property tax relief account as of the 15th day of the preceding month.

(3) By December 1, 2029, and by December 1 of each year thereafter, the department must lower the state property tax rate imposed under RCW 84.52.065(2)(a) for property tax collections in the subsequent calendar year. The tax rate shall be reduced by an amount necessary to reduce collections equivalent to the balance in the state property tax relief account determined under subsection (2) of this section.

(4) The state treasurer shall make transfers to the general fund under this section by June 15 and August 15 beginning in calendar year 2030.

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NEW SECTION. **Sec. 24.** (1) The city and county funding stabilization account is hereby created in the state treasury. All receipts specified under section 3(1)(d) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for distributions to cities and counties.

(2) By September 1, 2029, and by September 1 of each year thereafter, the state treasurer shall distribute:

(a) 50 percent of available funds in the city and county funding stabilization account to all cities on a pro rata basis using population; and

(b) The remaining funds in the city and county funding stabilization account to all counties on a pro rata basis using population.

(3) Each city shall receive a share of available funds equal to the proportion that its estimated population bears to the estimated total population of the state within incorporated areas.

(4) Each county shall receive a share of available funds equal to the proportion that its estimated population within its unincorporated area bears to the estimated total population of the state within unincorporated areas.

(5) For the population determinations under this section, the most recent April 1 estimate of population by the office of financial management shall be used. For the purpose of this section, the term “cities” includes a cities and towns.

NEW SECTION. **Sec. 25.** Sections 1 through 17 and 22 through 24 of this act constitute a new chapter in Title 82 RCW.

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Thursday, February 19, 2026 5:49 PM
To: Jensen, Dan (ATG)
Subject: quick research for meeting tomorrow

Key language from Druker v. Commissioner, 697 F.2d 46 (2d Cir. 1982), in which Second Circuit held that "marriage penalty" in federal income tax code did not violate the constitution:

> The 1969 reform spawned a new class of aggrieved taxpayers—the two wage-earner married couple whose combined tax burden, whether they chose to file jointly under § 1(a) or separately under § 1(d), was now greater than it would have been if they had remained single and filed under § 1(c). It is this last phenomenon which has been characterized, in somewhat loaded fashion, as the "marriage penalty" or "marriage tax".[2] Here, again, while constitutional attack has been unavailing, see *Johnson v. United States*, 422 F.Supp. 958 (N.D.Ind.1976), *aff'd per curiam sub nom. Barter v. United States*, 550 F.2d 1239 (7 Cir.1977), *cert. denied*, 434 U.S. 1012, 98 S.Ct. 725, 54 L.Ed.2d 755 (1978); *Mapes v. United States*, 576 F.2d 896 (Ct.Cl.), *cert. denied*, 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), as well as the decision here under review, Congress has acted to provide relief. The Economic Recovery Tax Act of 1981, Pub.L. No. 97–34, § 103, 95 Stat. 172, 187, allows two-earner married couples a deduction from gross income, within specified limits, equal to 10% of the earnings of the lesser-earning spouse.
>
> Subsequent to the decisions in *Johnson* and *Mapes*, the Supreme Court made explicit in *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978), what had been implicit in earlier decisions, that the right to marry is "fundamental". The Court, however, citing *Califano v. Jobst*, 434 U.S. 47, 98 S.Ct. 95, 54 L.Ed.2d 228 (1977), took care to explain that it did "not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed." 434 U.S. at 386, 98 S.Ct. at 681. Whereas differences in race, religion, and political affiliation are almost always irrelevant for legislative purposes, "a distinction between married persons and unmarried persons is of a different character". *Jobst, supra*, 434 U.S. at 53, 98 S.Ct. at 99. "Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status." *Id.*
>
> We do not doubt that the "marriage penalty" has some adverse effect on marriage; indeed, James Druker stated at argument that, having failed thus far in the courts, he and his wife had solved their tax problem by divorcing but continuing to live together. The

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adverse effect of the "marriage penalty", however, like the effect of the termination of social security benefits in *Jobst*, is merely "indirect"; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual. See generally, Developments in Law—The Constitution and the Family, 93 Harv.L.Rev. 1156, 1255 (1980). The tax rate structure of I.R.C. § 1 places "no direct legal obstacle in the path of persons desiring to get married". *Zablocki*, *supra*, 434 U.S. at n. 12, 98 S.Ct. at 681 n. 12. Nor is anyone "absolutely prevented" by it from getting married, *id.* at 387, 98 S.Ct. at 681. Moreover, the "marriage penalty" is most certainly not "an attempt to interfere with the individual's freedom [to marry]". *Jobst*, *supra*, 434 U.S. at 54, 98 S.Ct. at 99. It would be altogether absurd to suppose that Congress, in fixing the rate schedules in 1969, had any invidious intent to discourage or penalize marriage—an estate enjoyed by the vast majority of its members. Indeed, as has been shown, the sole and express purpose of the 1969 reform was to provide some relief for the single taxpayer. See S.Rep. No. 552, *supra*, at 260–261. Given this purpose Congress had either to abandon the principle of horizontal equity between married couples, a principle which had been established by the 1948 Act and the constitutionality of which has not been challenged, or to impose a "penalty" on some two-earner married couples. It was put to this hard choice because, as Professor Bittker has shown, *supra*, 27 Stan.L.Rev. at 1395–96, 1429–31, it is simply impossible to design a progressive tax regime in which all married couples of equal aggregate income are taxed equally and in which an individual's tax liability is unaffected by changes in marital status.[3] . . . . Faced with this choice, Congress in 1969 decided to hold fast to horizontal equity, even at the price of imposing a "penalty" on two-earner married couples like the Drukers. There is nothing in the equal protection clause that required a different choice. Since the objectives sought by the 1969 Act—the maintenance of horizontal equity and progressivity, and the reduction of the differential between single and married taxpayers—were clearly compelling, the tax rate schedules in I.R.C. § 1 can survive even the "rigorous scrutiny" reserved by *Zablocki* for measures which "significantly interfere" with the right to marry. Cf. *Johnson*, *supra*, 422 F.Supp. at 973–74. Clearly, the alternative favored by the Drukers, that married persons be permitted to file under § 1(c) if they so wish, would entail the loss of horizontal equity.

In the area of family taxation every legislative disposition is "virtually fated to be both overinclusive and underinclusive when judged from one perspective or another". The result, as Professor Bittker has well said, is that there "can be no peace in this area, only an uneasy truce." 27 Stan.L.Rev. at 1443. Congress must be accorded wide latitude in striking the terms of that truce. The history we have reviewed makes clear that Congress has worked persistently to accommodate the competing interests and accomplish fairness. While we could elaborate still further, we think that this, along with the discussion in *Johnson*, *Mapes*, and in Chief Judge Tannenwald's opinion below, is sufficient to show that what the Drukers choose to call the "marriage penalty" deprived them of no constitutional right.

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There is a similar discussion in *Johnson v. Pomeroy*, 294 F. App'x 397, 402–04 (10th Cir. 2008)

> Courts have subsequently applied the *Jobst*/*Zablocki* analysis to cases involving claims of impermissible interference with the right to marry. Following the Tax Reform Act of 1969, many two wage-earner married couples were subjected to the "marriage penalty," where their combined tax burden, whether they chose to file jointly or separately, was greater than it would have been if they had remained single and filed as single taxpayers. In *Druker v. Commissioner of Internal Revenue*, 697 F.2d 46 (2d Cir.1982), *cert. denied*, 461 U.S. 957, 103 S.Ct. 2429, 77 L.Ed.2d 1316 (1983), the plaintiff taxpayers alleged that the "marriage penalty" was unconstitutional. The Second Circuit had no doubt that the "marriage penalty" had some adverse effect on marriage, but concluded that the adverse effect, "like the effect of the termination of social security benefits in *Jobst*, is merely 'indirect'; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual." *Id.* at 50, 98 S.Ct. 95. The challenged tax rate structure placed no direct legal obstacle in the path of persons desiring to get married, it did not absolutely prevent anyone from getting married, and it did not attempt to interfere with the individuals' freedom to marry. The Second Circuit concluded that the "marriage penalty" did not deprive the Drukers of a constitutional right. *Id.* at 51, 98 S.Ct. 95.
>
> Similarly, in *Mapes v. United States*, 217 Ct.Cl. 115, 576 F.2d 896 (1978), *cert. denied*, 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), the United States Court of Claims held that the tax rates resulting in the "marriage penalty" were constitutional.
>
> > The additional tax liability suffered by two-income couples who cannot avail themselves of the rates for single persons is an indirect burden on the exercise of the right to marry. It is suffered not for marrying but for marrying one in a particular income group. This does not rise to the level of an 'impermissible' interference with the enjoyment of a fundamental right.
>
> 576 F.2d at 901. "[T]he elevated tax burden might in fact dissuade some couples from entering into matrimony, but does not present an insuperable barrier to marriage." *Id.* Strict scrutiny is appropriate only where the obstacle to marriage "operates to preclude the marriage entirely for a certain class of people." *Id.*
>
> We have previously considered and rejected a claim similar to the Johnsons'. In *Martin v. Bergland*, 639 F.2d 647 (10th Cir.1981), the appellants, husband and wife, challenged a regulation promulgated by the Secretary of Agriculture that defined a husband and wife as a single person for purposes of a statute limiting farm subsidy payments to $20,000 per person. In 1973, Congress directed the Secretary to define the term "person" in order to limit farm subsidy payments to farmers who kept their land idle. Appellants argued that the Secretary's refusal to pay farm subsidy payments to both of them solely because of

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their marriage denied them equal protection of the laws under the Fifth Amendment. Using the principles outlined in *Jobst* and *Zablocki,* we determined that the regulation was not such a direct and substantial burden on the freedom to marry that it should be strictly scrutinized. *Id.* at 649. We upheld the regulation under the rational basis test, finding that the husband-wife rule rationally furthers Congress' interest in limiting farm subsidy payments. *Id.* at 650.

We agree with the district court that the Johnsons have not established an impermissible interference with the right to marry or associate with family. Like the "marriage penalty" discussed in *Druker* and *Mapes,* and the farm subsidy regulation considered in *Martin,* the Employees' interpretation and application of the Wyoming statute did not present a direct legal obstacle in the path of persons desiring to get married. Nor did it absolutely prohibit a class of persons from getting married. Moreover, there is no plausible indiction that the denial of Mr. Johnson's claim for extended PTD benefits was an attempt to interfere with the Johnsons' freedom to make a decision as important as marriage. While the Johnsons may have suffered an indirect burden on their marriage, there was no direct and substantial burden on their freedoms to marry and to associate with family.[5]

My initial takeaway is that a court would likely hold that the marriage penalty in the Millionaire Tax does not "significantly interfere" with the right to marry and, therefore, is subject to rational basis review. However, it would certainly help if we could articulate a solid reason for the Legislative choice, was the case in *Drukers* and *Johnson v. Pomeroy*.

Regardless, keeping the marriage penalty creates another constitutional challenge that the tax must overcome. In my view, that is not a fight worth having as the important constitutional issue is to get Culliton overturned.

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Wednesday, February 18, 2026 4:01 PM
To: Jensen, Dan (ATG)
Subject: RE: DSHS technical concern with 6346

My only additional comments is that in section (2) whether "due process for all parties" should be changed to "appeal process"

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, February 18, 2026 1:59 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: DSHS technical concern with 6346

Chuck,

L&P is asking for our input on the proposed language below. I highlighted a few edits and one comment. Do you have anything else to add?

Dan

From: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Sent: Wednesday, February 18, 2026 11:59 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Cc: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Subject: FW: DSHS technical concern with 6346

[EXTERNAL]

Hi Dan,

DSHS has asked to develop language to include in ESSB 6346 that allows for income tax refund garnishment in support child support as required in 42 U.S. Code § 666. Given the time constraints of this request and the strong desire to codify something this year, Exec. decided to take the approach of providing for garnishment in statute but developing the process through rulemaking.

Can you please review the language below and let us know your feedback by 3pm tomorrow (2/19)? Our deadline to provide this language is COB 2/19, so we welcome any proposed solutions to concerns you identify. I've included the email string leading to this request below for more background in the event it proves helpful.

> New Section. Section 712 CHILD SUPPORT ENFORCEMENT: *[This would be codified as a new section in a new chapter under Title 82 along with the other income tax sections created in the bill]*

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(1) The department of social and health services and the department of revenue are authorized to enter into an agreement whereby the department of revenue may garnish a refund for excess payment of tax properly due under this chapter by a taxpayer for the purpose of child support owed by the same taxpayer, and remit such amount to the state's child support registry.

(2) The authority over child support administration, decisions regarding the~~y~~ identity of child support obligors, the amount child support obligors owe, due process for all parties [Comment: not sure what this includes. Could be more specific.], and issuing final administrative garnishment orders, must remain with the department of social and health services.

(3) A final administrative garnishment order~~s~~ sent to the department of revenue under this section is limited to ordering the amount of the obligor's refund to be transferred to the child support registry. Such order sent to the department of revenue may not order? any other demand for action by the department of revenue without both prior approval of a court of competent jurisdiction and proper notice required for all court proceedings seeking additional relief.

(4) The department of revenue is ~~must~~ not ~~be~~ required to defend any claim against the garnishment of a refund under this section except against a claim that the department of revenue improperly carried out its obligations under a final administrative garnishment order or related court instruction, or both.

(5) The department of social and health services and department or revenue may adopt rules as may be necessary to administer this section pursuant to their rule making authority.

(6) Nothing in section may be construed as permitting the department of revenue from disclosing return or tax information outside what is authorized under RCW 82.32.330.

Thanks!
Jack

From: Brumbaugh, Jack (DOR)
Sent: Wednesday, February 18, 2026 6:31 AM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Subject: RE: DSHS technical concern with 6346

FWIW, I would also have concerns around sharing language that hasn't been fully vetted by the divisions (including the IGO) and possibly the AGO. This response from DHSH makes me think the IGO really need to get involved.

> It makes sense to figure out between the two agencies (in the next few years) a way for DOR to send DCS the names and SSNs of individuals who pay the millionaire's tax so we can match them to paying parents in our caseloads, determine if the paying parent is behind in their child support, and so forth. If DOR can winnow the names they send to us down to those who are due (or have applied) for a refund of the income tax, so much the better. Again, following the principle of matching the smaller data set to the bigger one.

From: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Sent: Tuesday, February 17, 2026 8:13 PM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>; Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>
Subject: Fw: DSHS technical concern with 6346

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J&J,

OFM said that if we can get the language right now as as opposed to next session, let's try for it. Can we discuss at huddle tomorrow whether we think, based on DSHS's responses to our concerns, we think we can turn revisions around very quickly? (And obviously, we'd still have subsequent sessions to finetune.) If a rush job is not realistic, then we can just stick to Plan A of addressing the language fully with them in the interim.

Thanks,
Steve

From: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>
Sent: Friday, February 13, 2026 3:25:20 PM
To: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>; Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>; Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>; Turnbaugh, Monica (DSHS/ESA/DCS) <Monica.Turnbaugh@dshs.wa.gov>
Subject: RE: DSHS technical concern with 6346

Thank you, Steve.

I appreciate this feedback and in response, my DCS colleagues in ESA have provided the below green answers. Some of the amendatory language was based on assumptions made by DCS based on federal tax offset procedures and Oregon's procedures. We are happy to work with you on any adjustments to language.

Jon Noski / Senior Director of Legislative Affairs
Washington State Department of Social and Health Services
jon.noski@dshs.wa.gov

From: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Sent: Friday, February 13, 2026 12:00 PM
To: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>; Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>; Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Cc: Armstrong, Kate (DOR) <KateA@DOR.WA.GOV>
Subject: Re: DSHS technical concern with 6346

Jon et al.,

I understand that DSHS is keen to get language in 6346, and so to that end, DOR does not want to be a hurdle. However, I want to be clear that DOR has concerns with DSHS's language and that in return for not holding up efforts now to work on it, we would like to reconvene with DSHS in the interim to talk about refining the language. I'm sure there will be no shortage of opportunity to revise the tax on income next year.

Some immediate things that jumped out at us:

- On the first page, (2) outlines a plan "to refer the case to the department of revenue." DOR is not equipped to handle child support cases. DOR is willing to facilitate the transfer of obligor money to the child support registry

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upon request from DSHS. However, DOR does not want to adjudicate to whom and how much child support is granted.

In no way is Division of Child Support asking DOR to work child support cases, only to do the one enforcement action: offset state income tax refunds of the names/SSNs we send to them. As noted in the meeting we had a few days ago, DCS expects the Venn Diagram of paying parents who owe back support and people due a refund under the millionaire's tax to be pretty small.

In any offset scheme, there is going to need to be a match between DCS cases and folks who paid the millionaire's tax and of those, who is due a refund. Otherwise, DCS will just be shooting in the dark, which won't be efficient for either agency. The match could happen on the DOR side, or it could come on the DCS side.

For example, in the federal tax refund offset program (FTRO), DCS sends data on ALL qualifying cases to the federal Office of Child Support Enforcement (OCSE), who do a data match on their end with taxpayers who are due a refund. OCSE then send DCS the offset dollars and DCS distributes those monies to the appropriate child support case or cases. (In the case of FTRO, DCS has the smaller data set being sent to be matched with a much bigger data set. Plus, the IRS is very protective of their data.

It makes sense to figure out between the two agencies (in the next few years) a way for DOR to send DCS the names and SSNs of individuals who pay the millionaire's tax so we can match them to paying parents in our caseloads, determine if the paying parent is behind in their child support, and so forth. If DOR can winnow the names they send to us down to those who are due (or have applied) for a refund of the income tax, so much the better. Again, following the principle of matching the smaller data set to the bigger one.

- On the first page, (4) amends the DSHS statute, but within the DSHS statute orders DOR to block parents from applying withholding amounts to future taxes owed. Again, that places DOR in the position of adjudicating disputes. DOR would like to limit its participation to transferring funds to the child support registry after DSHS has already made a final determination of the identity of the obligor and the specific amount to transfer.

The provision about not applying refunds to future taxes in the amendatory language mimics Oregon's statutes, based on their laws that allow the taxpayer to check a box and have any refund applied to next year's income tax liability. If the person has been certified to Oregon Department of Revenue by the Oregon Department of Justice as owing back child support, they do not have that option. The refund must be offset for back child support rather than applied to next year's tax liability. If Washington DOR is not allowing folks to apply any refunds to future tax liability, then that can be stricken.

- On the second page, (2) places the responsibility on DOR to decide which parent is entitled to what share of the withholding money. DOR cannot adjudicate child support disputes. DOR will agree to transfer money after a final decision by, and upon request from, DSHS.

Since the bill allows joint filers, DCS has been operating under the assumption there would be a way for the person's spouse to say a portion of the state tax refund should not be offset to pay any of their spouse's separate obligations, such as past due child support. The provisions in the amendatory language are about the taxpayer's current spouse, who (usually) is not the person who is named the custodial parent/payee on the child support case.

The IRS allows the "injured spouse" to claim a share of a refund, and the amendatory language modeled Oregon's similar "injured spouse" process for their state income tax refund offset. Washington is a community property state, so we assume it would be a straight 50% of the refund that the injured spouse could claim. (That's how injured spouse for federal tax refund offset is calculated for Washington filers.)

Ideally, taxpayers file for injured spouse allocation at the same time they file their federal tax return, but often they don't and the injured spouse claim comes after DCS already has possession of the offset dollars. Federal rules allow us to hold a joint refund up to 180 days, in case of a late filing. Injured spouse allocation impacts the amount of the federal offset DCS can distribute to the paying parent's child support case or cases. The IRS

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claws back the injured spouse's portion, which has much less impact on DCS and the parent who is supposed to receive support if the offset dollars are still in the 180 day hold period.
Example: Chris Doe owes Blake Q. Public back child support. Chris pays the millionaire's tax with spouse Pat. Chris and Pat are due a refund. Pat files the state income tax equivalent of injured spouse. DOR lets DCS know that Pat filed an injured spouse claim. DCS is able to code our case in time before any money goes out the door while whatever injured spouse process in place at the time goes through its paces.
DCS is asking that in instances similar to the Doe/Public example above, where the current spouse has filed an "injured spouse" claim for part of the refund that would otherwise come to DCS as a state income tax refund offset, to let DCS know so we can code our cases appropriately so we don't unintentionally send money out the door to the child support payee and then have to try to collect it back from the child support payee as a receivable.
If no injured spouse claim process is planned, we could strike that portion.

- On the second page, (2) requires DOR to serve notice on parents regarding the application by the other spouse for half of the withholding. Service of process, and all due process, should be handled by DSHS.

DCS is not asking DOR to determine what the paying parent owes in back child support, nor how those funds would be distributed to the paying parent's case or cases. DCS would give DOR a number, and DOR would send DCS either the amount requested, or the entire refund, whichever is less. This is the purpose of the administrative review mentioned on page 1, subsection 2.
Through whatever data match process our two agencies develop, DOR tells DCS that Chris Doe has filed the millionaire's tax. DCS records show Chris Doe owes $20,000. DCS sends the advance written notice. Chris Doe asks for an administrative review and provides proof of $9500 in payments of which DCS had no prior knowledge. DCS adjusts the debt on the case accordingly. DCS sends to DOR: Chris Doe, SSN XXX-XX-XXXX, $10,500. If Chris is eligible for a refund of $8000, DOR would offset $8000 and send it to DCS to be distributed to Chris's child support case.

- The proposal does not address the handling of out-of-state child support orders.

Whether the order was issued by a court in a different jurisdiction is not relevant to this bill, only that the debt is enforceable. Any debt that DCS certifies to DOR would be enforceable because the order was issued in Washington and contains the appropriate enforcement language (as required by RCW 26.23.050), we have served a Notice of Support Debt and Demand for Payment under RCW 74.20A.040 directing all payments to the Washington State Support Registry, or we have registered the order for enforcement under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

Alternatively, we might suggest adding a section to the bill authorizing DSHS and DOR to work on a process:

> New Section. Section 712
> CHILD SUPPORT ENFORCEMENT: The department of social and health services and the department of revenue are authorized to enter into an agreement whereby the department of revenue may garnish taxpayer withholding for the purpose of child support, and remit that revenue to the state's child support registry. Each department is granted rulemaking authority to implement this plan. The department of social and health services must retain all authority over child support administration, decisions regarding child support obligors, how much those obligors owe, due process for all parties, and issuing final administrative orders. Garnishment orders sent to the department of revenue are limited to ordering the amount of the obligor's withholding to transfer to the child support registry. Administrative garnishment orders sent to the department of revenue may order no other action by DOR without prior approval of a court, with notice required for all court proceedings seeking additional relief.

Not sure if that has enough specificity to it to check whatever box DSHS needs to check with the feds on this front.

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Thanks for allowing us to weigh in,

Steve Ewing
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New: Resources for lawmakers and legislative staff:
dor.wa.gov/legislative-resources

From: Noski, Jon (DSHS/FTAA/OLA) <jon.noski@dshs.wa.gov>
Sent: Thursday, February 12, 2026 5:19 PM
To: Driver, Debbie (GOV) <Debbie.Driver@gov.wa.gov>; Sawyer, Sheri (OFM) <Sheri.Sawyer@ofm.wa.gov>; Huang, Grace (GOV) <Grace.Huang@GOV.wa.gov>; Minor, Anna (OFM) <Anna.Minor@ofm.wa.gov>; Parascand, Matthew (DSHS/ESA/OAS) <Matthew.Parascand1@dshs.wa.gov>
Cc: Ewing, Steve (DOR) <SteveE2@DOR.WA.GOV>
Subject: DSHS technical concern with 6346

Debbie, Sheri, Grace, and Anna.

ESA has provided the attached language and following information for me to share regarding SB 6346. If our amendatory language is adopted there will be an indeterminate fiscal impact related to the costs of implementation. These would likely include forms and potential database changes, making sure this new collection source is distributed properly. We expect the group of paying parents who would be impacted is small, which limits implementation and administrative costs somewhat (e.g., no anticipated need for automation for initial implementation), but we still need to have the skeleton of the program in place to do things in a more manual fashion.

ESA has been in contact with DOR, also copied on this email, to share their perspective.

Please let us know if you have any questions.

Sincerely,
Jon

Jon Noski / Senior Director of Legislative Affairs
Washington State Department of Social and Health Services
jon.noski@dshs.wa.gov

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Mayer, Ellie (ATG)

From: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Sent: Friday, February 20, 2026 12:19 PM
To: Zalesky, Chuck (ATG)
Cc: Jensen, Dan (ATG); Samans, James (DOR)
Subject: RE: ESSB 6346 - apportionment

[EXTERNAL]

Thank you, Chuck!

The potential mismatch does seem problematic administratively. To add to the complexity, we expect individual passthrough owners to take B&O tax and PUT credits for income subject to those taxes at the passthrough entity level. I don't think our operating divisions raised concerns about Section 405 but I'm going to get this in front of them ASAP to see if they think we should pursue a tweak. As always, greatly appreciate the feedback!

Thanks!
Jack

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, February 20, 2026 12:02 PM
To: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Subject: ESSB 6346 - apportionment

External Email

Hi Jack.

Dan and I had a quick conversation today with Chris Kilduff regarding a question she had about ESSB 6346. At the end of the conversation, I mentioned that I had a concern with section 405 which relates to apportionment of income from business activity. It is more of an administrative concern than a legal concern, so I thought I'd run it by you. It may be that the DOR feels that section is administrable as written. If so, you can disregard my comments below.

Section 405 requires nonresidents that receive income from sole proprietorships or pass-through entities to determine the Washington source income (including distributive share) based on an apportionment method modeled on the Uniform Division of Income for Tax Purposes Act. I

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haven't looked to see how closely section 405 is aligned to the UDITPA language in RCW 82.56.010 Article V. But at a more fundamental level, section 405 as currently written will require the owner to compute an apportionment factor different from the single-factor sales apportionment computation the entity is required to make under RCW 82.04.460, .462. That adds an administrative burden to individuals that need to compute this different apportionment method and, I presume, on the Department's ability to administer the tax.

Also, section 405 is not exactly clear with respect to whether the "taxpayer" is the owner or the entity. As one example, 405(2) requires classification of income as business or non-business. If the owner is a passive partner in a multistate partnership, that owner might reasonably conclude that his/her distributive share is "non-business" income; because it is with respect to the owner. But with respect to the entity, that same income could (likely will) qualify as business income. As I read section 405(2), it is not clear to me whether business / nonbusiness is determined at the entity or owner level.

In my view, there is a simpler way to create a fair apportionment mechanism for income earned from a sole proprietorship or pass-through entity. It is not perfect, but worth some thought.

Essentially, the idea is to use the entities Washington apportionment percentage as computed under RCW 82.04.460, .462. For entities that file Washington B&O tax returns and the annual apportionment reconciliation, that factor should be known or knowable to the owner. For those entities that do not file Washington B&O tax returns, the owner will need to do a *pro forma* single-factor sales calculation, or something similar. So not a perfect fix as there is still some administrative burden on some owners. But the basic idea is that the owner's apportionment percentage is equal to the entity's apportionment percentage, which is in theory a more administrable approach.

If this is something L&P is interested in pursuing, I'd be happy to help in any way I can. Here is some language that can be used as a starting point.

> NEW SECTION. Sec. 405. GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business,

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trade, or profession carried on in this state, including a sole proprietorship and any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) In those circumstances were the nonresident receives income from a sole proprietorship or pass-through entity engaged in business in this state and that has filed excise tax returns with the state reporting an apportioned share of its gross income to the state for all or part of the entity's current or prior taxable year, the nonresident individual owner's Washington source income under this section is equal to the income received, including items of distributive share income and loss, multiplied by the entity's Washington apportionment factor for the current taxable year. PROVIDED, however, that if the entity's Washington apportionment factor for the current taxable year is not known or available to the nonresident owner, then that owner's Washington source income under this section is equal to the income received, including items of distributive share income and loss, multiplied by the entity's Washington apportionment factor for the immediately prior taxable year.

(3) In those circumstances where subjection (2) does not apply because the sole proprietorship or pass-through entity engaged in business in this state is not required to file excise tax returns with the state reporting an apportioned share of its gross income to the state in either the current or prior taxable year, the nonresident individual owner's Washington source income under this section is equal to the income received, including items of distributive hare income and loss, multiplied by the entity's pro forma Washington apportionment factor computed in accordance with RCW 82.04.462. The Department is authorized to implement rules for determining the pro forma Washington apportionment factor, consistent with this subsection (3).

(4) [definitions]

Let me know if you have questions, comments or concerns.

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4858.2/26 2nd draft

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to investing in Washington families and businesses to fund K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, and to reduce certain sales and use taxes and certain business and occupation taxes by establishing a tax on millionaires; amending RCW 82.32.050, 82.32.060, 82.32.090, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.34.080, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, 82.08.0206, 82.04.4451, 82.32.045, 82.04.288, and 1.90.100; amending 2023 c 456 s 3 (uncodified); adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new Title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that the state, through the state's general fund, invests in K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, all of which help Washingtonians succeed and thrive.

(2) These general fund dollars help the state meet its paramount duty to make ample provision for the education of all children in the state, including children who qualify for special education services, creating the opportunity for each child to succeed in school and achieve success in life.

(3) The general fund supports health care programs that deliver critical, life-saving medical care, provide support for those with developmental and other disabilities, offers long-term care for the elderly, and protects the long-term health and well-being of the public.

(4) Further, the general fund invests in higher education, including two and four-year colleges, apprenticeships, and other

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postsecondary education and training programs, ensuring Washington students remain competitive in the workforce and broader economy.

(5) The general fund also invests in human services that provide vital basic-needs assistance to the state's lowest-income households and educate the youngest learners.

(6) Therefore, the intent of this act is to maintain and preserve essential governmental services for Washingtonians, particularly within K-12 education, health care, higher education, and human services, and support working families by ensuring continued investment in the working families' tax credit by depositing revenues from this act into the general fund.

(7) The legislature further recognizes that reforming our tax code to be common sense, balanced, and sustainable is essential to the long-term economic success of Washington. The Washington tax structure, developed during the Great Depression, relies heavily on excise and consumption taxes, with consequences for equity, adequacy, and long-term fiscal stability that persist today. The legislature recognizes that more progress is needed for the state to have a fair and balanced tax system that can provide sustainable, ample funding for K-12 education, health care, higher education, human services, and other essential governmental services. Washington's tax system remains the second most regressive in the nation as it asks those with the least to pay the most as a percentage of their income. Low-income Washingtonians pay at least three times more in state and local taxes as a percentage of their income than the state's highest income households.

(8) Further, due to the action of the federal government through the passage of HR 1, Washington's highest-income households are set to receive an average federal tax break of $90,850 while Washington's lowest-income households are set to receive a mere $200. These tax breaks were largely funded through cuts to federal funding in health care and food security programs, negatively impacting Washington's working families.

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(9) Thus, the legislature intends to limit the tax established by this act to only individuals with annual adjusted gross income of $1,000,000 or more. Washingtonians with an annual adjusted gross income of less than $1,000,000 will not owe this tax. As a result, the millionaires' tax is estimated to affect only the wealthiest one-half of one percent of the households in this state, taking a significant step toward reducing the disproportionate reliance on working people to fund K-12 education, health care, higher education, human services, the working families' tax credit, and other essential governmental services to benefit Washingtonians.

(10) The legislature further intends to exempt certain sources of income from the tax including, but not limited to, the sale of qualified family owned small businesses and the sale of all residential and other real property.

(11) It is also the intent of the legislature to rebalance the tax system by reducing taxes on consumers and businesses through small business and other business and occupation tax credits, as well as by exempting from the retail sales tax essential household items such as personal care products.

(12) Thus, to help meet the state's paramount duty of amply providing every child in the state with an education and supporting the health and well-being of Washingtonians, it is the intent of the legislature, by adopting this act, insofar as possible, to:

(a) Impose a tax on those individuals with the greatest ability to pay, specifically those earning Washington adjusted gross income during the taxable year of at least $1,000,000;

(b) Make the Washington millionaires' tax law identical in effect to the provisions of the internal revenue code relating to the measurement of adjusted gross income of individuals, modified as necessary to achieve the goals and purpose of this act;

(c) Achieve this result by the application of the various provisions of the internal revenue code relating to the definition of income, exemptions and exclusions therefrom, accounting methods, basis, depreciation, and other pertinent provisions, subject to

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additional exemptions and modifications as provided in this act, resulting in a final amount called "Washington adjusted taxable income"; and

(d) Impose a tax on residents of this state measured by Washington adjusted taxable income wherever derived and to impose a tax on nonresidents measured by Washington adjusted taxable income from sources within this state.

(13) The legislature finds that, in 2024, Washington counties were responsible for more than 90 percent of the costs associated with public defense in the state, creating a system of legal representation that varies greatly depending on where a person lives in Washington state. While fully funding public defense is not the responsibility of the state, the state is responsible under the United States Constitution for ensuring the protection of the right to counsel for all defendants. Furthermore, the Washington state supreme court's decision to modify caseload standards in 2025 will significantly increase the overall cost of providing public defense in Washington state. Through the creation and funding of the local government public defense stabilization account, the legislature intends to provide funding to help counties meet their obligations.

PART I
DEFINITIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Capital asset" has the same meaning as provided in chapter 82.87 RCW.

(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under section 62 of the internal revenue code.

(4) "Individual" means a natural person.

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(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

(7) "Pass-through entity" means a disregarded entity for federal tax purposes, such as a partnership, limited liability company, or S corporation.

(8)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(9) "Taxable year" means the taxpayer's taxable year as defined under section 7701(a)(23) of the internal revenue code.

(10) "Taxpayer" means an individual receiving income subject to tax under this chapter.

(11) "Washington base income" means federal adjusted gross income as modified under sections 302 through 306 and 401 through 407 of this act.

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(12) "Washington taxable income" means Washington base income as further modified by sections 307 through 310 of this act.

NEW SECTION. **Sec. 102.** UNDEFINED TERMS—CONFORMITY WITH FEDERAL INTERNAL REVENUE CODE. Any term used in this chapter has the same meaning as when used in a comparable context in the internal revenue code, unless a different meaning is clearly required or the term is specifically defined in this chapter.

PART II
DETERMINATION OF TAX

NEW SECTION. **Sec. 201.** TAX IMPOSED—RATES. (1) Beginning January 1, 2028, a tax is imposed on the receipt of Washington taxable income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryover for use in the calculation of that individual's Washington taxable income, for any taxable year. To the extent that a loss carryforward is included in an individual's adjusted gross income and the loss carryforward is derived from or connected with sources in this state, the loss carryforward is included in the calculation of that individual's Washington taxable income.

NEW SECTION. **Sec. 202.** DISTRIBUTION OF TAX REVENUES. (1) Taxes collected under this chapter must be deposited as follows:

(a) Seven percent to the local government public defense funding stabilization account created in section 711 of this act; and

(b) The remainder to the state general fund to fund the sales and use tax relief in sections 903 and 904 of this act, the working families' tax credit program, including its expansion in section 901

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of this act, and the business and occupation tax relief in sections 905 and 906 of this act.

(2) All interest and penalties collected under this chapter must be deposited in the state general fund.

NEW SECTION. **Sec. 203.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this chapter for the amount of any income tax paid to another state, or political subdivision of the state, on income taxed under this chapter, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes paid to the other jurisdiction on net income from sources within that jurisdiction that is included in the individual's Washington base income; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this chapter before application of credits allowable by this chapter, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

NEW SECTION. **Sec. 204.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2028 with taxes due

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in 2029, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW. The credit is equal to the amount of tax paid under chapter 82.04 or 82.16 RCW for income included in both the calculation of the tax paid under chapter 82.04 or 82.16 RCW and the tax imposed under this chapter.

(2) The credit under this section is earned in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 205.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2028 with taxes due in 2029, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 206.** CREDIT FOR PASS-THROUGH ENTITY TAX PAYMENTS. Beginning in tax year 2028 for taxes due in 2029, a credit is allowed against taxes due under this chapter for the amount of the tax expense incurred by a pass-through entity under section 502 of this act attributable to the owner as provided in section 502(3) of this act. For a resident, the credit under this section must be reduced by the amount of any credit claimed under section 203 of this act based on the same Washington taxable income.

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NEW SECTION. **Sec. 207.** CARRYFORWARDS AND CARRYBACKS. The amount of tax credits received by any taxpayer under sections 203 through 206 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

PART III
ADJUSTED GROSS INCOME MODIFICATIONS

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 407 of this act, unless the modification has the effect of duplicating an item of income or deduction. If an item of income is excluded from federal adjusted gross income, including income derived directly from treaty-protected tribal rights, it is excluded from the tax under this chapter unless specifically included as provided in sections 302 through 306 of this act.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3)

applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this

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state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** CHARITABLE CONTRIBUTIONS. In determining a taxpayer's Washington taxable income, the taxpayer may deduct from their Washington base income the amount of charitable contributions they claimed for the taxable year under section 170 of the internal revenue code, up to a maximum deduction of $100,000 per individual, or in the case of spouses or domestic partners, their combined charitable deduction is limited to $100,000, regardless of whether they file joint or separate returns.

NEW SECTION. **Sec. 308.** PASS-THROUGH ENTITY TAX PAYMENTS. In computing a taxpayer's Washington taxable income, the taxpayer must add to the taxpayer's Washington base income the taxpayer's distributive share of the tax expense incurred by a pass-through entity under section 502 of this act to the extent the expense has been deducted in calculating the taxpayer's federal adjusted gross income.

NEW SECTION. **Sec. 309.** In determining a taxpayer's Washington taxable income, the taxpayer may deduct from the taxpayer's Washington base income the amount deposited in a capital construction fund under section 7518 of the internal revenue code if the amount has reduced the taxpayer's federal taxable income for the taxable year.

NEW SECTION. **Sec. 310.** ONE MILLION DOLLAR STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or

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domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 312 of this act. The standard deduction must be adjusted for nonresidents as provided in section 311 of this act.

NEW SECTION. **Sec. 311.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 310 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income. The denominator of the fraction is the individual's federal adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 312.** INDEX FOR INFLATION. (1) Beginning October 2029 and each October thereafter, the department must adjust the standard deduction under section 310 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

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(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

PART IV
DIVISION OF INCOME

NEW SECTION. **Sec. 401.** ALLOCATION AND APPORTIONMENT OF INCOME. (1) For resident individuals, all income must be allocated to this state.

(2) For nonresident individuals, income derived from sources within this state must be allocated to this state. Income derived from sources within this state means:

(a) Wages and other compensation from employment within this state as provided in section 403 of this act;

(b) Compensation attributable to professional athletics as provided in section 404 of this act;

(c) Income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness as provided in section 407 of this act;

(d) Amounts attributable to any business, trade, profession, or occupation carried on within this state, including an individual's distributive share of income from a pass-through entity operating within this state as provided in section 402 of this act, to the extent determined under section 405 of this act;

(e) Rents, short-term gains, and other amounts attributable to the ownership or disposition of any interest in real or tangible personal property in this state; and

(f) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, to the extent that the intangible

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personal property was employed in a business, trade, profession, or occupation carried on within this state.

(3) Deductible expenses, capital losses, and net operating losses of a nonresident are based solely on income, gains, losses, and deductible expenses derived from or connected with sources in this state but are otherwise determined in the same manner as the corresponding federal deductions except as provided in this chapter.

(4) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

NEW SECTION. **Sec. 402.** PASS-THROUGH ENTITIES—DISTRIBUTIVE SHARE. (1) Income derived from sources within this state include an apportioned share of the individual's distributive share of income, gains, losses, and deductions from pass-through entities that operate in the state, as provided in subsection (2) of this section.

(2) The tax due under this chapter for partners, members, or shareholders of a pass-through entity are computed by including a pro rata share of the Washington base income and the credits allowed under sections 203 through 205 of this act, if the modification or credit relates to the income of the pass-through entity. Each member's, partner's, or shareholder's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the member's, partner's, or shareholder's distributive share of pass-through income. The denominator of the fraction is the total income of the pass-through entity. The fraction may never be greater than one.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

(b) "Pro rata share" means pro rata share as reflected on the member's, partner's, or shareholder's federal schedule K-1 form.

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NEW SECTION. **Sec. 403.** GENERAL RULE FOR ALLOCATING NONRESIDENT INCOME DERIVED FROM COMPENSATION TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of federal adjusted gross income derived from employment within the state of Washington, regardless of the location of the commercial domicile of the employer.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

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NEW SECTION. **Sec. 404.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

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(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including a sole proprietorship and any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) Income from a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state,

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must be classified as either apportionable income or nonapportionable income.

(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used

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in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

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(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b) must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's

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reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

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(7)(a) Short-term capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Short-term capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Short-term capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

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(a) "Apportionable income" means:

(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means a pass-through entity or individual conducting business activity in the state of Washington.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

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(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain, loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

NEW SECTION. **Sec. 407.** ALLOCATION AND APPORTIONMENT OF NONRESIDENT STUDENT ATHLETE INCOME. (1) The portion of adjusted gross income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness is allocated to this state if the publicity services provided by the student athlete related to such commercial use of the student athlete's name, image, or likeness primarily occur in Washington.

(2) The portion of adjusted gross income of a nonresident student athlete derived from payments by an institution of higher education representing a percentage of institutional athletic

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revenues shall be apportioned to Washington in a form and manner consistent with a duty-day methodology. By January 1, 2028, the department shall submit proposed legislation to the legislature that would implement an apportionment methodology as specified under this subsection (2).

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

(a) "Commercial use" means the use of an individual's name, image, or likeness for advertising, selling, or soliciting purchases of products, goods, or services.

(b) "Name, image, or likeness" means an individual's readily identifiable name, voice, signature, photograph, or likeness.

(c) "Publicity services" includes, but is not limited to, the following activities: Appearing in photoshoots; filming commercials; recording audio endorsements; posting sponsored content on social media platforms; attending promotional events; either wearing or using, or both, branded products; and granting rights by the student athlete to use the student athlete's name, image, or likeness in either advertisements or online campaigns, or both.

(d) "Student athlete" means an individual who is enrolled at an institution of higher education and eligible to engage in any varsity intercollegiate athletics program at the institution.

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PART V

ESTIMATED TAX PAYMENTS AND PASS-THROUGH ENTITY TAX ELECTION

NEW SECTION. **Sec. 501.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this chapter that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this chapter.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of

estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax unless the estimated tax remitted to the department is either at least 90 percent of the tax shown on the return required under section 702(1) of this act or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

(6) Estimated payments are not required under this section before July 1, 2029.

NEW SECTION. **Sec. 502.** PASS-THROUGH ENTITY TAX ELECTION. (1)(a) Beginning January 1, 2028, a tax is imposed at a rate of 9.90 percent of the taxable income of an electing entity for each taxable year in which an election under this section is in effect.

(b) The tax is paid by the electing entity.

(2)(a) A pass-through entity may elect to be subject to the tax imposed under this section by filing an election with the department on or before the due date prescribed by the department for making such election, but no later than April 15th.

(b) The election is made annually and is irrevocable for the taxable year once filed.

(c) The election must be made by: (i) In the case of a partnership or limited liability company, any person authorized to

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sign the entity's return; and (ii) in the case of an S corporation, an officer authorized to sign the return.

(3)(a) The taxable income of an electing entity consists of:

(i) The entire distributive share of income, gain, loss, and deduction attributable to resident owners, regardless of source; and

(ii) The state source distributive share of income, gain, loss, and deduction attributable to nonresident owners.

(b) Taxable income is determined by applying all state specific additions, subtractions, and modifications that would apply to the owners individually.

(c) Guaranteed payments, separately stated items, and investment income is included in taxable income to the same extent these items would be included in an owner's individual Washington taxable income under this chapter.

(4)(a) An electing entity shall make estimated tax payments in the same manner and at the same times as required for individual estimated tax payments under section 501 of this act.

(b) Estimated tax payments are based on the electing entity's reasonable estimate of taxable income for the taxable year.

(c) Estimated tax payments paid by the electing entity under this section are in lieu of the estimated tax payments imposed on owners under section 501 of this act with respect to the income included in the electing entity's taxable income.

(d) Estimated tax payments are not required under this subsection before July 1, 2029.

(5)(a) Each owner of an electing entity is allowed a credit against the tax imposed under this section equal to the owner's proportionate share of the tax paid by the electing entity under this chapter as provided in section 206 of this act.

(b) Resident owners shall include in their Washington taxable income their full distributive share of the electing entity's income, gains, losses, and deductions and shall claim the credit allowed under section 206 of this act.

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(c) Nonresident owners shall include in their Washington taxable income their distributive share of the electing entity's income, gains, losses, and deductions as allocated and apportioned under section 405 of this act and shall claim the credit allowed under section 206 of this act.

(6)(a) The electing entity shall file an annual return reporting taxable income, tax due, estimated payments, and any other information required by the department in a form and manner required by the department.

(b) The department may adopt rules necessary to administer this section, which to the extent possible, must be consistent with the requirements under this chapter for individuals. The department may adopt rules to streamline and simplify the process and procedures for making an election under this section.

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

(a) "Distributive share" means the owner's share of income, gain, loss, or deduction as determined under the entity's governing documents and federal income tax law.

(b) "Electing entity" means a pass-through entity that has made a valid election under subsection (2)(c) of this section.

(c) "Nonresident owner" means an owner who is not a resident of this state for individual income tax purposes.

(d) "Owner" means a partner, member, or shareholder of a pass-through entity.

(e) "Resident owner" means an owner who is a resident of this state for individual income tax purposes.

(f) "State source income" means income, gain, or loss derived from sources within this state, determined under the allocation and apportionment provisions of section 405 of this act.

PART VI

CRIMES

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NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this chapter or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this chapter who knowingly fails to truthfully account for or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, or supply information, as required under this chapter, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART VII
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this chapter is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this chapter is computed by the cash method of accounting.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this chapter.

NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

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(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

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(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not

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qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for

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each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under

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this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the state registered domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-

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half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be

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calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for

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assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in

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subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed

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from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five

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percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this ((~~section~~)) subsection, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or

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willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written

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instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this ((~~section~~)) subsection, "substantially underpaid" means that an

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individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If the total estimated tax payments under section 501 of this act for the tax year are substantially underpaid, there is assessed a penalty of five percent of the amount of the underpaid tax. If a pass-through entity makes an election under section 502 of this act, this subsection (11) applies to the estimated tax payments of the pass-through entity in lieu of the individual. As used in this subsection, "substantially underpaid" means that an individual's total annual estimated tax payments under section 501 of this act were less than 80 percent of the actual annual tax due, and at least $5,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) and the confirmation of an extension of the filing due date required under RCW 82.87.110(5).

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this chapter.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this chapter, all of the provisions of subtitle F (procedure and administration) of the internal revenue code relating to the following subjects apply to the taxes imposed under this chapter:

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(a) Timing and amount of tax prepayments under section 501 of this act;

(b) Liability of transferees; and

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this chapter.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this chapter. The rules, to the extent possible without being inconsistent with this chapter, must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue code and United States treasury department regulations and rulings, in whole or in part.

NEW SECTION. **Sec. 711.** LOCAL GOVERNMENT PUBLIC DEFENSE FUNDING STABILIZATION ACCOUNT. (1) The local government public defense funding stabilization account is hereby created in the state treasury. All receipts specified under section 202(1)(a) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for distributions to counties and cities for public defense services consistent with chapter 10.101 RCW. Counties and cities receiving funds must comply with the requirements of RCW 10.101.060.

(2) On a quarterly basis, the state treasurer shall distribute moneys deposited in the local government public defense funding stabilization account as follows:

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(a) 10 percent to cities on a pro rata basis, based upon the annual number of misdemeanor criminal cases filed in courts under each city's jurisdiction, as determined by the office of public defense.

(b) The remainder to counties as follows:

(i) Six percent shall be distributed as a base allocation among the counties. A county's base allocation is equal to the total amount to be distributed under this subsection (2)(b)(i) divided by 39.

(ii) 94 percent shall be distributed as follows:

(A) 40 percent shall be distributed on a pro rata basis to each county based on the county's personal income ratio as determined under subsection (3) of this section; and

(B) 60 percent shall be distributed on a pro rata basis to each county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all counties, as determined under subsection (5) of this section.

(3) The office of financial management shall calculate each county's personal income ratio by December 31, 2028, and December 31st of each year thereafter, using the most recent annual county personal income data published by the federal bureau of economic analysis for the state of Washington and notify the state treasurer. The updated county personal income ratio applies to county distributions in the following calendar year.

(4) For the purpose of this section, "county's personal income ratio" means the personal income of the county divided by the personal income of the state of Washington, as determined under subsection (3) of this section.

(5) For the purposes of this section, the annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

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(6) For the purposes of this section, the annual number of misdemeanor criminal cases filed in courts under the city's jurisdiction is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

PART VIII
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 801. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4)<u>, and (5)</u> of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued

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pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 802. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing

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deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 803. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any

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citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained

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for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary

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trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 804. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter

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shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 805. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

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(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 806. RCW 41.34.080 and 2012 c 159 s 23 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and

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the various funds created by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter 247, Laws of 2000 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a ((~~notice of payroll deduction~~)) income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

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(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 807. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to

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withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 808. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions

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therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 809. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

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(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 810. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

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(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 811. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e)

a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART IX

TAX RELIEF

Sec. 901. RCW 82.08.0206 and 2024 c 3 s 1 are each amended to read as follows:

(1) A working families' tax credit, funded by sales and use tax imposed, is provided to eligible low-income persons for calendar years beginning on or after January 1, 2022. The credit is refundable and is calculated as provided in this section.

(2) For purposes of the credit in this section, the following definitions apply:

(a)(i) "Eligible low-income person" means an individual who:

(A) Is eligible for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code;

(B) Properly files a federal income tax return for the prior federal tax year, and was a Washington resident during the year for which the credit is claimed; and

(C) Has paid either retail sales tax under this chapter or use tax under chapter 82.12 RCW, or both. There is a rebuttable

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presumption that a person paid either retail sales tax under this chapter or use tax under chapter 82.12 RCW, or both, if they were a Washington resident during the year for which the credit is claimed.

(ii) "Eligible low-income person" also means an individual who meets the requirements provided in (a)(i)(B) of this subsection and would otherwise qualify for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code except that one or any combination of the following conditions apply:

(A) The individual filed a federal income tax return for the prior federal tax year using a valid individual taxpayer identification number in lieu of a social security number, and the individual's spouse, if any, and all qualifying children, if any, have a valid individual taxpayer identification number or a social security number; ((~~or~~))

(B) The individual filed their federal income tax return for the prior federal tax year under the married filing separately status. For purposes of the refund provided in this section, the special rule for separated spouse under Title 26 U.S.C. Sec. 32(d)(2)(B) of the internal revenue code does not apply; or

(C) The individual does not meet the age requirement under Title 26 U.S.C. Sec. 32(c)(1)(A)(ii)(II) of the internal revenue code, but is at least age 18 by the end of the prior federal tax year.

(b) "Income" means earned income as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code.

(c) "Individual" means an individual or an individual and that individual's spouse if they file a federal joint income tax return.

(d) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of June 9, 2022, or such subsequent date as the department may provide by rule consistent with the purpose of this section.

(e) "Maximum qualifying income" means the maximum federally adjusted gross income for the prior federal tax year.

(f) "Qualifying child" means a qualifying child as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code, except the

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child may have a valid individual taxpayer identification number in lieu of a social security number.

(g) "Washington resident" means an individual who is physically present and residing in this state for at least 183 days. "Washington resident" also includes an individual who is not physically present and residing in this state for at least 183 days but is the spouse of a Washington resident. For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(3)(a) Except as provided in (b) and (c) of this subsection, for calendar year 2023 and thereafter, the working families' tax credit refund amount for the prior calendar year is:

(i) $300 for eligible persons with no qualifying children;

(ii) $600 for eligible persons with one qualifying child;

(iii) $900 for eligible persons with two qualifying children; or

(iv) $1,200 for eligible persons with three or more qualifying children.

(b) Except as provided in (f) of this subsection, the refund amounts provided in (a) of this subsection will be reduced, rounded to the nearest dollar, as follows:

(i) For eligible persons with no qualifying children, beginning at $2,500 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(ii) For eligible persons with one qualifying child, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 12 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iii) For eligible persons with two qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 15 percent per additional dollar of

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income until the minimum credit amount as specified in (c) of this subsection is reached.

(iv) For eligible persons with three or more qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(c) If the refund for an eligible person as calculated in this section is greater than zero cents, but less than $50, the refund amount is $50.

(d) The refund amounts in this section shall be adjusted for inflation every year beginning January 1, 2024, based upon changes in the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. The adjusted refund amounts must be rounded to the nearest $5.

(e) For purposes of this section, "consumer price index" means, for any 12-month period, the average consumer price index for that 12-month period for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(f) The percentage rate of remittance reductions in (b) of this subsection must be adjusted every year beginning January 1, 2023, based on calculations by the department that result in the minimum credit being received at the maximum qualifying income level.

(4) The working families' tax credit shall be administered as provided in this subsection.

(a) The refund paid under this section will be paid to eligible filers who apply pursuant to this subsection.

(i) Application must be made to the department in a form and manner determined by the department. If the application process is initially done electronically, the department must provide a paper application upon request. The application must include any information and documentation as required by the department. The department may use the information provided by the individual to

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calculate the refund amount. Income reported on the application may be rounded to the nearest dollar.

(ii) An individual applying for the credit under this section must keep records necessary for the department to verify eligibility under this section. Any information provided by the individual is subject to audit verification by the department.

(iii) In addition to information provided on the application, the department may verify that an individual qualifies as a Washington resident through the use of automated verification tools or other reasonable means.

(iv)(A) Except as provided in (a)(iv)(B) of this subsection (4), application for a refund under this section must be made in the year following the year for which the federal tax return was filed, but in no case may any refund be provided for any period before January 1, 2022.

(B)(I) A person may apply for any refund for which they were eligible but did not claim under (a)(iv)(A) of this subsection (4) for up to three additional years. A person must complete an application to claim this refund within the three calendar years after the end of the calendar year in which the federal income tax return for that tax year was legally due for federal income tax purposes, without regard to any federal extension.

(II) If a person seeks to increase the amount of a refund that has been made under this subsection (4), the person must apply for the amended refund within the nonclaims period established under RCW 82.32.060(1).

(v) A person may not claim a credit on behalf of a deceased individual. No individual may claim a credit under this section for any year in a disallowance period under Title 26 U.S.C. Sec. 32(k)(1) of the internal revenue code or for any year for which the individual is ineligible to claim the credit in Title 26 U.S.C. Sec. 32 of the internal revenue code by reason of Title 26 U.S.C. Sec. 32(k)(2) of the internal revenue code.

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(b) The department shall protect the privacy and confidentiality of personal data of refund recipients in accordance with chapter 82.32 RCW.

(c) The department shall, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of, and requirements for, the credit provided in this section.

(d) The department must work with the internal revenue service of the United States to administer the credit on an automatic basis as soon as practicable.

(5) Receipt of a refund under this section may not be used in eligibility determinations for any state income support programs or in making public charge determinations.

(6) The department may adopt rules necessary to implement this section. This includes establishing a date by which applications will be accepted, with the aim of accepting applications as soon as possible.

(7) The department must review the application and determine eligibility for the working families' tax credit based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through information from the internal revenue service of the United States, other federal agencies, Washington state agencies, third-party entities, or other persons. The department may accept a signed attestation in a form and manner determined by the department from an individual to presumptively validate that an individual meets all the eligibility requirements as provided in this section. The signed attestation is subject to audit verification by the department to validate an individual's eligibility for the working families' tax credit.

(8) If, upon review of internal revenue service data or other information obtained by the department, it appears that an individual received a refund that the individual was not entitled to, or received a larger refund than the individual was entitled to,

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the department may assess against the individual the overpaid amount. The department may also assess such overpaid amount against the individual's spouse if the refund in question was based on both spouses filing a joint federal income tax return for the year for which the refund was claimed.

(a) Interest as provided under RCW 82.32.050 applies to assessments authorized under this subsection (8) starting six months after the date the department issued the assessment until the amount due under this subsection (8) is paid in full to the department. Except as otherwise provided in this subsection, penalties may not be assessed on amounts due under this subsection.

(b) If an amount due under this subsection is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess the applicable penalties under RCW 82.32.090. Penalties under this subsection (8)(b) may not be made due until six months after the department's issuance of the assessment.

(c) If the department finds by clear, cogent, and convincing evidence that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent claim for refund under this section, the department must assess a penalty of 50 percent of the overpaid amount. This penalty is in addition to any other applicable penalties assessed in accordance with (b) of this subsection (8).

(9) If, within the period allowed for refunds under RCW 82.32.060, the department finds that an individual received a lesser refund than the individual was entitled to, the department must remit the additional amount due under this section to the individual.

(10) Interest does not apply to refunds provided under this section.

(11) Chapter 82.32 RCW applies to the administration of this section.

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Sec. 902. 2023 c 456 s 3 (uncodified) is amended to read as follows:

(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 195, Laws of 2021 ((~~and~~)), section 1, chapter 456, Laws of 2023, and section 901, chapter . . ., Laws of 2026 (section 901 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for the preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain individuals as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to allow low-income and middle-income workers to recover some or all of the sales tax they pay to support state and local government as a way to increase their economic security and to decrease the regressivity of our state tax code. It is the legislature's intent to provide a sales and use tax credit, in the form of a remittance, to low-income and middle-income working families.

(4) The joint legislative audit and review committee shall review this preference in 2028 and every 10 years thereafter. If a review finds that the working families' tax credit does not provide meaningful financial relief to low-income and middle-income households, RCW 82.08.0206 expires at the end of the calendar year two years after the adoption of the final report containing that finding. The joint legislative audit and review committee shall provide written notice of the expiration date of RCW 82.08.0206 to the department of revenue, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the joint legislative audit and review committee. In its review of the program, the joint legislative audit and review committee should use at least the following metrics: Size of the benefit per household, number of

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household beneficiaries statewide, and demographic information of beneficiaries to include family size, income level, race and ethnicity, and geographic location.(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the remittance data prepared by the department of revenue.

NEW SECTION. **Sec. 903.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.08.020 does not apply to the sales of grooming and hygiene products.

(2) For the purpose of this section, "grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the item meets the definition of "over-the-counter drug," as defined in RCW 82.08.0281.

NEW SECTION. **Sec. 904.** A new section is added to chapter 82.12 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.12.020 does not apply to the use of grooming and hygiene products.

(2) For purposes of this section, "grooming and hygiene products" has the same meaning as provided in section 903 of this act.

Sec. 905. RCW 82.04.4451 and 2022 c 295 s 1 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least 50 percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is ((~~$55~~)) $125 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

For a taxpayer that reports at least 50 percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is ((~~$160~~)) $375 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

Sec. 906. RCW 82.32.045 and 2023 c 374 s 12 are each amended to read as follows:

(1) Except as otherwise provided in this chapter and subsection (6) of this section, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.27 RCW, along with reports and returns on forms prescribed by the department, are due monthly within 25 days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year.

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Except as provided in subsection (3) of this section, for these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) For annual filers, tax payments, along with reports and returns on forms prescribed by the department, are due on or before April 15th of the year immediately following the end of the period covered by the return.

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

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

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than ((~~$125,000~~)) $250,000 per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than $24,000 per year; and

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

(6)(a) Taxes imposed under chapter 82.08 or 82.12 RCW on taxable events that occur beginning January 1, 2019, through June 30, 2019, and payable by a consumer directly to the department are due, on returns prescribed by the department, by July 25, 2019.

(b) This subsection (6) does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(i) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(ii) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to subsection (5) of this section.

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Sec. 907. RCW 82.04.288 and 2025 c 420 s 201 are each amended to read as follows:

(1) Beginning January 1, 2026, in addition to all other taxes imposed under this chapter, persons must pay a surcharge on Washington taxable income over $250,000,000 in a calendar year.

(2) The rate of the tax is 0.5 percent of the amount of Washington taxable income over $250,000,000.

(3)(a) Any Washington taxable income subject to the tax in RCW 82.04.29004 is exempt from the surcharge imposed in this section.

(b)(i) Any Washington taxable income subject to the manufacturing tax rates in RCW 82.04.240, 82.04.2404, 82.04.241, 82.04.260, 82.04.2602, 82.04.287, 82.04.2909, or 82.04.294(1) is exempt from the surcharge imposed in this section.

(ii) Any Washington taxable income attributable to the wholesale or retail sale of products so manufactured by a person subject to the manufacturing tax rates specified in (b)(i) of this subsection (3) is exempt from the surcharge imposed in this section.

(iii) Any Washington taxable income attributable to retail sales that are exempt from the imposition of sales tax in RCW 82.08.0293, 82.08.0297, and 82.08.0281 is exempt from the surcharge imposed in this section.

(iv) Any Washington taxable income subject to the tax rates in RCW 82.04.260(12) is exempt from the surcharge imposed in this section.

(v) Any Washington taxable income attributable to the wholesale or retail sale of petroleum products by a person who is both located in a state other than Washington and the owner of such materials processed for it in Washington by an affiliated processor for hire subject to the rate in RCW 82.04.280(1)(c), is exempt from the surcharge imposed in this section. For the purposes of this subsection (3)(b)(v), the following definitions apply:

(A) "Affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

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(B) "Control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise; and

(C) "Petroleum product" has the same meaning as in RCW 82.21.020.

(4)(a) The surcharge imposed under this section does not apply to taxable income for which a credit is allowed under RCW 82.04.440.

(b) The surcharge imposed under this section does not apply to a person engaged in business primarily as a farmer or eligible apiarist as defined in RCW 82.04.213.

(c) The surcharge imposed under this section does not apply to a person subject to the tax imposed pursuant to RCW 82.04.299.

(d) The surcharge imposed under this section does not apply to taxable income for wholesale and retail transactions of fuel as defined in RCW 82.38.020.

(5) Any income that is exempt from the surcharge imposed under this section is not included in the calculation of Washington taxable income in subsection (1) of this section.

(6) This section expires December 31, ((~~2029~~)) 2028.

NEW SECTION. **Sec. 908.** Sections 905 and 906 of this act apply to taxes initially due and payable on or after January 1, 2029.

PART X
MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** NULL AND VOID. If a court of final jurisdiction invalidates section 201 of this act, this act is null and void in its entirety.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 711 of this act constitute a new chapter in a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . ., Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** (1) Section 901 of this act takes effect January 1, 2029.

(2) Refunds may not be provided under section 901 of this act for any period before January 1, 2028.

NEW SECTION. **Sec. 1006.** Except as provided in section 902 of this act, RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 1007.** The tax imposed in this act is necessary for the support of the state government and its existing public institutions.

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NEW SECTION. **Sec. 1008.** It is the intent of the legislature for the department of revenue to spend appropriated amounts to implement this act regardless of litigation.

--- END ---

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AN ACT Relating to . . . ;

BE IT ENACTED . . .

NEW SECTION. **Sec. 1.** (1)[Add Legislative findings]

(2) Consistent with the findings set forth in subsection (1), it is the intent of the Legislature, by adopting this chapter, insofar as possible, to:

(a) Impose a tax on those individuals with the greatest ability to pay, specifically those earning Washington adjusted gross income during the taxable year of at least one million dollars.

(b) Make the Washington high earner income tax law identical in effect to the provisions of the internal revenue code relating to the measurement of adjusted gross income of individuals, modified as necessary to achieve the goals and purpose of this act;

(c) Achieve this result by the application of the various provisions of the internal revenue code relating to the definition of income, exemptions and exclusions therefrom, accounting methods, basis, depreciation and other pertinent provisions, modified as provided in this chapter, resulting in a final amount called “Washington adjusted taxable income”; and

(d) Impose a tax on residents of this state measured by Washington adjusted taxable income wherever derived and to impose a tax on nonresidents measured by Washington adjusted taxable income from sources within this state.

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NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(2) “Employment” means personal service, of whatever nature, as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

(3) “Federal adjusted gross income” means adjusted gross income for an individual as provided under 26 U.S. Code Sec. 62 of the internal revenue code, with the following modifications:

(a) Long-term capital gains and long-term capital losses, as reportable for federal income tax purposes, are excluded from federal adjusted gross income;

(b) Income from any federal treasury bond, note, bill, or any other obligation of the United States, is excluded from federal adjusted gross income; and

(c) Income from any state or municipal bond, note, or bill, or any other obligation of any state or local municipality, or any territory or possession of the United States, is included in federal adjusted gross income, except as otherwise provided in this chapter.

(4) “Individual” means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of the effective date of this Act.

(6)(a) "Resident" means an individual:

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(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(7) “Pass-through entity” means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes.

(8) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(9) "Taxpayer" means an individual subject to tax under this chapter.

(10) “Washington adjusted gross income” means federal adjusted gross income as modified under this chapter.

(11) “Washington source income” means the portion of federal adjusted gross income of a nonresident derived from or connected with:

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(a) A business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state; or

(b) Employment within this state.

NEW SECTION. **Sec. 3.** DISTRIBUTION OF TAX REVENUES. (1) Taxes collected under this chapter shall be deposited as follows:

(a) Sixty percent to the state general fund;

(b) Ten percent to the working families tax credit support account created in section 22 of this act;

(c) Ten percent to the state property tax relief account created in section 23 of this act; and

(d) The remainder to the city and county funding stabilization account created in section 24 of this act.

(2) All interest and penalties collected under this chapter shall be deposited in the state general fund.

NEW SECTION. **Sec. 4.** IMPOSITION OF TAX. (1) Beginning January 1, 2028, an excise tax is imposed on employment, business, investment, and other activities that generate the actual or constructive receipt of income in the state of Washington. Only individuals are subject to the tax, which equals 9.90 percent multiplied by an individual's Washington adjusted gross income.

(2) The tax levied in subsection (1) of this section is necessary for the support of the state government and its existing public institutions.

(3) If an individual's Washington adjusted gross income is zero or less for a taxable year, no tax is due under this section and no such amount is allowed as a carryback or carryover for use in the calculation of that individual's

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Washington adjusted gross income for any prior or subsequent taxable year.

(4) The tax imposed in this section applies to the actual or constructive receipt of income by the taxpayer. The tax imposed under this section applies when the income is recognized by the taxpayer in accordance with federal tax law.

NEW SECTION. **Sec. 5.** DEDUCTIONS. In computing Washington adjusted gross income for a taxable year, a taxpayer may deduct from his or her federal adjusted gross income:

(1) A standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction shall be adjusted pursuant to section … of this act;

and

(2) Interest income from any bond or note, or any other obligation, issued by the state of Washington or any municipality of the state of Washington. For the purpose of this subsection (3), "municipality" means a county, city, and any special purpose district, of the state of Washington.

NEW SECTION. **Sec. 6.** GENERAL RULES FOR ALLOCATING AND APPORTIONING INCOME FOR RESIDENTS AND NONRESIDENTS. For purposes of the tax imposed under this chapter, federal adjusted gross income is allocated and apportioned to Washington as follows:

(1) For Washington residents, all federal adjusted gross income is allocated to Washington, except as otherwise modified under this chapter;

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(2) For nonresidents, the portion of federal adjusted gross derived from Washington source income is allocated and apportioned to Washington as provided under:

(a) Section 10 for employment within this state other than as a member of a professional athletic team;

(b) Section 11 of this act for members of a professional athletic team; and

(c) Section 12 for any adjusted gross income derived from a business, trade, or profession carried on in this state; and

NEW SECTION. **Sec. 7.** REPORT BY EMPLOYMENT SECURITY DEPARTMENT. By September 1, 2029, and September 1 of each year thereafter, the employment security department, using the tax and wage report submitted to the employment security department for unemployment insurance, must provide a report to the department of revenue specifying all employees with total wages, aggregated across all employers, exceeding $1,000,000 in the prior calendar year.

NEW SECTION. **Sec. 8.** TAX CREDIT FOR SIMILAR TAXES PAID TO ANOTHER STATE. (1) An individual is allowed a credit against the tax otherwise due under this chapter for the amount of any excise tax imposed on income earned by the individual on the basis of employment in another state or a business, trade, or profession carried on in another state, including another state's excise tax imposed on the distributive share of income of a pass-through entity, of which the individual is a shareholder, partner, or member.

(2) The credit authorized under this section is for federal adjusted gross income derived from sources in another state related to employment, business activities, or both, occurring

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within another state that would otherwise be subject to tax under this chapter for the same taxable year.

(3) The credit authorized under this section may not exceed the amount of tax that would otherwise be due under this chapter on the federal adjusted gross income of the taxpayer derived from sources in another state.

(4) To substantiate the credit allowed under this section, the taxpayer must submit a copy of any return or returns filed with such other state or any other documentation, as required by the department, establishing payment to the other state of any excise taxes on income.

(5) A credit is not allowed under this section if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this chapter.

(6) If an interest in a pass-through entity was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal income tax purposes.

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

(a) “Excise tax imposed on income” means a tax imposed on an individual or pass-through entity, which includes:

(i) A direct tax imposed upon the income for the taxable year of the individual or pass-through entity; and

(ii) Any other excise or franchise tax that is measured by the income for the taxable year of the pass-through entity.

(b) "Measured by income for the taxable year of the pass-through entity" means that the base for the tax:

(i) Includes:

(A) Revenue from sales;

(B) Revenue from services rendered; and

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(C) Income from investments; and

(ii) Permits a deduction for one or both of the following:

(A) The cost of goods, inventory or products with respect to revenue from sales; or

(B) The cost of services rendered with respect to revenue from services rendered.

(c) "State" means any state of the United States, the District of Columbia, or any possession or territory of the United States.

NEW SECTION. **Sec. 9.** GENERAL RULE FOR APPORTIONING NONRESIDENT WAGE INCOME TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of adjusted gross income derived from compensation for employment within the state of Washington, regardless of the location of the employer.

(2) Compensation for services performed by a nonresident as part of their employment shall be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation shall be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) Employers must maintain records sufficient to substantiate the allocation of income to this state and shall report such income to the department in a form and manner required by the department for employees that are reasonably assumed to be subject to the tax under this chapter.

NEW SECTION. **Sec. 10.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident

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members of a professional athletic team, the portion of compensation attributable to athletic performances in the state shall be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to Washington that the department determines to be fair and equitable.

(3) The following definitions apply to this section unless the context clearly requires otherwise:

(a) “Compensation” means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) “Duty days” means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(b) “Member of a professional athletic team” means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation earned by

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the athlete or other individual from that professional athletic team exceeds $10,000,000 in a tax year.

(4)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (4) shall include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made.

(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(5) The report must be filed with the department on or before April 15 following the year for which the report is being made or at another time as the department may require by rule.

NEW SECTION. **Sec. 11.** APPORTIONING AND ALLOCATING WASHINGTON SOURCE INCOME FOR A NONRESIDENT BASED ON BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) Washington source income for a nonresident derived from a business, trade, or profession carried on in this state shall be apportioned and allocated

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based on a sales factor as described in subsections (2) and (4) of this section.

(2) The sales factor is a fraction, the numerator of which is the total sales of a pass-through entity or sole proprietorship apportioned to this state during the tax period, and the denominator of which is the total sales of the pass-through entity or sole proprietorship everywhere during the tax period.

(3) Sales of tangible personal property are apportioned to this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

(c) Sales, other than sales of tangible personal property, are apportioned to this state if:

(i) The income-producing activity is performed in this state; or

(ii) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(4) All other income of the taxpayer conducting a business, trade, or profession in Washington is allocated to this state using the total sales factor. "Total sales factor" means the total sales of tangible personal property and other income-producing activity apportioned to Washington, as determined

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under subsection (3) of this section, divided by the total sales of tangible personal property and other income-producing activity everywhere, as determined under subsection (3) of this section.

(5) If the allocation and apportionment provisions of subsections (2) through (4) of this section do not fairly represent the extent of a pass through entity's or sole proprietorship's business activity in this state, the taxpayer may petition the department, or the department may require, an alternate method of allocation and apportionment that may use:

(a) Separate accounting;

(b) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(c) The employment of any other reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

NEW SECTION. **Sec. 12.** TAX IS IN ADDITION TO OTHER TAXES. The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same receipt of income, including the taxes imposed in, or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

NEW SECTION. **Sec. 13.** CREDIT FOR B&O TAXES. (1) Beginning in tax year 2028 with taxes due in 2029, to avoid taxing the same adjusted gross income under both the business and occupation tax and excise tax under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 RCW. The

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credit is equal to the amount of tax imposed under chapter 82.04 RCW on such gross income of the business.

(2) The credit under this section is earned in regards to income reportable for federal income tax purposes, and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 14.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax

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return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income, but not limited to, form W-2, form 1099-INT, form 1099-DIV, 1099-NEC, 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing

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extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do

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not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taypayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taypayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (8), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

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(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (8) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the

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department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (8) of this section.

NEW SECTION. **Sec. 15.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow Title 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The

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activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 16.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

NEW SECTION. **Sec. 17.** TAX EVASION. (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

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(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 18. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The

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rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 14 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in

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subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

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(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 19. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered

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by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before

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January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3)

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((~~and~~)), 82.87.110, and section 14 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 20. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this

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subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department

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a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such

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instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under

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this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays the tax imposed under RCW 82.87.040 by the due date required by RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this section, "substantially underpaid" means that an individual's payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If a taxpayer substantially underpays the tax imposed under section 4 of this act by the due date required by section 14(3) of this act, there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under section 4 of this act. As used in this section, "substantially

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underpaid" means that an individual's payment for taxes imposed under section 4 of this act was less than 80 percent of the actual tax due, and at least $1,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) or section 14(3) of this act and the confirmation of an extension of the filing due date required under RCW 82.87.110(5) or section 14(5) of this act.

Section. 21.

RCW 1.90.100

Personal income tax prohibition.

(1)Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

(2) Subsection (1) of this section does not apply to the tax authorized in chapter . . . RCW (sections 1 through 17 and 22 through 24 this act).

NEW SECTION. **Sec. 22.** The working families tax credit support account is hereby created in the state treasury. All receipts specified under section 3(1)(b) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to fund the working families tax credit under RCW 82.08.0206.

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NEW SECTION. **Sec. 23.** (1) The state property tax relief account is hereby created in the state treasury. All receipts specified under section 3(1)(c) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Moneys in the account must be transferred to the general fund to offset the estimated fiscal year impact from the state property tax relief provided in this section.

(2) By September 1, 2029, and by September 1 of each year thereafter, the state treasurer shall notify the department of the balance in the state property tax relief account as of the 15th day of the preceding month.

(3) By December 1, 2029, and by December 1 of each year thereafter, the department must lower the state property tax rate imposed under RCW 84.52.065(2)(a) for property tax collections in the subsequent calendar year. The tax rate shall be reduced by an amount necessary to reduce collections equivalent to the balance in the state property tax relief account determined under subsection (2) of this section.

(4) The state treasurer shall make transfers to the general fund under this section by June 15 and August 15 beginning in calendar year 2030.

NEW SECTION. **Sec. 24.** (1) The city and county funding stabilization account is hereby created in the state treasury. All receipts specified under section 3(1)(d) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for distributions to cities and counties.

(2) By September 1, 2029, and by September 1 of each year thereafter, the state treasurer shall distribute:

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(a) 50 percent of available funds in the city and county funding stabilization account to all cities on a pro rata basis using population; and

(b) The remaining funds in the city and county funding stabilization account to all counties on a pro rata basis using population.

(3) Each city shall receive a share of available funds equal to the proportion that its estimated population bears to the estimated total population of the state within incorporated areas.

(4) Each county shall receive a share of available funds equal to the proportion that its estimated population within its unincorporated area bears to the estimated total population of the state within unincorporated areas.

(5) For the population determinations under this section, the most recent April 1 estimate of population by the office of financial management shall be used. For the purpose of this section, the term "cities" includes a cities and towns.

NEW SECTION. **Sec. 25.** Sections 1 through 17 and 22 through 24 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 26.** SHORT TITLE. The new chapter authorized under section 25 may be cited as the Washington high earner income tax act of 2026.

NEW SECTION. **Sec. 27.** The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 28.** This act shall take effect on January 1, 2028. The department of revenue is authorized to immediately

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take steps as are necessary to ensure that this act is implemented on its effective date.

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Monday, December 1, 2025 8:29 AM
To: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP
Attachments: FIAT_Memo.docx

Hi Dan.

We can add some analysis of uniformity if you think this draft is too high-level. Here is Andrew's memo from last session. I can cut much of the second and third pages of Andrew's memo and add those paragraphs to the current draft memo, with modification to address income. Let me know your preference.

From: Zalesky, Chuck (ATG)
Sent: Tuesday, November 25, 2025 4:58 PM
To: Jensen, Dan (ATG) <Dan.Jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

I accepted most corrections. There are a couple of comments that we can discuss before finalizing the memo. I'm OOO tomorrow, so it will need to be next week.

Here is the revised draft. F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1b.docx

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, November 25, 2025 4:36 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck,

Sorry for taking so long to get back to you on this. I have some relatively minor comments and suggestions. Let me know what you think.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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TJM10-00830
PRR-2026-0158

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From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, November 14, 2025 4:27 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Here is a draft for your review. I kept is short and (hopefully) simple.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Friday, November 14, 2025 10:28 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Sorry, Chuck. That's on me. I shouldn't have said "initial draft." Save that draft legislation though. I think we could be asked to come up with something later.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, November 14, 2025 10:00 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

OK. I'll get working on that. [Basically wasted 2 days drafting proposed legislation. ☹]

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Friday, November 14, 2025 9:57 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks for clarifying. I mean a memo addressing the litigation risks. The memo would be to the Gov's Office.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, November 14, 2025 9:51 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

I may have misunderstood the request. By "initial draft," do you mean a memo addressing the litigation risks, or an initial draft of income tax legislation?

I've been working on the latter, but in re-reading the email I think I misunderstood the ask.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, November 12, 2025 10:56 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

Chuck,

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I touched base with Noah about this on Monday. He is asking that REV do the initial draft and then send to the SGO (Noah and Peter) for their input.

Do you have capacity to do the initial draft? I am hoping that we can get something to Noah and Peter in early December so this is not a rush. If you do not, I can draft but I would need your input. I would like to review it before you send to the SGO.

Thanks,

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Saturday, October 18, 2025 8:40 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

Hi Dan,

It was good talking with you on Thursday. As we discussed, here's my best sense of what a proposal might look like for your analysis:

High-earners income tax

- Applies to Adjusted Gross Income (AGI) of $1 million per year or more
- 5% tax rate for AGI between $1-5 million
- 10% tax rate for AGI over $5 million
- Individuals below the $1 million threshold don't owe any taxes
- Follows federal income tax rules (e.g. definitions, deductions)

My questions:

- Would this withstand a legal challenge?
- If the tax were to only have one rate (i.e. 5% for income over $1 million), would that matter for the legal analysis (vs a tiered rate structure)?

I'm happy to set-up a meeting and discuss this further if helpful.

TJM10-00832
PRR-2026-0158

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Thanks, -Beau

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

External Email

Beau,

Including Noah in the conversation. No, we have not done any written analysis of any specific proposal for this session. We are happy to do one now but it would be helpful to know more specifics regarding what is being requested or the options that the Governor's Office would like us to evaluate.

Happy to talk more about this over the phone or in a meeting if that would be easier.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Tuesday, October 14, 2025 12:20 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>
Subject: High-earners income tax legal analysis - ACP

[EXTERNAL]

Attorney client privilege

Hi Dan and Kristin,

Some legislators are discussing the concept of a high-earners income tax (e.g. 3% on income over $1 million). Has the AG's Office done any analysis on the legal risks (e.g. uniformity) and chance of something like this

being upheld in court? If not, would it be possible to get that analysis? It's not urgent, but would be helpful to have it before the legislative session if possible.

Thanks, -Beau

Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government
564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Monday, December 1, 2025 9:51 AM
To: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP

I see your point. I made some revisions in redline to better separate the uniformity and levy risks.

F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1c.docx

If you concur with these edits, I'll send you a clean draft to forward to Noah and Peter.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Monday, December 1, 2025 9:02 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. I really appreciate your quick turnaround. I had a chance to review your comments on the memo. I'm ok with not expanding on how *Quinn* discussed *Culliton*. Just didn't know if there was anything worth mentioning there.

Regarding my uniformity comments, I was trying to understand what the "significant risk" was. Is it only because we assume that the rate will exceed one percent? See my revised edits in the memo. Let me know if I am misunderstanding something.

Dan

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 8:29 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Hi Dan.

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TJM10-00835
PRR-2026-0158

I accepted most corrections. There are a couple of comments that we can discuss before finalizing the memo. I'm OOO tomorrow, so it will need to be next week.

Here is the revised draft. F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1b.docx

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Subject: RE: High-earners income tax legal analysis - ACP

Chuck,

Sorry for taking so long to get back to you on this. I have some relatively minor comments and suggestions. Let me know what you think.

Dan Jensen
Sr. Assistant Attorney General
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The Center Square

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Subject: RE: High-earners income tax legal analysis - ACP

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Thanks, -Beau

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beau.perschbacher@gov.wa.gov
Pronouns: He/Him

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BOB FERGUSON

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Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Monday, December 1, 2025 10:17 AM
To: Zalesky, Chuck (ATG)
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. Your edits were perfect. Yes, please send a clean draft to Noah and Peter for their review. Appreciate your work on this.

Dan

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Sent: Monday, December 1, 2025 9:51 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

I see your point. I made some revisions in redline to better separate the uniformity and levy risks.

F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1c.docx

If you concur with these edits, I'll send you a clean draft to forward to Noah and Peter.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Monday, December 1, 2025 9:02 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
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Thanks, Chuck. I really appreciate your quick turnaround. I had a chance to review your comments on the memo. I'm ok with not expanding on how *Quinn* discussed *Culliton*. Just didn't know if there was anything worth mentioning there.

Regarding my uniformity comments, I was trying to understand what the "significant risk" was. Is it only because we assume that the rate will exceed one percent? See my revised edits in the memo. Let me know if I am misunderstanding something.

Dan

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Sent: Monday, December 1, 2025 8:29 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Hi Dan.

We can add some analysis of uniformity if you think this draft is too high-level. Here is Andrew's memo from last session. I can cut much of the second and third pages of

The Center Square

Andrew's memo and add those paragraphs to the current draft memo, with modification to address income. Let me know your preference.

From: Zalesky, Chuck (ATG)
Sent: Tuesday, November 25, 2025 4:58 PM
To: Jensen, Dan (ATG) <Dan.Jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

I accepted most corrections. There are a couple of comments that we can discuss before finalizing the memo. I'm OOO tomorrow, so it will need to be next week.

Here is the revised draft. F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1b.docx

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, November 25, 2025 4:36 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck,

Sorry for taking so long to get back to you on this. I have some relatively minor comments and suggestions. Let me know what you think.

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Attachments: IncomeTaxMemoDraft2a.docx; RE: ATTORNEY/CLIENT CONFIDENTIAL - tax structure question

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Mayer, Ellie (ATG)

From: Gonick, Peter B. (ATG)
Sent: Tuesday, December 2, 2025 9:46 AM
To: Zalesky, Chuck (ATG); Purcell, Noah Guzzo (ATG)
Cc: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. If you have it handy, can you send me the *Quinn* brief from Pacifica that you think makes the best case for overturning the income=property cases? Thanks!

Peter

Peter B. Gonick (he, him)
Deputy Solicitor General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100
360-753-6245

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Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

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Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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The Center Square

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Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Tuesday, December 2, 2025 10:00 AM
To: Gonick, Peter B. (ATG); Purcell, Noah Guzzo (ATG)
Cc: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP
Attachments: IntervenorsOpenBr.pdf; Apartment Operators, 56 Wn2d 46 (1960)_ Brief of Appellants.pdf

Attached. See pages 24-34.

Also attaching the state's (very long) brief in Apartment Operators. See pages 106-112.

From: Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Sent: Tuesday, December 2, 2025 9:46 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. If you have it handy, can you send me the *Quinn* brief from Pacifica that you think makes the best case for overturning the income=property cases? Thanks!

Peter

Peter B. Gonick (he, him)
Deputy Solicitor General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100
360-753-6245

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Mayer, Ellie (ATG)

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To: Zalesky, Chuck (ATG); Gonick, Peter B. (ATG)
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Subject: RE: High-earners income tax legal analysis - ACP
Attachments: IncomeTaxMemoDraft2a(PBG and NGP edits)).docx

Chuck and Dan,

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Thursday, December 4, 2025 1:24 PM
To: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP
Attachments: IncomeTaxMemoDraft3a_Compare.docx

Here is a comparison of the two versions, which makes it easier to see the parts I added.

From: Zalesky, Chuck (ATG)
Sent: Thursday, December 4, 2025 1:06 PM
To: Jensen, Dan (ATG) <Dan.Jensen@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

I accepted the SGO edits and added additional analysis. Let me know if you want to review before I send it to Noah and Peter for their final review.
F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft3a.docx

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Mayer, Ellie (ATG)

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To: Zalesky, Chuck (ATG)
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Attachments: IncomeTaxMemoDraft3a.docx; IncomeTaxMemoDraft3a_Compare.docx

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Attachments: IncomeTaxMemoDraft3a_Compare(PBG&NGP edits).docx

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Good morning, Noah and Peter.

Attached for your review is the draft response to Beau's questions regarding a legal challenge to the proposed high-earner income tax. We kept the analysis fairly simple. As you may remember, Andrew Krawczyk prepared a detailed memo last legislative session regarding uniformity concerns with a proposed wealth tax. But here we felt that a deep dive into the uniformity issue was not needed since the proposed tax would almost certainly exceed the 1% levy limit in Article VII, Section 2. Thus, we presume that the Governor's Office is more interested in our view as to whether the Supreme Court would overrule its prior "income = property" line of cases.

I am also attaching advice I recently provided to the Department on a similar question that also originated from the Governor's Office.

We will wait for your edits before finalizing. Also, let us know if any questions or concerns.

Chuck Zalesky
Assistant Attorney General
(360) 586-0756

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The Center Square

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Sent: Wednesday, November 12, 2025 10:56 AM
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Subject: FW: High-earners income tax legal analysis - ACP

Chuck,

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Do you have capacity to do the initial draft? I am hoping that we can get something to Noah and Peter in early December so this is not a rush. If you do not, I can draft but I would need your input. I would like to review it before you send to the SGO.

Thanks,

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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Sent: Saturday, October 18, 2025 8:40 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

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I'm happy to set-up a meeting and discuss this further if helpful.

Thanks, -Beau

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>

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[EXTERNAL]

Attorney client privilege

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Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government

564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Thursday, December 11, 2025 11:22 AM
To: Perschbacher, Beau (GOV); Beneski, Kristin (GOV)
Cc: McDorman, Camille (GOV); Purcell, Noah Guzzo (ATG); Zalesky, Chuck (ATG)
Subject: RE: High-earners income tax legal analysis - ACP
Attachments: MemoToGovReTaxProposal.pdf

Beau and Kristin:

Attached you will find a memo addressing the questions you raised below regarding a tax on high-earning individuals in Washington. After reviewing, please let us know if you have any follow-up questions or if you would like to meet to discuss further.

Thanks,

Dan Jensen
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[EXTERNAL]

Attorney client privilege

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Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Thursday, December 11, 2025 11:24 AM
To: Zalesky, Chuck (ATG)
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. I finalized and just sent the email. Appreciate all of your work on this.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Thursday, December 11, 2025 8:54 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

Hi Dan.

SGO had only a few edits, which I incorporated into the final version. [I also renamed the final version to take out "income tax"]. F:\ACTIVE\Cases_Zalesky\L&P Advice\MemoToGovReTaxProposal.docx

I am out until this afternoon. But if you want to review and send this morning, that works for me.

My thought is we send it to Beau and Kristin as a pdf, not as a Word document. Also, if sent as a pdf, we should initial to signify final version. [You can initial on my behalf].

If you have questions/concerns, I should be back by 1:30 or so.

Chuck.

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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 10, 2025 6:09 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thank you for the great memo and for making those edits. Minor additional comments from me and Peter in the attached. If these look okay to you, please go ahead and make them and send it on to Kristin. Thanks!

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, December 5, 2025 9:26 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks Noah and Peter.

We accepted all your edits, and added additional analysis. I'm attaching the latest draft, and a Compare version showing the edits. If you have other edits or comments, let us know.

Chuck.

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 3, 2025 5:29 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thanks so much for this. It is very well done. Peter and I have both reviewed it and included some comments/suggestions here. In general, I agree that it makes sense to keep this more high level and not a full treatise on the income tax case law. But both Peter and I think it would be good to give a brief summary of our own analysis of the arguments that the prior case law is incorrect and harmful, rather than relying solely on citing the intervenor's briefing. I've suggested where to do that in the attached. Please let us know if you have questions or concerns about any of our edits, and thanks for your great work on this.

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 11:21 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

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dive into the uniformity issue was not needed since the proposed tax would almost certainly exceed the 1% levy limit in Article VII, Section 2. Thus, we presume that the Governor's Office is more interested in our view as to whether the Supreme Court would overrule its prior "income = property" line of cases.

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Subject: High-earners income tax legal analysis - ACP

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564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
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The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Monday, December 1, 2025 9:02 AM
To: Zalesky, Chuck (ATG)
Subject: RE: High-earners income tax legal analysis - ACP

Thanks, Chuck. I really appreciate your quick turnaround. I had a chance to review your comments on the memo. I'm ok with not expanding on how *Quinn* discussed *Culliton*. Just didn't know if there was anything worth mentioning there.

Regarding my uniformity comments, I was trying to understand what the "significant risk" was. Is it only because we assume that the rate will exceed one percent? See my revised edits in the memo. Let me know if I am misunderstanding something.

Dan

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 8:29 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Hi Dan.

We can add some analysis of uniformity if you think this draft is too high-level. Here is Andrew's memo from last session. I can cut much of the second and third pages of Andrew's memo and add those paragraphs to the current draft memo, with modification to address income. Let me know your preference.

From: Zalesky, Chuck (ATG)
Sent: Tuesday, November 25, 2025 4:58 PM
To: Jensen, Dan (ATG) <Dan.Jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

I accepted most corrections. There are a couple of comments that we can discuss before finalizing the memo. I'm OOO tomorrow, so it will need to be next week.

Here is the revised draft. F:\ACTIVE\Cases_Zalesky\L&P Advice\IncomeTaxMemoDraft1b.docx

---

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, November 25, 2025 4:36 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck,

The Center Square

Sorry for taking so long to get back to you on this. I have some relatively minor comments and suggestions. Let me know what you think.

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To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
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Here is a draft for your review. I kept is short and (hopefully) simple.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Friday, November 14, 2025 10:28 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Sorry, Chuck. That's on me. I shouldn't have said "initial draft." Save that draft legislation though. I think we could be asked to come up with something later.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Friday, November 14, 2025 10:00 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

OK. I'll get working on that. [Basically wasted 2 days drafting proposed legislation. ☹]

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Sent: Friday, November 14, 2025 9:57 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Thanks for clarifying. I mean a memo addressing the litigation risks. The memo would be to the Gov's Office.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
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To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
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The Center Square

I may have misunderstood the request. By "initial draft," do you mean a memo addressing the litigation risks, or an initial draft of income tax legislation?

I've been working on the latter, but in re-reading the email I think I misunderstood the ask.

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Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

External Email

Beau,

Including Noah in the conversation. No, we have not done any written analysis of any specific proposal for this session. We are happy to do one now but it would be helpful to know more specifics regarding what is being requested or the options that the Governor's Office would like us to evaluate.

Happy to talk more about this over the phone or in a meeting if that would be easier.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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The Center Square

From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Tuesday, October 14, 2025 12:20 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>
Subject: High-earners income tax legal analysis - ACP

[EXTERNAL]

Attorney client privilege

Hi Dan and Kristin,

Some legislators are discussing the concept of a high-earners income tax (e.g. 3% on income over $1 million). Has the AG's Office done any analysis on the legal risks (e.g. uniformity) and chance of something like this being upheld in court? If not, would it be possible to get that analysis? It's not urgent, but would be helpful to have it before the legislative session if possible.

Thanks, -Beau

Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government
564-250-1559
beau.perschbacher@gov.wa.gov
Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, December 24, 2025 3:36 PM
To: Zalesky, Chuck (ATG)
Subject: RE: House income tax draft--Attorney-client privileged

Thanks, Chuck. I'll combine our comments and respond to Noah.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Wednesday, December 24, 2025 3:26 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: House income tax draft--Attorney-client privileged

I didn't closely read the entire draft. But I did look at those sections you referenced and added my comments in red.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, December 24, 2025 11:46 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: House income tax draft--Attorney-client privileged

Chuck,

Here are some thoughts that I have about the draft legislation:

- Section 204(1) should specify "adjusted gross income as defined in section 62 of the internal revenue code."
- Tax rate – Section 301. I presume the intention is to impose a 10% tax on all individuals, estates, and trusts. This section could be read as saying that the 10% rate only applies to joint returns and surviving spouses. Agree. Section 301(1) should identify the rate of the tax. Also, the phrase "on the type of return filed" seems out of place in a tax imposing statute. Section 301(2) also seems odd. What is the meaning of the phrase "every married individual who makes a single return jointly . . ."?
- Standard Deduction – Section 407. I assume this was a drafting error, but those who file as heads of household at the federal level will owe the tax on all income over $22k whereas everyone else will owe tax on amounts over $1M or $2M, depending on how they file. Agree. If this was intentional, the tax policy reason escapes me. Also, as drafted, there is no standard deduction for an estate or trust. You could probably lump head of household filers with individual filers because this federal filing status is meant to benefit taxpayers with dependents who, likely, won't have income that would impact this standard deduction unless they have a significant trust fund. Also, Section 407(1) is odd. It mixes a type of return (joint return) with a filing status (qualified surviving spouse). According to an IRS educational webpage, there are five filing statuses: single, married filing jointly, married filing separately, head of household, and qualifying surviving spouse. https://apps.irs.gov/app/understandingTaxes/teacher/hows_mod05.jsp. My best guess is that the term "joint return" was intended to mean "married filing jointly." If I were to redraft Section 407, I'd state that "except as provided in section (2), the standard deduction for an individual is one million dollars." Then in section (2) "The standard deduction for married individuals that file a joint return is two million dollars." If there is an intent to give a lower standard deduction to individuals that happen to file federal returns under the head of household filing status, that exception could be made in section (3). The point is, state the standard deduction amount that generally applies, then state the exception(s).

Center Square

- Section 408 is also poorly drafted. The first sentence uses plural "deductions" when there appears to be no need since the only deduction referenced is the one "under section 407 of this act …" And I don't think there is a need to use the term "individual taxpayers." Finally, I'd use active voice. "In the case of an individual who is not a resident of this state for the entire taxable year, the standard deduction allowed in Section 407 must be reduced by multiplying the amount allowed in Section 407 by a fraction. . . ." [The numerator of the faction could also use some fine tuning.]
- Section 501(e). May want to clarify whether this extends to just members of the armed forces or if it includes independent contractors as well. Ultimately, this is a policy call. I am mostly pointing out an area where there could be ambiguity. The purpose of subsection (e) appears to be to conform to section 571(b) of the federal Servicemembers Civil Relief Act. See 50 U.S.C. app. § 571(b). That federal law could also impact the "residency" status of active-duty military and their spouses.
- Appeals – Section 901. Because the bill incorporated RCW 82.32.160 and 170 via Section 808, the edits in Section 901 are not necessary. Those appeals would already come to the BTA under (1)(a) via RCW 82.03.190.
- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists. By my count, there are 13 sections that reference section 1502.

Let me know what you think. Thanks for looking at this before I send to Noah.

Dan Jensen
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Tre Center Square

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Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
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To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

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Joe Fitzgibbon

The Center Square

Mayer, Ellie (ATG)

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To: Purcell, Noah Guzzo (ATG); Zalesky, Chuck (ATG); Gonick, Peter B. (ATG)
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Noah,

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- Section 204(1) should specify "adjusted gross income as defined in section 62 of the internal revenue code."
- Section 301. We presume the intention is to impose a 10% tax on all individuals, estates, and trusts. This section could be read as the 10% tax only applying to joint returns and surviving spouses. Section 301(1) should identify the rate of tax. Also, the phrase "on the type of return filed" seems out of place in a tax imposing statute. Finally, what is the meaning of the phrase "every married individual who makes a single return jointly" in Section 301(2)?
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- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists. There are 13 sections that reference section 1502.

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TJM10-00901
PRR-2026-0158

Hopefully, this is helpful. Let us know if you have any questions or need us to look at anything else.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

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The Center Square

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Wednesday, January 7, 2026 11:27 AM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG); Gonick, Peter B. (ATG)
Subject: RE: House income tax draft--Attorney-client privileged

Thank you for your input on this, Chuck and Dan. I just returned from being out of the office and am catching up on emails. Unfortunately I didn't have time to review and share this with the House before I left, but my understanding is that both houses are working out a combined draft this week and we should see a new version soon. So if it's okay with you, I will hold these comments for now and share them if these problems persist in the next draft. My apologies.

On a related note, Senator Pederson asked me yesterday if I think it matters whether the bill explicitly calls the "Millionaire's Tax" an income tax or simply calls it an excise tax. He said they have heard from DOR that the bill should say "income tax" or else DOR might have trouble getting info they need from the IRS to implement and calculate the tax. I'm not familiar with that issue—has either of you heard about that? For our purposes defending the tax, I told him that my initial reaction was that the Court would decide what type of tax it is regardless of the label, and some courts treat income taxes as excise taxes while others treat them as sui generis, and we could argue either, so I did not feel strongly for purposes of our defense of the tax. Does anyone have a different take? I welcome other opinions.

Thanks all!
Noah

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Sent: Monday, December 29, 2025 4:29 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
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PRR-2026-0158

The Center Square

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Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
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Sent: Wednesday, January 7, 2026 11:52 AM
To: Purcell, Noah Guzzo (ATG); Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: RE: House income tax draft--Attorney-client privileged

Hi Noah.

The IRS is authorized to enter into information exchange agreements with state taxing agencies. 28 U.S.C. § 6103(d)(1). See generally https://www.irs.gov/government-entities/governmental-liaisons/irs-information-sharing-programs. I do not know whether these agreements are limited to income taxes. The DOR folks likely have more insight on the limits to the exchange program. Let me know if you'd like me to dig deeper into this issue.

Aside from potential issues that may arise under the information exchange program, Here is what I told the DOR a few months back regarding the proposed Millionaire tax, before any language had been drafted:

> If the proposal is for a tax that applies to taxable income from whatever source (like the federal income tax and virtually every state income tax), it most likely will not matter what it is called in the statute. In other words, calling the tax an "excise tax" will not save it from that line of cases holding that "income" is "property" subject to ownership. For example, in *Power, Inc. v. Huntley*, 39 Wn.2d 191, 196 (1951), the Supreme Court invalidated the 1951 "Corporate Excise Tax" as "a mere property tax 'masquerading as an excise.'" The fact that the tax was called an "excise tax" and was imposed "for the privilege of exercising [the taxpayer's] corporate franchise in the state or for the privilege of doing business in the state" did not make it an excise tax.
>
> Thus, if the proposal is to create a Washington tax that is measured by (or starts with) a person's federal taxable income, I wouldn't monkey around with tying to characterize it as an excise tax. That will only make the Leg. seem disingenuous. Instead, tee it up as a test case to try to get the "income = property" line of cases overruled.

Chuck Zalesky
Senior Counsel
(360) 586-0756

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- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists. There are 13 sections that reference section 1502.

Hopefully, this is helpful. Let us know if you have any questions or need us to look at anything else.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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The Center Square

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: House income tax draft--Attorney-client privileged

Thank you all for reviewing the Senate draft. Attached is the House version. I welcome your thoughts.

From: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Sent: Monday, December 8, 2025 4:57 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>;

Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

Hi Sen Pedersen and Noah –

Attached is a high-earners income tax that OPR has prepared for our deliberations. Interested in your thoughts on the mechanics of it relative to the Senate draft that Sen Pedersen shared last week, for discussion some time soon. Thanks,

Joe Fitzgibbon

The Center Square

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Wednesday, January 7, 2026 1:41 PM
To: Zalesky, Chuck (ATG); Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: RE: House income tax draft--Attorney-client privileged

Thank you Chuck!

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Wednesday, January 7, 2026 11:52 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: RE: House income tax draft--Attorney-client privileged

Hi Noah.

The IRS is authorized to enter into information exchange agreements with state taxing agencies. 28 U.S.C. § 6103(d)(1). See generally https://www.irs.gov/government-entities/governmental-liaisons/irs-information-sharing-programs. I do not know whether these agreements are limited to income taxes. The DOR folks likely have more insight on the limits to the exchange program. Let me know if you'd like me to dig deeper into this issue.

Aside from potential issues that may arise under the information exchange program, Here is what I told the DOR a few months back regarding the proposed Millionaire tax, before any language had been drafted:

> If the proposal is for a tax that applies to taxable income from whatever source (like the federal income tax and virtually every state income tax), it most likely will not matter what it is called in the statute. In other words, calling the tax an "excise tax" will not save it from that line of cases holding that "income" is "property" subject to ownership. For example, in *Power, Inc. v. Huntley*, 39 Wn.2d 191, 196 (1951), the Supreme Court invalidated the 1951 "Corporate Excise Tax" as "a mere property tax 'masquerading as an excise.'" The fact that the tax was called an "excise tax" and was imposed "for the privilege of exercising [the taxpayer's] corporate franchise in the state or for the privilege of doing business in the state" did not make it an excise tax.
>
> Thus, if the proposal is to create a Washington tax that is measured by (or starts with) a person's federal taxable income, I wouldn't monkey around with tying to characterize it as an excise tax. That will only make the Leg. seem disingenuous. Instead, tee it up as a test case to try to get the "income = property" line of cases overruled.

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TJM10-00910
PRR-2026-0158

Chuck Zalesky
Senior Counsel
(360) 586-0756

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Subject: RE: House income tax draft--Attorney-client privileged

Thank you for your input on this, Chuck and Dan. I just returned from being out of the office and am catching up on emails. Unfortunately I didn't have time to review and share this with the House before I left, but my understanding is that both houses are working out a combined draft this week and we should see a new version soon. So if it's okay with you, I will hold these comments for now and share them if these problems persist in the next draft. My apologies.

On a related note, Senator Pederson asked me yesterday if I think it matters whether the bill explicitly calls the "Millionaire's Tax" an income tax or simply calls it an excise tax. He said they have heard from DOR that the bill should say "income tax" or else DOR might have trouble getting info they need from the IRS to implement and calculate the tax. I'm not familiar with that issue—has either of you heard about that? For our purposes defending the tax, I told him that my initial reaction was that the Court would decide what type of tax it is regardless of the label, and some courts treat income taxes as excise taxes while others treat them as sui generis, and we could argue either, so I did not feel strongly for purposes of our defense of the tax. Does anyone have a different take? I welcome other opinions.

Thanks all!
Noah

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Monday, December 29, 2025 4:29 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: RE: House income tax draft--Attorney-client privileged

Noah,

We have not had capacity to do an in depth review of the house income tax draft bill, but here is some feedback we have:

- Section 204(1) should specify "adjusted gross income as defined in section 62 of the internal revenue code."
- Section 301. We presume the intention is to impose a 10% tax on all individuals, estates, and trusts. This section could be read as the 10% tax only applying to joint returns and surviving spouses. Section 301(1) should identify the rate of tax. Also, the phrase "on the type of return filed" seems out of place in a tax imposing statute. Finally, what is the meaning of the phrase "every married individual who makes a single return jointly" in Section 301(2)?
- Section 407. We assume this was a drafting error, but those who file as heads of household at the federal level will owe the tax on all income over $22k whereas everyone else will owe tax on amounts over $1M or $2M,

TJM10-00911
PRR-2026-0158

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depending on how they file. Also, there is no standard deduction for an estate or trust. You could probably lump head of household filers with individual filers because this federal filing status is meant to benefit taxpayers with dependents who, likely, won't have income that would impact this standard deduction unless they have a significant trust fund. Also, Section 407(1) is odd. It mixes a type of return (joint return) with a filing status (qualified surviving spouse). According to an IRS educational webpage, there are five filing statuses: single, married filing jointly, married filing separately, head of household, and qualifying surviving spouse. https://apps.irs.gov/app/understandingTaxes/teacher/hows_mod05.jsp. "Joint return" was probably intended to mean "married filing jointly." Chuck has the following proposed edits to Section 407: I'd state that "except as provided in section (2), the standard deduction for an individual is one million dollars." Then in section (2) "The standard deduction for married individuals that file a joint return is two million dollars." If there is an intent to give a lower standard deduction to individuals that happen to file federal returns under the head of household filing status, that exception could be made in section (3). The point is, state the standard deduction amount that generally applies, then state the exception(s).

- Section 408 is also poorly drafted. The first sentence uses plural "deductions" when there appears to be no need since the only deduction referenced is the one "under section 407 of this act …" We also don't think there is a need to use the term "individual taxpayers." Finally, we suggest using the active voice. "In the case of an individual who is not a resident of this state for the entire taxable year, the standard deduction allowed in Section 407 must be reduced by multiplying the amount allowed in Section 407 by a fraction. . . ." [The numerator of the faction could also use some fine tuning.]
- Section 501(e) appears to conform to section 571(b) of the federal Servicemembers Civil Relief Act. See 50 U.S.C. app. § 571(b). That federal law could also impact the "residency" status of active-duty military and their spouses. Also, the legislature may want to clarify whether this subsection extends to just servicemembers of the armed forces or if it includes independent contractors as well. The current language could be construed as ambiguous.
- Appeals – Section 901. Because the bill incorporated RCW 82.32.160 and 170 via Section 808, the edits in Section 901 are not necessary. Those appeals would already come to the BTA under RCW 82.03.130(1)(a) via RCW 82.03.190.
- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists. There are 13 sections that reference section 1502.

Hopefully, this is helpful. Let us know if you have any questions or need us to look at anything else.

Dan Jensen
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Revenue and Finance Division
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Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: House income tax draft--Attorney-client privileged

Thank you all for reviewing the Senate draft. Attached is the House version. I welcome your thoughts.

TJM10-00912
PRR-2026-0158

The Center Square

From: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Sent: Monday, December 8, 2025 4:57 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

Hi Sen Pedersen and Noah –

Attached is a high-earners income tax that OPR has prepared for our deliberations. Interested in your thoughts on the mechanics of it relative to the Senate draft that Sen Pedersen shared last week, for discussion some time soon. Thanks,

Joe Fitzgibbon

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Wednesday, December 24, 2025 3:26 PM
To: Jensen, Dan (ATG)
Subject: RE: House income tax draft--Attorney-client privileged

I didn't closely read the entire draft. But I did look at those sections you referenced and added my comments in red.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, December 24, 2025 11:46 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: House income tax draft--Attorney-client privileged

Chuck,

Here are some thoughts that I have about the draft legislation:

- Section 204(1) should specify "adjusted gross income as defined in section 62 of the internal revenue code."
- Tax rate – Section 301. I presume the intention is to impose a 10% tax on all individuals, estates, and trusts. This section could be read as saying that the 10% rate only applies to joint returns and surviving spouses. Agree. Section 301(1) should identify the rate of the tax. Also, the phrase "on the type of return filed" seems out of place in a tax imposing statute. Section 301(2) also seems odd. What is the meaning of the phrase "every married individual who makes a single return jointly . . ."?
- Standard Deduction – Section 407. I assume this was a drafting error, but those who file as heads of household at the federal level will owe the tax on all income over $22k whereas everyone else will owe tax on amounts over $1M or $2M, depending on how they file. Agree. If this was intentional, the tax policy reason escapes me. Also, as drafted, there is no standard deduction for an estate or trust. You could probably lump head of household filers with individual filers because this federal filing status is meant to benefit taxpayers with dependents who, likely, won't have income that would impact this standard deduction unless they have a significant trust fund. Also, Section 407(1) is odd. It mixes a type of return (joint return) with a filing status (qualified surviving spouse). According to an IRS educational webpage, there are five filing statuses: single, married filing jointly, married filing separately, head of household, and qualifying surviving spouse. https://apps.irs.gov/app/understandingTaxes/teacher/hows_mod05.jsp. My best guess is that the term "joint return" was intended to mean "married filing jointly." If I were to redraft Section 407, I'd state that "except as provided in section (2), the standard deduction for an individual is one million dollars." Then in section (2) "The standard deduction for married individuals that file a joint return is two million dollars." If there is an intent to give a lower standard deduction to individuals that happen to file federal returns under the head of household filing status, that exception could be made in section (3). The point is, state the standard deduction amount that generally applies, then state the exception(s).
- Section 408 is also poorly drafted. The first sentence uses plural "deductions" when there appears to be no need since the only deduction referenced is the one "under section 407 of this act …" And I don't think there is a need to use the term "individual taxpayers." Finally, I'd use active voice. "In the case of an individual who is not a resident of this state for the entire taxable year, the standard deduction allowed in Section 407 must be reduced by multiplying the amount allowed in Section 407 by a fraction. . . ." [The numerator of the faction could also use some fine tuning.]
- Section 501(e). May want to clarify whether this extends to just members of the armed forces or if it includes independent contractors as well. Ultimately, this is a policy call. I am mostly pointing out an area where there

Liberty Square

TJM10-00914
PRR-2026-0158

could be ambiguity. The purpose of subsection (e) appears to be to conform to section 571(b) of the federal Servicemembers Civil Relief Act. See 50 U.S.C. app. § 571(b). That federal law could also impact the "residency" status of active-duty military and their spouses.

- Appeals – Section 901. Because the bill incorporated RCW 82.32.160 and 170 via Section 808, the edits in Section 901 are not necessary. Those appeals would already come to the BTA under (1)(a) via RCW 82.03.190.
- Missing section 1502. Certain provisions reference section 1502 of the bill. However, no such section exists. By my count, there are 13 sections that reference section 1502.

Let me know what you think. Thanks for looking at this before I send to Noah.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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Sent: Thursday, December 11, 2025 11:27 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
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Cc: Jinkins, Speaker Laurie <Laurie.Jinkins@leg.wa.gov>; Meyers, Dominique <Dominique.Meyers@leg.wa.gov>; Taylor, Tracey <Tracey.Taylor@leg.wa.gov>; Mahgoub, Noha <Noha.Mahgoub@leg.wa.gov>; Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>; Weber, Alma <Alma.Weber@leg.wa.gov>; Bridges, Matt <Matt.Bridges@leg.wa.gov>; Eitmann, Adam (ATG) <adam.eitmann@atg.wa.gov>
Subject: House income tax draft

[EXTERNAL]

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Joe Fitzgibbon

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, January 21, 2026 4:45 PM
To: Samans, James (DOR); Zalesky, Chuck (ATG)
Cc: Brumbaugh, Jack (DOR); Jennrich, Timothy (DOR)
Subject: RE: Legal review requested: "millionaire tax"
Attachments: S-3846.4_AGO comments.docx

Attorney-Client Privileged Communication:

Jamie,

Attached are our comments regarding the bill. Overall, we have concerns with crafting a tax with provisions this complicated if the intent of the bill is to overturn the *Culliton* decision. The complexity will make it harder for the AGO to explain the new tax in litigation. The edits in the attachment attempt to simplify some of the provisions but more work is needed to do that. We did not see any additional constitutional problems with tax other than needing to overcome the holding from *Culliton* regarding income being property.

Let us know if you have any questions or if you want to talk about any of our feedback.

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The Center Square

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Friday, January 16, 2026 12:36 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Cc: Brumbaugh, Jack (DOR) <JackB@dor.wa.gov>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: Legal review requested: "millionaire tax"
Importance: High

[EXTERNAL]

Hi Dan and Chuck – Exec has asked me to reach out for a legal review of the attached draft proposal. As a head's up, when Senator Pedersen shared this with us, he indicated that he would also be sharing it with the AGO, so perhaps there is an opportunity to not reinvent the wheel.

Do you think you could share your thoughts by the end of the day on Wednesday, January 21st?

Thank you!

Jamie Samans

Assistant Director
Legislation & Policy

6400 Linderson Way SW | Tumwater, WA 98501
360/534-1541 | 360/280-6348 (cell)
Washington State Department of Revenue

The Center Square

Mayer, Ellie (ATG)

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Wednesday, January 21, 2026 4:47 PM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG)
Cc: Brumbaugh, Jack (DOR); Jennrich, Timothy (DOR)
Subject: RE: Legal review requested: "millionaire tax"

[EXTERNAL]

Thank you both! We will review and let you know if/when we have questions. Really appreciate the quick turnaround on this.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, January 21, 2026 4:45 PM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Cc: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: RE: Legal review requested: "millionaire tax"

External Email

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Let us know if you have any questions or if you want to talk about any of our feedback.

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Cc: Brumbaugh, Jack (DOR) <JackB@dor.wa.gov>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: Legal review requested: "millionaire tax"
Importance: High

[EXTERNAL]

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Do you think you could share your thoughts by the end of the day on Wednesday, January 21st?

Thank you!

Jamie Samans
Assistant Director
Legislation & Policy

6400 Linderson Way SW | Tumwater, WA 98501
360/534-1541 | 360/280-6348 (cell)
Washington State Department of Revenue

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Friday, January 16, 2026 5:40 PM
To: Jensen, Dan (ATG)
Subject: RE: Legal review requested: "millionaire tax"
Attachments: S-3846.4_CZreview.docx

FYI - I spent all afternoon on this, and only got through the first 12 pages of the 56 page draft. I will try to get through the rest, but unlikely I can give detailed comments/edits by Wednesday. I have a COA brief I need to be working on.

Attached is my mark-up draft, as of now.

Chuck Zalesky
Senior Counsel
(360) 586-0756

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Cc: Brumbaugh, Jack (DOR) <JackB@dor.wa.gov>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: RE: Legal review requested: "millionaire tax"

Yes, we will be able to review this by the end of Wednesday.

Dan

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Friday, January 16, 2026 12:36 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Cc: Brumbaugh, Jack (DOR) <JackB@dor.wa.gov>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: Legal review requested: "millionaire tax"
Importance: High

[EXTERNAL]

TJM10-00920
PRR-2026-0158

Hi Dan and Chuck – Exec has asked me to reach out for a legal review of the attached draft proposal. As a head's up, when Senator Pedersen shared this with us, he indicated that he would also be sharing it with the AGO, so perhaps there is an opportunity to not reinvent the wheel.

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360/534-1541 | 360/280-6348 (cell)
Washington State Department of Revenue

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Tuesday, January 20, 2026 5:06 PM
To: Zalesky, Chuck (ATG); Purcell, Noah Guzzo (ATG); Gonick, Peter B. (ATG)
Subject: RE: millionaire tax draft--Attorney-client privileged

Noah,

I was able to review the bill as well. I like Chuck's proposed edits and they resolved the concerns I had with the language early on in the bill. So, I will focus my input on the last half of this bill.

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TJM10-00922
PRR-2026-0158

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Sent: Monday, January 19, 2026 3:53 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
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Executive Legislative Assistant
Sam Hendrickson
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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Wednesday, January 21, 2026 1:14 PM
To: Jensen, Dan (ATG)
Subject: RE: millionaire tax draft--Attorney-client privileged
Attachments: S-3846.4_CZreview.docx

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The Center Square

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[EXTERNAL]

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Attached please find a first joint House/Senate draft of the mechanical sections of the proposed millionaire tax. We welcome your review and comments. We're hoping to collect feedback by Monday, 1/26 to be able to consider incorporating changes into the introduction version of the bill. Obviously, that will not be the last opportunity for changes. We have not included an intent section yet, but do have your previous suggested language there and anticipate using that as a starting point.

I have shared the draft with the Governor's office, OFM and DOR. Please let me and/or Rep. Fitzgibbon know if you have any questions about the process or substance of the proposal. We look forward to working with you on perfecting the bill.

Best wishes, Jamie

Senator Jamie Pedersen
Majority Leader
43rd Legislative District
jamie.pedersen@leg.wa.gov
pronouns: he, him, his

Olympia Office
307 Legislative Building
P.O. Box 40443
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1200 12th Ave. S., Ste. 801
Seattle, WA 98144
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Executive Legislative Assistant
Sam Hendrickson
sam.hendrickson@leg.wa.gov

To subscribe to my online newsletter, please sign up here. To send any comments, or to learn more please visit my website.

The Center Square

Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Tuesday, February 10, 2026 5:26 PM
To: Jensen, Dan (ATG)
Subject: RE: PSSB 6346
Attachments: S-4858.2_CZcomments.pdf

Hi Dan.

Here are my comments:

1. No concerns with the revised city/county distribution language.

2. Happy to see that the initial bill included some of our proposed changes to the draft. However, I've made some comments to this proposed Substitute to (hopefully) get the Legislature to adopt a few more of our proposed changes. See attached.

3. Section 405, which attempts to create a method for apportioning income from business activity, needs to be re-drafted. I didn't add detailed comments to that section, but it is way over complicated, likely cannot be administered, and will result in legal challenges that will be hard to defend. If there is interest in fixing that section, I can work on language.

The Center Square

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Monday, February 9, 2026 10:05 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: PSSB 6346

Could you two please have a look at this revised version and send me any feedback by EOD Wednesday so that I can get it back to the Legislature? Thank you!

Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, February 9, 2026 10:03 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: PSSB 6346

[EXTERNAL]

TJM10-00938
PRR-2026-0158

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Sunday, February 8, 2026 10:46 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: PSSB 6346

Hi Sen. Pedersen –
Attached is the proposed substitute. I will get it posted to the EBB.

For the revised city/county distribution language, I had to do a little bit of cleanup; however, the distribution framework made sense, so I think the revised language works as intended.

I've attached a compare version so you can see the changes in the PSSB compared to the original bill.

Regards,
Jeff

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, February 11, 2026 4:05 PM
To: Purcell, Noah Guzzo (ATG); Zalesky, Chuck (ATG)
Subject: RE: PSSB 6346
Attachments: S-4858.2_REVcomments.pdf

Noah,

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Let us know if you have any questions or need anything else.

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
Olympia WA 98504-0123
(360) 664-9429

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[EXTERNAL]

TJM10-00940
PRR-2026-0158

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Sunday, February 8, 2026 10:46 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
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Jeff

The Center Square

TJM10-00941
PRR-2026-0158

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Thursday, February 12, 2026 2:45 PM
To: Jensen, Dan (ATG); Zalesky, Chuck (ATG)
Subject: RE: PSSB 6346

Thank you both. I just passed your feedback on to the legislature. I really appreciate your time.

From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, February 11, 2026 4:05 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
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Noah

TJM10-00942
PRR-2026-0158

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, February 9, 2026 10:03 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: PSSB 6346

[EXTERNAL]

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To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: PSSB 6346

[EXTERNAL]

TJM10-00948
PRR-2026-0158

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Sunday, February 8, 2026 10:46 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
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Regards,
Jeff

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Friday, February 20, 2026 7:40 AM
To: Zalesky, Chuck (ATG)
Subject: RE: quick research for meeting tomorrow

This is great, Chuck. Thanks for forwarding. Based on these materials, I agree with your conclusions below. I do think that it would be helpful to understand what the Legislature's basis for this particular marriage penalty is so we can defend it and that the better course is to eliminate it so that the case can focus on *Culliton*.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Thursday, February 19, 2026 5:49 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: quick research for meeting tomorrow

Key language from Druker v. Commissioner, 697 F.2d 46 (2d Cir. 1982), in which Second Circuit held that "marriage penalty" in federal income tax code did not violate the constitution:

In the Center Square

> The 1969 reform spawned a new class of aggrieved taxpayers—the two wage-earner married couple whose combined tax burden, whether they chose to file jointly under § 1(a) or separately under § 1(d), was now greater than it would have been if they had remained single and filed under § 1(c). It is this last phenomenon which has been characterized, in somewhat loaded fashion, as the "marriage penalty" or "marriage tax".[2] Here, again, while constitutional attack has been unavailing, see *Johnson v. United States*, 422 F.Supp. 958 (N.D.Ind.1976), *aff'd per curiam sub nom. Barter v. United States*, 550 F.2d 1239 (7 Cir.1977), *cert. denied*, 434 U.S. 1012, 98 S.Ct. 725, 54 L.Ed.2d 755 (1978); *Mapes v. United States*, 576 F.2d 896 (Ct.Cl.), *cert. denied*, 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), as well as the decision here under review, Congress has acted to provide relief. The Economic Recovery Tax Act of 1981, Pub.L. No. 97–34, § 103, 95 Stat. 172, 187, allows two-earner married couples a deduction from gross income, within specified limits, equal to 10% of the earnings of the lesser-earning spouse.
>
> Subsequent to the decisions in *Johnson* and *Mapes*, the Supreme Court made explicit in *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978), what had been implicit in earlier decisions, that the right to marry is "fundamental". The Court, however, citing *Califano v. Jobst*, 434 U.S. 47, 98 S.Ct. 95, 54 L.Ed.2d 228 (1977), took care to explain that it did "not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed." 434 U.S. at 386, 98 S.Ct. at 681. Whereas differences in race, religion, and political affiliation are

almost always irrelevant for legislative purposes, "a distinction between married persons and unmarried persons is of a different character". *Jobst, supra,* 434 U.S. at 53, 98 S.Ct. at 99. "Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status." *Id.*

We do not doubt that the "marriage penalty" has some adverse effect on marriage; indeed, James Druker stated at argument that, having failed thus far in the courts, he and his wife had solved their tax problem by divorcing but continuing to live together. The adverse effect of the "marriage penalty", however, like the effect of the termination of social security benefits in *Jobst,* is merely "indirect"; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual. See generally, Developments in Law—The Constitution and the Family, 93 Harv.L.Rev. 1156, 1255 (1980). The tax rate structure of I.R.C. § 1 places "no direct legal obstacle in the path of persons desiring to get married". *Zablocki, supra,* 434 U.S. at n. 12, 98 S.Ct. at 681 n. 12. Nor is anyone "absolutely prevented" by it from getting married, *id.* at 387, 98 S.Ct. at 681. Moreover, the "marriage penalty" is most certainly not "an attempt to interfere with the individual's freedom [to marry]". *Jobst, supra,* 434 U.S. at 54, 98 S.Ct. at 99. It would be altogether absurd to suppose that Congress, in fixing the rate schedules in 1969, had any invidious intent to discourage or penalize marriage—an estate enjoyed by the vast majority of its members. Indeed, as has been shown, the sole and express purpose of the 1969 reform was to provide some relief for the single taxpayer. See S.Rep. No. 552, *supra,* at 260–261. Given this purpose Congress had either to abandon the principle of horizontal equity between married couples, a principle which had been established by the 1948 Act and the constitutionality of which has not been challenged, or to impose a "penalty" on some two-earner married couples. It was put to this hard choice because, as Professor Bittker has shown, *supra,* 27 Stan.L.Rev. at 1395–96, 1429–31, it is simply impossible to design a progressive tax regime in which all married couples of equal aggregate income are taxed equally and in which an individual's tax liability is unaffected by changes in marital status.[3] . . . . Faced with this choice, Congress in 1969 decided to hold fast to horizontal equity, even at the price of imposing a "penalty" on two-earner married couples like the Drukers. There is nothing in the equal protection clause that required a different choice. Since the objectives sought by the 1969 Act—the maintenance of horizontal equity and progressivity, and the reduction of the differential between single and married taxpayers—were clearly compelling, the tax rate schedules in I.R.C. § 1 can survive even the "rigorous scrutiny" reserved by *Zablocki* for measures which "significantly interfere" with the right to marry. Cf. *Johnson, supra,* 422 F.Supp. at 973–74. Clearly, the alternative favored by the Drukers, that married persons be permitted to file under § 1(c) if they so wish, would entail the loss of horizontal equity.

In the area of family taxation every legislative disposition is "virtually fated to be both overinclusive and underinclusive when judged from one perspective or another". The result, as Professor Bittker has well said, is that there "can be no peace in this area, only an uneasy truce." 27 Stan.L.Rev. at 1443. Congress must be accorded wide latitude in striking the terms of that truce. The history we have reviewed makes clear that Congress

TJM10-00951
PRR-2026-0158

has worked persistently to accommodate the competing interests and accomplish fairness. While we could elaborate still further, we think that this, along with the discussion in *Johnson*, *Mapes*, and in Chief Judge Tannenwald's opinion below, is sufficient to show that what the Drukers choose to call the "marriage penalty" deprived them of no constitutional right.

There is a similar discussion in *Johnson v. Pomeroy*, 294 F. App'x 397, 402–04 (10th Cir. 2008)

Courts have subsequently applied the *Jobst*/*Zablocki* analysis to cases involving claims of impermissible interference with the right to marry. Following the Tax Reform Act of 1969, many two wage-earner married couples were subjected to the "marriage penalty," where their combined tax burden, whether they chose to file jointly or separately, was greater than it would have been if they had remained single and filed as single taxpayers. In *Druker v. Commissioner of Internal Revenue*, 697 F.2d 46 (2d Cir.1982), *cert. denied*, 461 U.S. 957, 103 S.Ct. 2429, 77 L.Ed.2d 1316 (1983), the plaintiff taxpayers alleged that the "marriage penalty" was unconstitutional. The Second Circuit had no doubt that the "marriage penalty" had some adverse effect on marriage, but concluded that the adverse effect, "like the effect of the termination of social security benefits in *Jobst*, is merely 'indirect'; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual." *Id.* at 50, 98 S.Ct. 95. The challenged tax rate structure placed no direct legal obstacle in the path of persons desiring to get married, it did not absolutely prevent anyone from getting married, and it did not attempt to interfere with the individuals' freedom to marry. The Second Circuit concluded that the "marriage penalty" did not deprive the Drukers of a constitutional right. *Id.* at 51, 98 S.Ct. 95.

Similarly, in *Mapes v. United States*, 217 Ct.Cl. 115, 576 F.2d 896 (1978), *cert. denied*, 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), the United States Court of Claims held that the tax rates resulting in the "marriage penalty" were constitutional.

> The additional tax liability suffered by two-income couples who cannot avail themselves of the rates for single persons is an indirect burden on the exercise of the right to marry. It is suffered not for marrying but for marrying one in a particular income group. This does not rise to the level of an 'impermissible' interference with the enjoyment of a fundamental right.

576 F.2d at 901. "[T]he elevated tax burden might in fact dissuade some couples from entering into matrimony, but does not present an insuperable barrier to marriage." *Id.* Strict scrutiny is appropriate only where the obstacle to marriage "operates to preclude the marriage entirely for a certain class of people." *Id.*

The Center Square

We have previously considered and rejected a claim similar to the Johnsons'. In *Martin v. Bergland*, 639 F.2d 647 (10th Cir.1981), the appellants, husband and wife, challenged a regulation promulgated by the Secretary of Agriculture that defined a husband and wife as a single person for purposes of a statute limiting farm subsidy payments to $20,000 per person. In 1973, Congress directed the Secretary to define the term "person" in order to limit farm subsidy payments to farmers who kept their land idle. Appellants argued that the Secretary's refusal to pay farm subsidy payments to both of them solely because of their marriage denied them equal protection of the laws under the Fifth Amendment. Using the principles outlined in *Jobst* and *Zablocki*, we determined that the regulation was not such a direct and substantial burden on the freedom to marry that it should be strictly scrutinized. *Id.* at 649. We upheld the regulation under the rational basis test, finding that the husband-wife rule rationally furthers Congress' interest in limiting farm subsidy payments. *Id.* at 650.

We agree with the district court that the Johnsons have not established an impermissible interference with the right to marry or associate with family. Like the "marriage penalty" discussed in *Druker* and *Mapes*, and the farm subsidy regulation considered in *Martin*, the Employees' interpretation and application of the Wyoming statute did not present a direct legal obstacle in the path of persons desiring to get married. Nor did it absolutely prohibit a class of persons from getting married. Moreover, there is no plausible indiction that the denial of Mr. Johnson's claim for extended PTD benefits was an attempt to interfere with the Johnsons' freedom to make a decision as important as marriage. While the Johnsons may have suffered an indirect burden on their marriage, there was no direct and substantial burden on their freedoms to marry and to associate with family.[5]

My initial takeaway is that a court would likely hold that the marriage penalty in the Millionaire Tax does not "significantly interfere" with the right to marry and, therefore, is subject to rational basis review. However, it would certainly help if we could articulate a solid reason for the Legislative choice, was the case in *Drukers* and *Johnson v. Pomeroy*.

Regardless, keeping the marriage penalty creates another constitutional challenge that the tax must overcome. In my view, that is not a fight worth having as the important constitutional issue is to get Culliton overturned.

The Center Square

Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, December 10, 2025 5:03 PM
To: Zalesky, Chuck (ATG); Purcell, Noah Guzzo (ATG)
Cc: Gonick, Peter B. (ATG)
Subject: RE: research and drafting request; attorney-client privileged and confidential

Noah,

I agree with Chuck both in regards to the proposed legislation not causing problems with future litigation and with his other suggestions, in particular the marriage penalty provision. Here are a few additional thoughts regarding cleaning up the bill:

- Another oddity with the marriage penalty provision is that under Section 7 the DOR would only receive wage data for individuals earning more than $1,000,000, making it more difficult to audit married couples who both earn under that threshold but collectively earn more than $1,000,000.
- Section 11 focuses more on businesses that have sales. Other businesses fall under the last subsection of Section 11, which creates an odd petition process to the DOR. I would advise the Legislature to come up with a specific method for non-sales related businesses rather than creating a process where the taxpayer petitions the DOR for an apportionment method. What happens when the DOR denies the taxpayer's petitioned apportionment method? Is that appealable? I think that could get messy.
- Finally, you don't need a separate substantial underpayment penalty in RCW 82.32.090(11). The one in subsection (2) already applies because all of Chapter 82.32 RCW is incorporated into this bill. Otherwise, you could have taxpayers owing a 30% substantial underpayment penalty with RCW 82.32.090(2) penalties and proposed RCW 82.32.090(11) penalties both applying.

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From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Tuesday, December 9, 2025 4:40 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: RE: research and drafting request; attorney-client privileged and confidential

Hi Noah.

I didn't see anything in the proposal that would cause problems with eventual litigation.

TJM10-00954
PRR-2026-0158

I do wonder about the policy for granting married couples the same amount of deduction as single persons. That creates a marriage penalty where married persons receive, in effect, only ½ of the deduction amount two single persons would receive in the aggregate.

I had a few other comments and suggestions that might be worth sharing with Senator Petersen. See attached. But that is entirely your call. None substantively relate to fixes that will make it easier to convince the Supreme Court to overrule Culliton.

Chuck.

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Monday, December 8, 2025 12:15 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

Could you all please review and let me know your thoughts? Thanks.

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, December 6, 2025 7:37 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Hi Noah –

Here is the draft of the millionaire tax bill. I welcome your thoughts and comments about what will give us the best shot to have Culliton overruled. Let me know if you would like to set up a time to chat about this.

Best wishes, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, December 2, 2025 3:34 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Sen. Pedersen –
Attached is the updated draft. I've also attached the DOR revenue estimate. DOR assumes an effective date in 2028 instead of 2027 because of the time it will take to implement the bill. I've updated the dates in the draft accordingly. Hopefully, DOR will provide language feedback within the next week, at which point I will run the draft through the CRO. The new revenue distribution language is in section 3.

Three outstanding items:

1. Touch base on how you want to structure the tax imposition language in section 4 in light of a potential court challenge;
2. Bill title; and
3. Intent language.

Please let me know if you have any questions, changes, and/or if you would like to set up a time to discuss in more detail.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

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From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, December 2, 2025 11:41 AM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

Thanks for checking back. For initial target practice, I was actually thinking 10% to cities and 10% to counties (reducing GF to 60%). But that part of the bill will definitely be the subject of a lot of discussion and debate at every stage. It's the other parts that are most important to start getting socialized. Let me know if you have any other questions. Any idea when we will have the numbers back from DOR?

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, December 2, 2025 11:20 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>

Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
When you get a moment, could you please confirm the distribution of revenues:

- 70% to GF;
- 10% to fund state property tax relief;
- 10% to fund the working families tax credit; and
- 10% to cities/counties.

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, November 26, 2025 3:49 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff – I look forward to seeing both. Jamie

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Monday, November 24, 2025 4:35 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
I just checked with DOR. The fiscal note will hopefully be done next week. DOR is also reviewing the language, which should be completed in early December. The language I sent the Department several weeks ago did not include the distribution provisions. I will send an updated draft with the distribution language next Monday or Tuesday.

Have a wonderful Thanksgiving as well!

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, November 24, 2025 3:37 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

I wanted to check back and see whether you had any update on the fiscal note from DOR, and when you think you might have a next draft with the language that we discussed a few weeks ago.

Hope all is well with you; best wishes for a wonderful Thanksgiving!

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Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 2:19 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Sen. Pedersen –
Yes, 10:30am to 11:30am on Friday works great for both Matt and me. Would you like me to send a Teams invite?

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 2:13 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>

TJM10-00959
PRR-2026-0158

Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

Unfortunately, Thursday is packed for me. On Friday, I am open from 10:30am-12:30pm – would a time in that window work?

Thanks, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:53 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –

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I think the discussion might take close to an hour and I have a bunch of meetings scattered throughout the day tomorrow. Do you by chance have any availability on Thursday?

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:11 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff! Lots of issues I had not thought of there. I have several questions and comments, so would love to have a chance to meet. I think it would be good to have Matt there too, if that is OK. Any chance you have availability tomorrow? I'm open 9-10am; 11am-2pm; and 2:30-4:30pm. If not, let me know and we can look further out.

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 10:14 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Attached is a preliminary draft. I've started a list of discussion questions/topics, which I'm continuing to compile. Let me know if you have any availability in the next week or two to discuss. Once you are good with the draft, I will send it to DOR for an estimate.

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, October 18, 2025 3:31 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

We had a good discussion of the concept at our retreat this past weekend, so I think it is time to start drafting.

I like following the capital gains approach on couples (i.e. they have to split the $1 million exemption regardless of filing status).

Please let me know if there is any other guidance that you need from me.

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Friday, September 5, 2025 11:18 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Below are some brief, initial thoughts in red. As I think of additional points for your consideration, I will periodically send those to you as well.

Also, I will be out of the office for the next two weeks. However, I will be able to follow up on any additional questions/research that you may have as soon as I get back. Also, if you think this concept is likely to be introduced, I should probably start formulating a draft by October. If you could let me know by the end of September, it would be greatly appreciated.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

The Center Square

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, August 27, 2025 9:16 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: research and drafting request

Hi Jeff –

I hope that your summer has been great. I need your help with development of an idea that I am working on for next session.

The basic concept would be a "millionaire excise tax", which would be a new tax on federal adjusted gross income received by individuals (not businesses; I would not expect to touch B&O taxes at this point) in excess of $1 million each year.

Questions/requests:

1. I'd like to use federal AGI as the base so that it is as easy to calculate and enforce as possible – does that create a delegation problem? As a starting point, an open-ended reference to federal tax law (rolling conformity) would likely present a delegation problem. However, structured in a manner that allows DOR to periodically update the federal tax code reference under certain well-defined conditions such as a "de minimis" impact on state revenues with additional sideboards would probably avoid significant delegation concerns. However, because of the broader legal considerations likely to arise, it might make sense to start with static conformity where the state code ties to the federal tax code as existing on a specific date without automatic updates. As some additional context, the state capital gains tax does provide a mechanism where the date for the IRC reference can be updated without legislation. The state law allows DOR by rule to specify a later date in a manner consistent with the capital gains tax law. However, DOR has not updated the reference yet, i.e., it is still based on the date specified in the original enacting legislation. I've reached out to DOR to get their thoughts on what considerations they think would go into a possible update.

2. What are my options for handling the different federal filing statuses (single, married filing jointly)? I think it will be important politically to be able to say that it applies only to income above $1 million and that income below that is fully exempt. Generally, in most states with income taxes, the standard deduction for married couples filing jointly is typically double the amount for single or married filing separate status. However, the standard exclusion is much lower in these states. This proposal could use our state capital gains tax approach where spouses and state-registered domestic partners receive a total, combined exclusion of $270K regardless of filing status. In other words, under this concept, if a married couple filed separately, the $1M exclusion would be divided between the two tax returns.

1. Do you have any other suggestions for how to keep the bill (a) as short and easy to understand as possible and (b) as cheap for DOR to administer as possible? Basing the state tax on the federal return to the largest extent possible will certainly help reduce DOR admin/implementation costs. Also, the $1M exclusion will narrow the scope of the impacted taxpayers considerably further reducing administrative costs. As a very rough estimate, using a uniform $1M threshold for all returns regardless of filing status, the proposal would impact roughly 20,000 taxpayers out of approximately 3.5 million.

2. I'd like to start with a rate of 9.99%, with a dollar-for-dollar credit for capital gains taxes paid. Can you get an estimate for how much money that would raise? As a rough estimate, about $3B in revenue would have been generated in 2025 under a very basic scenario where all tax returns – single and joint - are eligible for a $1M exclusion and the tax pivots directly from federal AGI. In other words, the 9.99% rate is applied to the portion of a taxpayer's federal AGI above $1M. This rough estimate reflects an offset for the state capital gains tax; however, the amount has not been reduced by a credit for WA residents working in Oregon (or other states) and paying Oregon (or other states) income taxes. For example, a WA resident would show all income on a WA return but receive a credit for the portion of income subject to Oregon's income tax. This same taxpayer would file a nonresident return with Oregon only showing the wage income earned in Oregon. With a $1M threshold, I don't think there would be a significant impact for out-of-state credits.

3. I'd like to leave open the possibility that we could allocate part of the stack (maybe up to 2% each) to county and city governments. If you decide to proceed with having this proposal drafted, I'll make sure to include placeholder language for an allocation for cities/counties.

4. I expect that the bill will get challenged in court. I would like to force the Washington Supreme Court to reconsider its caselaw that considers income to be property. Do you have any other suggestions about how to bolster the argument that this would be an excise tax and not a property tax? With the capital gains tax and its specific focus on the sale of capital assets, a lot of people were reasonably confident it would be construed as

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an excise tax because of its transactional nature. As a counter example, a wealth tax, while impacting similar financial assets, is clearly a type of property tax. Along similar lines, a tax based on employment activity, as measured by wages/salaries, would seem to fall within the excise tax bucket. However, dividend and interest income is more complicated because those revenues result directly from property ownership, somewhat conflating matters. However, one option would be to structure the tax for these revenues based on the idea of engaging in investment activity. In short, it might make sense to specify the triggering activity in the draft for each type of income subject to tax to bolster the argument that the disparate forms of revenue captured within AGI and subject to the state tax are based on specific triggering activities, a fundamental hallmark of an excise tax.

5. I'd like to understand where that rate would put us relative to the rates in other US jurisdictions (particularly our major blue-state economic competition, such as CA, MA, IL, NY, CO, and VA, as well as neighboring states such as ID and OR) for income at that scale. Attached is a spreadsheet with state income tax rates.

6. Are there any lessons from previous income tax attempts that I should take into account? I will ponder this one and follow up. I worked on some of the proposals by Jim McIntire many years ago as well as the original version of the capital gains tax by Rep. Jinkins about 14 years ago. However, a lot has changed in terms of the legal landscape as well as the statutory landscape with the state capital gains tax (and working families' credit, which is very similar to the federal EITC).

7. Are there any other suggestions that you have for how to proceed with this concept? Another option would be to work from Sen. Frame's payroll tax proposal last year but change the legal incidence of the tax from the employer to the employee. As some context, wages and salaries account for roughly 2/3 of federal AGI. Capital gains contribute around 5-10%. Therefore, this approach would capture most of the revenue that would be obtained from a more traditional income tax (and the capital gains tax is already in place). Because it would be narrowly focused on high-earner employment activity, it might be potentially easier to argue it is an excise tax and it would also capture the faster wage growth associated with high income individuals. (The latter point would of course also be true under the more traditional income tax approach.) On the flip side, the tax would, by its nature, disregard interest, dividend, and other types of income. Also, I think an effort to truly force the WA Supreme Court to reconsider its caselaw would necessitate the use of a broader AGI-type tax that includes revenue items like dividends and interest. Lastly, there is a 1950s court case (Cary v. Bellingham), where the state supreme court invalidated an employee excise tax imposed by the city of Bellingham. The key issue centered around the city's authority to require employees to secure an annual license. In other words, the focus, in my opinion, was more on the licensing aspect versus the excise tax element. For now, I just wanted to raise the issue for future consideration.

Please let me know if you have any other clarifying questions or need further direction from me. I appreciate your help with this!

Best, Jamie

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PRR-2026-0158

Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Thursday, December 11, 2025 11:26 PM
To: Pedersen, Sen. Jamie
Cc: Zalesky, Chuck (ATG); Jensen, Dan (ATG)
Subject: RE: research and drafting request; attorney-client privileged and confidential
Attachments: Pedersen-AGI_czEdits.docx

Senator Pedersen,

Thank you for your patience as we reviewed this. I'm cc'ing here my colleagues Chuck Zalesky and Dan Jensen, from our Revenue Division, who are the leading experts on this issue and both reviewed the bill. In general, as a legal matter, we think this achieves your desired policy goals. We just have a few comments and suggestions for your consideration:

First, Chuck prepared detailed comments in the attached and included potential language for an intent section if you want to incorporate it.

One other idea we had for the intent section was that it might be useful for the legislature to say something about why the Culliton line of cases is harmful (e.g., that it leads to WA having such a regressive tax system).

Both Chuck and Dan noted that the draft grants married couples the same amount of deduction as single persons. That creates a marriage penalty where married persons receive, in effect, only ½ of the deduction amount two single persons would receive in the aggregate. Dan also noted that under Section 7 the DOR would only receive wage data for individuals earning more than $1,000,000, making it more difficult to audit married couples who both earn under that threshold but collectively earn more than $1,000,000.

Dan noted that Section 11 focuses more on businesses that have sales. Other businesses fall under the last subsection of Section 11, which creates an odd petition process to the DOR. We would advise the Legislature to come up with a specific method for non-sales related businesses rather than creating a process where the taxpayer petitions the DOR for an apportionment method. What happens when the DOR denies the taxpayer's petitioned apportionment method? Is that appealable? We think that could get messy.

Dan suggests that you don't need a separate substantial underpayment penalty in RCW 82.32.090(11). The one in subsection (2) already applies because all of Chapter 82.32 RCW is incorporated into this bill. Otherwise, you could have taxpayers owing a 30% substantial underpayment penalty with RCW 82.32.090(2) penalties and proposed RCW 82.32.090(11) penalties both applying.

Last but not least, unless I missed it, I did not see an emergency clause. Without one, someone could try to subject the bill to a referendum. It should not be subject to referendum because it raises revenue, but under the Secretary of State's longstanding practice, they only reject proposed referenda if the bill has an emergency clause, so someone would have to sue to prevent a referendum on the bill as written. I just wanted to make sure you were aware of that.

We hope this is helpful, and please let us know if you have any questions or want to discuss further.

All the best,
Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, December 8, 2025 1:10 PM

TJM10-00967
PRR-2026-0158

The Seattle Square

To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Thanks, Noah – I appreciate your help with this project. I should note that the distribution side is just my musings; there is no agreement about that. We're mostly interested in the mechanics of the tax. Best, Jamie

---

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Monday, December 8, 2025 12:16 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Subject: RE: research and drafting request; attorney-client privileged and confidential

CAUTION:External email.

Let me talk to my internal experts and we will get back to you once we've had a chance to discuss. Thanks.

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, December 6, 2025 7:37 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Hi Noah –

Here is the draft of the millionaire tax bill. I welcome your thoughts and comments about what will give us the best shot to have Culliton overruled. Let me know if you would like to set up a time to chat about this.

Best wishes, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, December 2, 2025 3:34 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Sen. Pedersen –
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Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

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Sent: Tuesday, December 2, 2025 11:41 AM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

The Center Square

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Best, Jamie

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Sent: Tuesday, November 4, 2025 1:53 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
I think the discussion might take close to an hour and I have a bunch of meetings scattered throughout the day tomorrow. Do you by chance have any availability on Thursday?

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:11 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>

Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff! Lots of issues I had not thought of there. I have several questions and comments, so would love to have a chance to meet. I think it would be good to have Matt there too, if that is OK. Any chance you have availability tomorrow? I'm open 9-10am; 11am-2pm; and 2:30-4:30pm. If not, let me know and we can look further out.

Best, Jamie

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Sent: Tuesday, November 4, 2025 10:14 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –

Attached is a preliminary draft. I've started a list of discussion questions/topics, which I'm continuing to compile. Let me know if you have any availability in the next week or two to discuss. Once you are good with the draft, I will send it to DOR for an estimate.

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, October 18, 2025 3:31 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

We had a good discussion of the concept at our retreat this past weekend, so I think it is time to start drafting.

I like following the capital gains approach on couples (i.e. they have to split the $1 million exemption regardless of filing status).

Please let me know if there is any other guidance that you need from me.

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Friday, September 5, 2025 11:18 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Below are some brief, initial thoughts in red. As I think of additional points for your consideration, I will periodically send those to you as well.

Also, I will be out of the office for the next two weeks. However, I will be able to follow up on any additional questions/research that you may have as soon as I get back. Also, if you think this concept is likely to be introduced, I should probably start formulating a draft by October. If you could let me know by the end of September, it would be greatly appreciated.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

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From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, August 27, 2025 9:16 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: research and drafting request

Hi Jeff –

I hope that your summer has been great. I need your help with development of an idea that I am working on for next session.

The basic concept would be a "millionaire excise tax", which would be a new tax on federal adjusted gross income received by individuals (not businesses; I would not expect to touch B&O taxes at this point) in excess of $1 million each year.

Questions/requests:

1. I'd like to use federal AGI as the base so that it is as easy to calculate and enforce as possible – does that create a delegation problem? As a starting point, an open-ended reference to federal tax law (rolling conformity) would likely present a delegation problem. However, structured in a manner that allows DOR to periodically update the federal tax code reference under certain well-defined conditions such as a "de minimis" impact on state

revenues with additional sideboards would probably avoid significant delegation concerns. However, because of the broader legal considerations likely to arise, it might make sense to start with static conformity where the state code ties to the federal tax code as existing on a specific date without automatic updates. As some additional context, the state capital gains tax does provide a mechanism where the date for the IRC reference can be updated without legislation. The state law allows DOR by rule to specify a later date in a manner consistent with the capital gains tax law. However, DOR has not updated the reference yet, i.e., it is still based on the date specified in the original enacting legislation. I've reached out to DOR to get their thoughts on what considerations they think would go into a possible update.

2. What are my options for handling the different federal filing statuses (single, married filing jointly)? I think it will be important politically to be able to say that it applies only to income above $1 million and that income below that is fully exempt. Generally, in most states with income taxes, the standard deduction for married couples filing jointly is typically double the amount for single or married filing separate status. However, the standard exclusion is much lower in these states. This proposal could use our state capital gains tax approach where spouses and state-registered domestic partners receive a total, combined exclusion of $270K regardless of filing status. In other words, under this concept, if a married couple filed separately, the $1M exclusion would be divided between the two tax returns.

1. Do you have any other suggestions for how to keep the bill (a) as short and easy to understand as possible and (b) as cheap for DOR to administer as possible? Basing the state tax on the federal return to the largest extent possible will certainly help reduce DOR admin/implementation costs. Also, the $1M exclusion will narrow the scope of the impacted taxpayers considerably further reducing administrative costs. As a very rough estimate, using a uniform $1M threshold for all returns regardless of filing status, the proposal would impact roughly 20,000 taxpayers out of approximately 3.5 million.

2. I'd like to start with a rate of 9.99%, with a dollar-for-dollar credit for capital gains taxes paid. Can you get an estimate for how much money that would raise? As a rough estimate, about $3B in revenue would have been generated in 2025 under a very basic scenario where all tax returns – single and joint - are eligible for a $1M exclusion and the tax pivots directly from federal AGI. In other words, the 9.99% rate is applied to the portion of a taxpayer's federal AGI above $1M. This rough estimate reflects an offset for the state capital gains tax; however, the amount has not been reduced by a credit for WA residents working in Oregon (or other states) and paying Oregon (or other states) income taxes. For example, a WA resident would show all income on a WA return but receive a credit for the portion of income subject to Oregon's income tax. This same taxpayer would file a nonresident return with Oregon only showing the wage income earned in Oregon. With a $1M threshold, I don't think there would be a significant impact for out-of-state credits.

3. I'd like to leave open the possibility that we could allocate part of the stack (maybe up to 2% each) to county and city governments. If you decide to proceed with having this proposal drafted, I'll make sure to include placeholder language for an allocation for cities/counties.

4. I expect that the bill will get challenged in court. I would like to force the Washington Supreme Court to reconsider its caselaw that considers income to be property. Do you have any other suggestions about how to bolster the argument that this would be an excise tax and not a property tax? With the capital gains tax and its specific focus on the sale of capital assets, a lot of people were reasonably confident it would be construed as an excise tax because of its transactional nature. As a counter example, a wealth tax, while impacting similar financial assets, is clearly a type of property tax. Along similar lines, a tax based on employment activity, as measured by wages/salaries, would seem to fall within the excise tax bucket. However, dividend and interest income is more complicated because those revenues result directly from property ownership, somewhat conflating matters. However, one option would be to structure the tax for these revenues based on the idea of engaging in investment activity. In short, it might make sense to specify the triggering activity in the draft for each type of income subject to tax to bolster the argument that the disparate forms of revenue captured within

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AGI and subject to the state tax are based on specific triggering activities, a fundamental hallmark of an excise tax.

5. I'd like to understand where that rate would put us relative to the rates in other US jurisdictions (particularly our major blue-state economic competition, such as CA, MA, IL, NY, CO, and VA, as well as neighboring states such as ID and OR) for income at that scale. Attached is a spreadsheet with state income tax rates.

6. Are there any lessons from previous income tax attempts that I should take into account? I will ponder this one and follow up. I worked on some of the proposals by Jim McIntire many years ago as well as the original version of the capital gains tax by Rep. Jinkins about 14 years ago. However, a lot has changed in terms of the legal landscape as well as the statutory landscape with the state capital gains tax (and working families' credit, which is very similar to the federal EITC).

7. Are there any other suggestions that you have for how to proceed with this concept? Another option would be to work from Sen. Frame's payroll tax proposal last year but change the legal incidence of the tax from the employer to the employee. As some context, wages and salaries account for roughly 2/3 of federal AGI. Capital gains contribute around 5-10%. Therefore, this approach would capture most of the revenue that would be obtained from a more traditional income tax (and the capital gains tax is already in place). Because it would be narrowly focused on high-earner employment activity, it might be potentially easier to argue it is an excise tax and it would also capture the faster wage growth associated with high income individuals. (The latter point would of course also be true under the more traditional income tax approach.) On the flip side, the tax would, by its nature, disregard interest, dividend, and other types of income. Also, I think an effort to truly force the WA Supreme Court to reconsider its caselaw would necessitate the use of a broader AGI-type tax that includes revenue items like dividends and interest. Lastly, there is a 1950s court case (Cary v. Bellingham), where the state supreme court invalidated an employee excise tax imposed by the city of Bellingham. The key issue centered around the city's authority to require employees to secure an annual license. In other words, the focus, in my opinion, was more on the licensing aspect versus the excise tax element. For now, I just wanted to raise the issue for future consideration.

Please let me know if you have any other clarifying questions or need further direction from me. I appreciate your help with this!

Best, Jamie

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Tuesday, December 9, 2025 4:40 PM
To: Purcell, Noah Guzzo (ATG)
Cc: Jensen, Dan (ATG); Gonick, Peter B. (ATG)
Subject: RE: research and drafting request; attorney-client privileged and confidential
Attachments: Pedersen-AGI_czEdits.docx

Hi Noah.

I didn't see anything in the proposal that would cause problems with eventual litigation.

I do wonder about the policy for granting married couples the same amount of deduction as single persons. That creates a marriage penalty where married persons receive, in effect, only ½ of the deduction amount two single persons would receive in the aggregate.

I had a few other comments and suggestions that might be worth sharing with Senator Petersen. See attached. But that is entirely your call. None substantively relate to fixes that will make it easier to convince the Supreme Court to overrule Culliton.

Chuck.

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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Monday, December 8, 2025 12:15 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

Could you all please review and let me know your thoughts? Thanks.

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, December 6, 2025 7:37 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Hi Noah –

Here is the draft of the millionaire tax bill. I welcome your thoughts and comments about what will give us the best shot to have Culliton overruled. Let me know if you would like to set up a time to chat about this.

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Jamie

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Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:53 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
I think the discussion might take close to an hour and I have a bunch of meetings scattered throughout the day tomorrow. Do you by chance have any availability on Thursday?

Thanks,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Tuesday, November 4, 2025 1:11 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Thanks, Jeff! Lots of issues I had not thought of there. I have several questions and comments, so would love to have a chance to meet. I think it would be good to have Matt there too, if that is OK. Any chance you have availability tomorrow? I'm open 9-10am; 11am-2pm; and 2:30-4:30pm. If not, let me know and we can look further out.

Best, Jamie

Senator Jamie Pedersen
Majority Leader
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jamie.pedersen@leg.wa.gov
pronouns: he/him

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Tuesday, November 4, 2025 10:14 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Attached is a preliminary draft. I've started a list of discussion questions/topics, which I'm continuing to compile. Let me know if you have any availability in the next week or two to discuss. Once you are good with the draft, I will send it to DOR for an estimate.

Regards,
Jeff

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, October 18, 2025 3:31 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Jeff –

We had a good discussion of the concept at our retreat this past weekend, so I think it is time to start drafting.

I like following the capital gains approach on couples (i.e. they have to split the $1 million exemption regardless of filing status).

Please let me know if there is any other guidance that you need from me.

Best, Jamie

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From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Friday, September 5, 2025 11:18 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Below are some brief, initial thoughts in red. As I think of additional points for your consideration, I will periodically send those to you as well.

Also, I will be out of the office for the next two weeks. However, I will be able to follow up on any additional questions/research that you may have as soon as I get back. Also, if you think this concept is likely to be introduced, I should probably start formulating a draft by October. If you could let me know by the end of September, it would be greatly appreciated.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, August 27, 2025 9:16 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: research and drafting request

Hi Jeff –

I hope that your summer has been great. I need your help with development of an idea that I am working on for next session.

The basic concept would be a "millionaire excise tax", which would be a new tax on federal adjusted gross income received by individuals (not businesses; I would not expect to touch B&O taxes at this point) in excess of $1 million each year.

Questions/requests:

1. I'd like to use federal AGI as the base so that it is as easy to calculate and enforce as possible – does that create a delegation problem? As a starting point, an open-ended reference to federal tax law (rolling conformity) would likely present a delegation problem. However, structured in a manner that allows DOR to periodically update the federal tax code reference under certain well-defined conditions such as a "de minimis" impact on state revenues with additional sideboards would probably avoid significant delegation concerns. However, because of the broader legal considerations likely to arise, it might make sense to start with static conformity where the state code ties to the federal tax code as existing on a specific date without automatic updates. As some additional context, the state capital gains tax does provide a mechanism where the date for the IRC reference can be updated without legislation. The state law allows DOR by rule to specify a later date in a manner consistent with the capital gains tax law. However, DOR has not updated the reference yet, i.e., it is still based on the date specified in the original enacting legislation. I've reached out to DOR to get their thoughts on what considerations they think would go into a possible update.

2. What are my options for handling the different federal filing statuses (single, married filing jointly)? I think it will be important politically to be able to say that it applies only to income above $1 million and that income below that is fully exempt. Generally, in most states with income taxes, the standard deduction for married couples filing jointly is typically double the amount for single or married filing separate status. However, the standard exclusion is much lower in these states. This proposal could use our state capital gains tax approach where spouses and state-registered domestic partners receive a total, combined exclusion of $270K regardless of filing status. In other words, under this concept, if a married couple filed separately, the $1M exclusion would be divided between the two tax returns.

1. Do you have any other suggestions for how to keep the bill (a) as short and easy to understand as possible and (b) as cheap for DOR to administer as possible? Basing the state tax on the federal return to the largest extent possible will certainly help reduce DOR admin/implementation costs. Also, the $1M exclusion will narrow the scope of the impacted taxpayers considerably further reducing administrative costs. As a very rough estimate, using a uniform $1M threshold for all returns regardless of filing status, the proposal would impact roughly 20,000 taxpayers out of approximately 3.5 million.

2. I'd like to start with a rate of 9.99%, with a dollar-for-dollar credit for capital gains taxes paid. Can you get an estimate for how much money that would raise? As a rough estimate, about $3B in revenue would have been generated in 2025 under a very basic scenario where all tax returns – single and joint - are eligible for a $1M exclusion and the tax pivots directly from federal AGI. In other words, the 9.99% rate is applied to the portion of a taxpayer's federal AGI above $1M. This rough estimate reflects an offset for the state capital gains tax; however, the amount has not been reduced by a credit for WA residents working in Oregon (or other states)

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and paying Oregon (or other states) income taxes. For example, a WA resident would show all income on a WA return but receive a credit for the portion of income subject to Oregon's income tax. This same taxpayer would file a nonresident return with Oregon only showing the wage income earned in Oregon. With a $1M threshold, I don't think there would be a significant impact for out-of-state credits.

3. I'd like to leave open the possibility that we could allocate part of the stack (maybe up to 2% each) to county and city governments. If you decide to proceed with having this proposal drafted, I'll make sure to include placeholder language for an allocation for cities/counties.

4. I expect that the bill will get challenged in court. I would like to force the Washington Supreme Court to reconsider its caselaw that considers income to be property. Do you have any other suggestions about how to bolster the argument that this would be an excise tax and not a property tax? With the capital gains tax and its specific focus on the sale of capital assets, a lot of people were reasonably confident it would be construed as an excise tax because of its transactional nature. As a counter example, a wealth tax, while impacting similar financial assets, is clearly a type of property tax. Along similar lines, a tax based on employment activity, as measured by wages/salaries, would seem to fall within the excise tax bucket. However, dividend and interest income is more complicated because those revenues result directly from property ownership, somewhat conflating matters. However, one option would be to structure the tax for these revenues based on the idea of engaging in investment activity. In short, it might make sense to specify the triggering activity in the draft for each type of income subject to tax to bolster the argument that the disparate forms of revenue captured within AGI and subject to the state tax are based on specific triggering activities, a fundamental hallmark of an excise tax.

5. I'd like to understand where that rate would put us relative to the rates in other US jurisdictions (particularly our major blue-state economic competition, such as CA, MA, IL, NY, CO, and VA, as well as neighboring states such as ID and OR) for income at that scale. Attached is a spreadsheet with state income tax rates.

6. Are there any lessons from previous income tax attempts that I should take into account? I will ponder this one and follow up. I worked on some of the proposals by Jim McIntire many years ago as well as the original version of the capital gains tax by Rep. Jinkins about 14 years ago. However, a lot has changed in terms of the legal landscape as well as the statutory landscape with the state capital gains tax (and working families' credit, which is very similar to the federal EITC).

7. Are there any other suggestions that you have for how to proceed with this concept? Another option would be to work from Sen. Frame's payroll tax proposal last year but change the legal incidence of the tax from the employer to the employee. As some context, wages and salaries account for roughly 2/3 of federal AGI. Capital gains contribute around 5-10%. Therefore, this approach would capture most of the revenue that would be obtained from a more traditional income tax (and the capital gains tax is already in place). Because it would be narrowly focused on high-earner employment activity, it might be potentially easier to argue it is an excise tax and it would also capture the faster wage growth associated with high income individuals. (The latter point would of course also be true under the more traditional income tax approach.) On the flip side, the tax would, by its nature, disregard interest, dividend, and other types of income. Also, I think an effort to truly force the WA Supreme Court to reconsider its caselaw would necessitate the use of a broader AGI-type tax that includes revenue items like dividends and interest. Lastly, there is a 1950s court case (Cary v. Bellingham), where the state supreme court invalidated an employee excise tax imposed by the city of Bellingham. The key issue centered around the city's authority to require employees to secure an annual license. In other words, the focus, in my opinion, was more on the licensing aspect versus the excise tax element. For now, I just wanted to raise the issue for future consideration.

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Please let me know if you have any other clarifying questions or need further direction from me. I appreciate your help with this!

Best, Jamie

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Mayer, Ellie (ATG)

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Wednesday, November 19, 2025 8:23 AM
To: Zalesky, Chuck (ATG)
Cc: Brumbaugh, Jack (DOR); Jennrich, Timothy (DOR); Jensen, Dan (ATG)
Subject: RE: ATTORNEY/CLIENT CONFIDENTIAL - tax structure question

[EXTERNAL]

Thanks Chuck! This is great, and I had also come across the *Power, Inc.* case.

My thought is that with the wealth tax, because it was a relatively novel idea, we had a little more leeway in how creative we could be with the structure. Not the case here.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Tuesday, November 18, 2025 4:34 PM
To: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Cc: Brumbaugh, Jack (DOR) <JackB@DOR.WA.GOV>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: ATTORNEY/CLIENT CONFIDENTIAL - tax structure question

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Hi Jamie.

Like many legal questions, the short answer is "it depends."

If the proposal is for a tax that applies to taxable income from whatever source (like the federal income tax and virtually every state income tax), it most likely will not matter what it is called in the statute. In other words, calling the tax an "excise tax" will not save it from that line of cases holding that "income" is "property" subject to ownership. For example, in *Power, Inc. v. Huntley*, 39 Wn.2d 191, 196 (1951), the Supreme Court invalidated the 1951 "Corporate Excise Tax" as "a mere property tax 'masquerading as an excise.'" The fact that the tax was called an "excise tax" and was imposed "for the privilege of exercising [the taxpayer's] corporate franchise in the state or for the privilege of doing business in the state" did not make it an excise tax.

Thus, if the proposal is to create a Washington tax that is measured by (or starts with) a person's federal taxable income, I wouldn't monkey around with tying to characterize it as an excise tax. That will only make the Leg. seem disingenuous. Instead, tee it up as a test case to try to get the "income = property" line of cases overruled.

By contrast, if the proposal is to tax a specific type of activity, it can be structured as a true excise tax. That is why the Cap. Gains tax was upheld. The incident of the tax was on an *identifiable activity*, selling capital assets. The fact that the tax was measured by income derived from that taxable activity was irrelevant.

What *Quinn* and other post-*Culliton* cases teach us is that a tax imposed on a bona fide in-state activity or transaction is an excise tax even though it is *measured* by income derived from that activity/transaction. But if the tax appears to apply merely to the receipt of income, it will be characterized as an income tax regardless of what label the Leg. places on the tax.

Hope this helps. Let us know if you need anything else.

From: Samans, James (DOR) <JamesSa@DOR.WA.GOV>
Sent: Tuesday, November 18, 2025 11:45 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Cc: Brumbaugh, Jack (DOR) <JackB@dor.wa.gov>; Jennrich, Timothy (DOR) <TimJe@DOR.WA.GOV>
Subject: ATTORNEY/CLIENT CONFIDENTIAL - tax structure question
Importance: High

[EXTERNAL]

Dan and Chuck – I hope this email finds you both well and that you guys are getting plenty of rest before what looks to be an exciting 2026 legislative session!

We have been asked by the Governor's office to draft legislation that would impose an income tax on high earners, and my question to you has to do with how we structure the imposition of that tax. I think we have two choices: either structure it as a pure income tax, or structure it as an excise tax on income ala *Quinn*.

Was hoping you could provide your thoughts on this choice as well as any pros/cons you see with either option. Of course if you have other thoughts/options I would be interested in hearing those too.

Thank you!

Jamie Samans
Assistant Director
Legislation & Policy

6400 Linderson Way SW | Tumwater, WA 98501
360/534-1541 | 360/280-6348 (cell)
Washington State Department of Revenue

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Mayer, Ellie (ATG)

From: Zalesky, Chuck (ATG)
Sent: Friday, December 5, 2025 9:26 AM
To: Purcell, Noah Guzzo (ATG); Gonick, Peter B. (ATG)
Cc: Jensen, Dan (ATG)
Subject: RE: High-earners income tax legal analysis - ACP
Attachments: IncomeTaxMemoDraft3a.docx; IncomeTaxMemoDraft3a_Compare.docx

Thanks Noah and Peter.

We accepted all your edits, and added additional analysis. I'm attaching the latest draft, and a Compare version showing the edits. If you have other edits or comments, let us know.

Chuck.

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Wednesday, December 3, 2025 5:29 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Chuck and Dan,

Thanks so much for this. It is very well done. Peter and I have both reviewed it and included some comments/suggestions here. In general, I agree that it makes sense to keep this more high level and not a full treatise on the income tax case law. But both Peter and I think it would be good to give a brief summary of our own analysis of the arguments that the prior case law is incorrect and harmful, rather than relying solely on citing the intervenor's briefing. I've suggested where to do that in the attached. Please let us know if you have questions or concerns about any of our edits, and thanks for your great work on this.

Noah

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, December 1, 2025 11:21 AM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

Good morning, Noah and Peter.

Attached for your review is the draft response to Beau's questions regarding a legal challenge to the proposed high-earner income tax. We kept the analysis fairly simple. As you may remember, Andrew Krawczyk prepared a detailed memo last legislative session

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TJM10-00994
PRR-2026-0158

regarding uniformity concerns with a proposed wealth tax. But here we felt that a deep dive into the uniformity issue was not needed since the proposed tax would almost certainly exceed the 1% levy limit in Article VII, Section 2. Thus, we presume that the Governor's Office is more interested in our view as to whether the Supreme Court would overrule its prior "income = property" line of cases.

I am also attaching advice I recently provided to the Department on a similar question that also originated from the Governor's Office.

We will wait for your edits before finalizing. Also, let us know if any questions or concerns.

Chuck Zalesky
Assistant Attorney General
(360) 586-0756

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Wednesday, November 12, 2025 10:56 AM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Subject: FW: High-earners income tax legal analysis - ACP

Chuck,

I touched base with Noah about this on Monday. He is asking that REV do the initial draft and then send to the SGO (Noah and Peter) for their input.

Do you have capacity to do the initial draft? I am hoping that we can get something to Noah and Peter in early December so this is not a rush. If you do not, I can draft but I would need your input. I would like to review it before you send to the SGO.

Thanks,

Dan Jensen
Sr. Assistant Attorney General
Revenue and Finance Division
PO Box 40123
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(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Saturday, October 18, 2025 8:40 AM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

[EXTERNAL]

Hi Dan,

It was good talking with you on Thursday. As we discussed, here's my best sense of what a proposal might look like for your analysis:

High-earners income tax

- Applies to Adjusted Gross Income (AGI) of $1 million per year or more
- 5% tax rate for AGI between $1-5 million
- 10% tax rate for AGI over $5 million
- Individuals below the $1 million threshold don't owe any taxes
- Follows federal income tax rules (e.g. definitions, deductions)

My questions:

- Would this withstand a legal challenge?
- If the tax were to only have one rate (i.e. 5% for income over $1 million), would that matter for the legal analysis (vs a tiered rate structure)?

I'm happy to set-up a meeting and discuss this further if helpful.

Thanks, -Beau

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From: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Sent: Tuesday, October 14, 2025 3:05 PM
To: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>; Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: RE: High-earners income tax legal analysis - ACP

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Beau,

Including Noah in the conversation. No, we have not done any written analysis of any specific proposal for this session. We are happy to do one now but it would be helpful to know more specifics regarding what is being requested or the options that the Governor's Office would like us to evaluate.

Happy to talk more about this over the phone or in a meeting if that would be easier.

Dan Jensen
Sr. Assistant Attorney General
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PO Box 40123
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(360) 664-9429

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From: Perschbacher, Beau (GOV) <Beau.Perschbacher@GOV.wa.gov>
Sent: Tuesday, October 14, 2025 12:20 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Beneski, Kristin (GOV) <Kristin.Beneski@GOV.wa.gov>
Cc: McDorman, Camille (GOV) <Camille.McDorman@GOV.wa.gov>
Subject: High-earners income tax legal analysis - ACP

[EXTERNAL]

Attorney client privilege

Hi Dan and Kristin,

Some legislators are discussing the concept of a high-earners income tax (e.g. 3% on income over $1 million). Has the AG's Office done any analysis on the legal risks (e.g. uniformity) and chance of something like this being upheld in court? If not, would it be possible to get that analysis? It's not urgent, but would be helpful to have it before the legislative session if possible.

Thanks, -Beau

Beau Perschbacher
Senior Policy Advisor – Economic Development/General Government
564-250-1559
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Pronouns: He/Him

OFFICE OF GOVERNOR
BOB FERGUSON

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3846.4/26 4th ROUGH DRAFT

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to establishing a tax on millionaires to provide tax relief and funds for essential governmental services; amending RCW 82.32.050, 82.32.060, 82.32.090, 82.03.130, 82.03.140, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, and 1.90.100; adding a new title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** INTENT. ...

PART I
DEFINITIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title. Except as provided in this section, any term used in this title has the same meaning as when used in a comparable context in the internal revenue code.

(1) "Capital asset" has the same meaning as provided in chapter 82.87 RCW.

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(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under the internal revenue code.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

(7) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions, or credits from the entity for federal income tax purposes.

(8) "Resident" includes an individual who:

(a) Has resided in this state for the entire tax year;

(b) Is domiciled in this state unless the individual:

(i) Maintains no permanent place of abode in this state;

(ii) Maintains a permanent place of abode elsewhere; and

(iii) Spends in the aggregate not more than 30 days of the tax year in this state;

(c) Is not domiciled in this state, but maintains a permanent place of abode in this state and spends in the aggregate more than 183 days of the tax year in this state unless the individual establishes to the satisfaction of the department that the individual is in the state only for temporary or transitory purposes; or

(d) Claims the state of Washington as the individual's tax home for federal income tax purposes.

(9) "Taxable year" means the taxpayer's taxable year as defined under the internal revenue code.

(10) "Taxpayer" means a person receiving income subject to tax under this title.

(11) "Washington base income" means federal adjusted gross income as modified under sections 302 through 306 and 401 through 406 of this act.

(12) "Washington taxable income" means Washington base income less the applicable standard deduction amount as provided in section 307 of this act.

PART II

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DETERMINATION OF TAX

NEW SECTION. **Sec. 201.** TAX IMPOSED—RATES. (1) Beginning January 1, 2029, a tax is imposed on the receipt of Washington taxable income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) The tax imposed in this section is necessary for the support of the state government and its existing public institutions.

(3) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryover for use in the calculation of that individual's Washington taxable income, for any taxable year.

(4) The tax imposed in this section applies to the actual or constructive receipt of income by the taxpayer. The tax imposed under this section applies when the income is recognized by the taxpayer in accordance with federal tax law.

(5) Taxes collected under this title must be deposited as follows: ...

NEW SECTION. **Sec. 202.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this title for the amount of any income tax imposed by another state or foreign country, or political subdivision of the state or foreign country, on income taxed under this title, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes imposed by the other jurisdiction on net income from sources within that jurisdiction; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this title before application of credits allowable by this title, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If, instead of a credit similar to the credit allowed under subsection (1) of this section, the laws of the other taxing

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jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

NEW SECTION. **Sec. 203.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2029 with taxes due in 2030, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW. The credit is equal to the amount of tax imposed under chapter 82.04 or 82.16 RCW on the gross income of the business.

(2) The credit under this section is earned in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 204.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2029 with taxes due in 2030, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 205.** CARRYFORWARDS AND CARRYBACKS. The amount of tax credits received by any taxpayer under sections 202, 203, and 204 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

PART III

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TAXABLE INCOME MODIFICATIONS

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 406 of this act, unless the modification has the effect of duplicating an item of income or deduction.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3) applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

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(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 309 of this act. The standard deduction must be adjusted for nonresidents as provided in section 308 of this act.

NEW SECTION. **Sec. 308.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 307 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income.

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The denominator of the fraction is the individual's federal adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 309.** INDEX FOR INFLATION. (1) Beginning October 2030 and each October thereafter, the department must adjust the standard deduction under section 307 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

PART IV

DIVISION OF INCOME

NEW SECTION. **Sec. 401.** APPORTIONMENT AND ALLOCATION OF INCOME. (1) For resident individuals, all income must be apportioned and allocated to this state.

(2) For nonresident individuals, income derived from or connected with sources within this state must be apportioned and allocated to this state as specified in this subsection (2).

(a) The federal adjusted gross income of a nonresident derived from or connected with sources within this state is the net amount of items of income, gain, loss, and deduction of the nonresident's federal adjusted gross income that are derived from or connected with

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sources in this state, including any distributive share of income, gain, loss, and deduction for a pass-through entity.

(b) Items of income, gain, loss, and deduction of a nonresident derived from or connected with sources within this state are those items attributable to the ownership or disposition of any interest in real or tangible personal property in this state, and a business, trade, profession, or occupation carried on within this state.

(c) Deduction with respect to expenses, capital losses, and net operating losses of a nonresident is based solely on income, gains, losses, and deductions derived from or connected with sources in this state but is otherwise determined in the same manner as the corresponding federal deduction except as provided in this title.

(d) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, constitutes income derived from or connected with sources within the state of Washington only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on within this state.

(e) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from or connected with sources within this state.

(f) If a business, trade, profession, or occupation is carried on partly within and partly outside this state by a nonresident, the determination of net income derived from or connected with sources within this state as provided in this section must be made by apportionment and allocation as provided in sections 403, 404, and 405 of this act.

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NEW SECTION. **Sec. 402.** PASS-THROUGH ENTITIES. (1) Pass-through entities are not subject to tax under this title. Partners, members, or shareholders of a pass-through entity are subject to tax in their separate or individual capacities based on the partner's, member's, or shareholder's distributive share of pass-through income, gains, losses, and deductions.

(2) The tax due under this chapter for partners, members, or shareholders of a pass-through entity are computed by including a pro rata share of the Washington base income and the credits allowed under sections 202, 203, and 204 of this act, if the modification or credit relates to the income of the pass-through entity. Each

member's, partner's, or shareholder's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the member's, partner's, or shareholder's distributive share of pass-through income. The denominator of the fraction is the total income of the pass-through entity. The fraction may never be greater than one.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

(b) "Pro rata share" means pro rata share as determined under section 1366(a) of the internal revenue code.

NEW SECTION. **Sec. 403.** GENERAL RULE FOR ALLOCATING NONRESIDENT WAGE INCOME TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of federal adjusted gross income derived from compensation for employment within the state of Washington, regardless of the location of the commercial domicile of the employer, as defined in section 405 of this act.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) Employers must maintain records sufficient to substantiate the allocation of income to this state and shall report such income to the department on an annual basis in a form and manner required by the department for those employees who are reasonably assumed to be subject to the tax under this chapter.

(4) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in

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bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

NEW SECTION. **Sec. 404.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

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(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) Income from a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be classified as either apportionable income or nonapportionable income.

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(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of

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such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b) must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

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(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number

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of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(7)(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

(a) "Apportionable income" means:

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(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain,

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loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

PART V

TAX PREPAYMENTS

NEW SECTION. **Sec. 501.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this title that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this title.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax but do not apply to underpayments, as defined by the internal revenue code, if the tax remitted to the department is either 90 percent of the tax shown on the return or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

PART VI
CRIMES

NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this title or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this title who knowingly fails to collect, truthfully account for, or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART VII
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this title is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this title is computed by a method of accounting which in the opinion of the department fairly reflects income.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this title.

NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required

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to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence

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satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under

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subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be

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made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

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(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be

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calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes,

penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest

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must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

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Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty

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under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as

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provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this section, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) <u>If a taxpayer substantially underpays an estimated payment of tax due to section 501 of this act, there is assessed a penalty of five percent of the amount of the underpaid tax. As used in this</u>

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section, "substantially underpays" means that an individual's estimated payment for taxes imposed under section 201 of this act was less than 80 percent of the actual tax due, and at least $1,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) or section 501 of this act and the confirmation of an extension of the filing due date required under RCW 82.87.110(5) or section 501 of this act.

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this title.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this title, all of the provisions of the internal revenue code relating to the following subjects apply to the taxes imposed under this title:

(a) Timing and amount of tax prepayments under section 501 of this act;

(b) Liability of transferees;

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this title.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this title. The rules, to the extent possible without being inconsistent with this title, must follow the internal revenue code

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and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue code and United States treasury department regulations and rulings, in whole or in part.

PART VIII
APPEALS

Sec. 801. RCW 82.03.130 and 2005 c 253 s 7 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

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(f) Appeals from the decisions of sale price of second-class shorelands on navigable lakes by the department of natural resources pursuant to RCW ((~~79.94.210~~)) 79.125.450.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW ((~~39.88.060~~)) . . . .

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(m) Appeals relating to income tax deficiencies and refunds, including penalties and interest, under Title 82A RCW (the new title created in section 1003 of this act).

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals.

Sec. 802. RCW 82.03.140 and 2023 c 28 s 1 are each amended to read as follows:

(1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within 20 days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein may be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1) (c), (d), (e), (h), (i), ((~~or~~)) (j), or (m), the director of revenue may, within 10 days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

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(2) A responding party may file a cross appeal. In the event that appeals are taken by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding.

PART IX
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 901. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4)<u>, and (5)</u> of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

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(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 902. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

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Sec. 903. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent

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jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order

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issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 904. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

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(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 905. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

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(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 906. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in

actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 907. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution,

garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 908. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

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(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 909. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts

with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 910. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and

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41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART X

MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 710 of this act constitute a new chapter in a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . .,

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Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** RCW 82.32.805 and 82.32.808 do not apply to this act.

--- END ---

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3846.4/26 4th ROUGH DRAFT

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to establishing a tax on millionaires to provide tax relief and funds for essential governmental services; amending RCW 82.32.050, 82.32.060, 82.32.090, 82.03.130, 82.03.140, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, and 1.90.100; adding a new title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** INTENT. ...

PART I
Tax on Annual Income Over $1,000,000

NEW SECTION. **Sec. 101.** DEFINITIONS. For the purpose of this title, unless the context clearly requires otherwise:

(1) "Capital asset" has the same meaning as provided in RCW 82.87.020(2).

(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under section 62 of the internal revenue code.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

(7) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions, or credits from the entity for federal income tax purposes.

(8)(a) "Resident" means an individual who is either (i) domiciled in this state during part or all of the taxable year or

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(ii) not domiciled in this state at any time during the taxable year but maintained a place of abode in this state for part or all of the tax year and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, a "day" means a calendar day or any portion of a calendar day.

(c) The Washington taxable income of an individual who is a resident under (a) of this subsection for less than the full taxable year is determined as provided in section 406 of this act.

(9) "Taxable year" means the taxpayer's taxable year as defined under the internal revenue code.

(10) "Taxpayer" means an individual receiving income subject to tax under this title.

(11) "Washington base income" means federal adjusted gross income after making the following modifications:

(a) Add any net operating loss deduction used in arriving at federal adjusted gross income that is carried over from a taxable year beginning prior to January 1, 2029.

(b) Add interest and mutual fund dividends from state, county, or municipal bonds that are excluded from the federal income tax by section 103 of the internal revenue code, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

(c) Add taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income.

(d) Subtract interest and mutual fund dividends from obligations issued by the federal government and exempt from state income tax under section 3124 of the internal revenue code, but only if included in federal adjusted gross income for federal income tax purposes.

(e) [placeholder. Include other additions or subtraction that achieve policy objectives. As an example, could include a subtraction for “the amount of any social security benefits, as

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defined in section 86 of the internal revenue code, but only if included in federal adjusted gross income for federal income tax purposes." Several states allow a subtraction of social security benefits. However, this is entirely a policy choice, as no federal law requires states to exclude social securing benefits. Also, it would be entirely reasonable to tax social security benefits received by those earning $1M+ in the taxable year.]

(12) "Washington taxable income" means Washington base income less the applicable standard deduction amount as provided in section 307 of this act for full-year residents, or section 308 of this act for individual that were not full-year residents during the taxable year.

NEW SECTION. **Sec. 102.** UNDEFINED TERMS - CONFORMITY WITH FEDERAL INTERNAL REVENUE CODE. Any term used in this chapter has the same meaning as when used in a comparable context in the internal revenue code, unless a different meaning is clearly required or the term is specifically defined in this chapter.

NEW SECTION. **Sec. 103.** TAX IMPOSED - RATES. (1) Beginning January 1, 2029, a tax is imposed on the receipt of Washington taxable income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) The tax imposed in this section is necessary for the support of the state government and its existing public institutions.

(3) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryback or carryover for use in the calculation of that individual's Washington taxable income in any other taxable year.

(4) The tax imposed in this section applies to the actual or constructive receipt of income by the taxpayer. The tax imposed

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under this section applies when the income is recognized by the taxpayer in accordance with federal tax law.

(5) Taxes collected under this title must be deposited as follows: ...

NEW SECTION. **Sec.104.** CREDIT FOR INCOME TAXES PAID TO ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this title for the amount of any income tax imposed by another state on income taxed under this title, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes imposed by the other jurisdiction on net income from sources within that jurisdiction; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this title before application of credits allowable by this title, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If, instead of a credit similar to the credit allowed under subsection (1) of this section, the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

[Alterative credit calculation to consider, limited to taxes paid to another *state*] NEW SECTION. **Sec. 104**. CREDIT FOR TAX PAID TO

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ANOTHER STATE. (1) Subject to the conditions provided in subsections (2) through (5) of this section, a taxpayer is allowed a credit against the tax otherwise due under this chapter for net income taxes paid to another state on income subject to tax under this chapter.

(2) The credit is allowed only for net income taxes paid to the other state on income that is derived from sources within that state and taxable under its laws irrespective of the residence or domicile of the recipient.

(3) The credit is not allowed if the other state allows residents of this state a credit against the taxes imposed by that state for taxes paid or payable under this chapter.

(4) The credit shall not exceed the proportion of the tax payable under this chapter as the income subject to tax in the other state and also taxable under this chapter bears to the taxpayer's Washington taxable income. The Department shall proscribe forms for computing the maximum credit amount.

(5) For purposes of this section:

(a) A "net income tax" means a tax imposed annually on individuals that is measured by the individual's total annual income less allowable deductions, exemptions and exclusions.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

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NEW SECTION. **Sec.105.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2029 with taxes due in 2030, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW by the same

person. The credit is equal to the amount of tax imposed under chapter 82.04 or 82.16 RCW on the gross income of the business.

(2) The credit under this section is allowed in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 106.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2029 with taxes due in 2030, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 107** CARRYFORWARDS AND CARRYBACKS NOT ALLOWED. The amount of tax credits received by any taxpayer under sections 104, 105, and 106 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 406 of this act, unless the modification has the effect of duplicating an item of income or deduction.

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NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3) applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

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(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 309 of this act. The standard deduction must be adjusted for nonresidents as provided in section 308 of this act.

NEW SECTION. **Sec. 308.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 307 of this act for individual taxpayers who are not

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residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income. The denominator of the fraction is the individual's federal adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 309.** INDEX FOR INFLATION. (1) Beginning October 2030 and each October thereafter, the department must adjust the standard deduction under section 307 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

NEW SECTION. **Sec. 401.** ALLOCATION AND APPORTIONMENT OF INCOME. (1) For individuals that were residents of Washington for the entire taxable year, all income must be allocated to this state.

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(2) For nonresident individuals, income derived from sources within this state must be allocated to this state. Income derived from sources within this state means:

(a) wages and other compensation from employment within this state as provided in section 403 of this act;

(b) compensation attributable to professional athletics as provided in section 404 of this act;

(c) amounts attributable to any business, trade, profession, or occupation carried on within this state as provided in section 405 of this act;

(d) the individual's distributive share of income from a pass-through entity operating within this state as provided in section 402 of this act;

(e) rents, gains, and other amounts attributable to the ownership or disposition of any interest in real or tangible personal property in this state; and

(f) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, to the extent that the intangible personal property was employed in a business, trade, profession, or occupation carried on within this state.

(3) For individuals that were residents of Washington for only part of the taxable year, all income received during the portion of the taxable year during with the individual was a resident is allocated to this state, and all income derived from sources within this state during the portion of the taxable year during with the individual was not a resident is allocated to this state.

(4) Deduction with respect to expenses, capital losses, and net operating losses of a nonresident is based solely on income, gains, losses, and deductions derived from sources in this state but is otherwise determined in the same manner as the corresponding federal deduction except as provided in this title.

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(5) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

NEW SECTION. **Sec. 402.** DISTRIBUTIVE SHARE INCOME. (1)

(2) The amount of an individual's distributive share income derived from sources within this state equals the total distributive share income, including gains and losses, multiplied by the pass-through entities Washington apportionment factor as computed under RCW 82.04.460 and .462. The department shall provide by rule the method of computing an individual's distributive share from a pass-through entity that operates in Washington but does not, or has not, computed a Washington apportionment factor for the taxable year. The department's rule may be based on the pass-through entity's Washington apportionment factor as computed in a prior year, a method to estimate the pass-through entities Washington apportionment factor for the taxable year, or other method that reasonably estimates the extent of the pass-through entities Washington business activity for the taxable year.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

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NEW SECTION. **Sec. 403.** WAGE INCOME. (1) Unless provided otherwise in this chapter, income derived from sources within this state includes the portion of an individual's federal adjusted gross income derived from employment within the state of Washington, regardless of the location of the commercial domicile of the employer.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent

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such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked for the taxable year, or by another reasonable method approved by the department.

(3) Employers must maintain records sufficient to substantiate the allocation of income to this state and shall report such income to the department on an annual basis in a form and manner required by the department for those employees who are reasonably assumed to be subject to the tax under this chapter.

(4) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

NEW SECTION. **Sec. 404.** INCOME EARNED BY PROFESSIONAL ATHLETES. (1) Income derived by professional athletes from athletic or

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entertainment performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

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(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) Except as otherwise provided in this act, income derived from sources within this state includes the portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state.

(2) Income from a business, trade, or profession carried on in this state, must be classified as either apportionable income or nonapportionable income.

(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

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(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

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(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b)

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must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

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(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(7)(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

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(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

(a) "Apportionable income" means:

(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

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(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain, loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number

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of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

PART II

TAX PREPAYMENTS

NEW SECTION. **Sec. 501.** PREPAYMENT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this title that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this title.

(2) The provisions of the internal revenue code relating reporting periods and due dates of payments of estimated income tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax but do not apply to underpayments, as defined by the internal revenue code, if the tax remitted to the department is either 90 percent of the tax shown on the return or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

PART III
CRIMES

NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this title or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this title who knowingly fails to collect, truthfully account for, or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART IV
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this title is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this title is computed under the cash basis.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this title.

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NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax return filed with the internal revenue service, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the

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return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and

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the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

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(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

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NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under section 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow section 6015 of the internal revenue code.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and

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activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

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Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds

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transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

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(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty

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of 19 percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not

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impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written

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instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

(9) The department may not impose the evasion penalty in combination with the penalty for disregarding specific written

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instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this section, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If a taxpayer substantially underpays an estimated payment of tax due to section 501 of this act, there is assessed a penalty of five percent of the amount of the underpaid tax. As used in this section, "substantially underpays" means that an individual's estimated payment for taxes imposed under section 201 of this act was less than 80 percent of the actual tax due, and at least $1,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in section 501 of this act and the confirmation of an extension of the filing due date required under RCW 82.87.110(5) or section 501 of this act.

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this title.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with

this title, all of the provisions of subtitle F of the internal revenue code relating to the following subjects apply to the taxes imposed under this title:

(a) Timing and amount of estimated tax payments under section 501 of this act;

(b) Liability of transferees;

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this title.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this title. The rules, to the extent possible without being inconsistent with this title, must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue code and United States treasury department regulations and rulings, in whole or in part.

Sec. 801. RCW 82.03.130 and 2005 c 253 s 7 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the

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mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second-class shorelands on navigable lakes by the department of natural resources pursuant to RCW ((~~79.94.210~~)) 79.125.450.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW ((~~39.88.060~~)) . . .

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

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(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(m) Appeals relating to income tax deficiencies and refunds, including penalties and interest, under Title 82A RCW (the new title created in section 1003 of this act).

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals.

Sec. 802. RCW 82.03.140 and 2023 c 28 s 1 are each amended to read as follows:

(1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within 20 days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein may be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1) (c), (d), (e), (h), (i), ((~~or~~)) (j), or (m), the director of revenue may, within 10 days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

(2) A responding party may file a cross appeal. In the event that appeals are taken by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding.

PART V

APPLICATION OF TAX TO PUBLIC PENSIONS

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Sec. 901. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4)<u>, and (5)</u> of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

<u>(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).</u>

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Sec. 902. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

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Sec. 903. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to

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the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions

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issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section.

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The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 904. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

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(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 905. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

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Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 906. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of

Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 907. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to

execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

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(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 908. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 909. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the

fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 910. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all

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moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART X

MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 710 of this act constitute a new chapter in a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . ., Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** RCW 82.32.805 and 82.32.808 do not apply to this act.

--- END ---

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3846.4/26 4th ROUGH DRAFT

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to establishing a tax on millionaires to provide tax relief and funds for essential governmental services; amending RCW 82.32.050, 82.32.060, 82.32.090, 82.03.130, 82.03.140, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, and 1.90.100; adding a new title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** INTENT. ...

PART I

Tax on Annual Income Over $1,000,000

NEW SECTION. **Sec. 101.** DEFINITIONS. For the purpose of this title, unless the context clearly requires otherwise:

(1) "Capital asset" has the same meaning as provided in RCW 82.87.020(2).

(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under section 62 of the internal revenue code.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

(7) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions, or credits from the entity for federal income tax purposes.

(8)(a) "Resident" means an individual who is either (i) domiciled in this state during part or all of the taxable year or

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(ii) not domiciled in this state at any time during the taxable year but maintained a place of abode in this state for part or all of the tax year and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, a "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident only for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(9) "Taxable year" means the taxpayer's taxable year as defined under the internal revenue code.

(10) "Taxpayer" means an individual receiving income subject to tax under this title.

(11) "Washington base income" means federal adjusted gross income after making the following modifications:

(a) Add any net operating loss deduction used in arriving at federal adjusted gross income that is carried over from a taxable year beginning prior to January 1, 2029.

(b) Add interest and mutual fund dividends from state, county, or municipal bonds that are excluded from the federal income tax by section 103 of the internal revenue code, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

(c) Add taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income.

(d) Subtract interest and mutual fund dividends from obligations issued by the federal government and exempt from state income tax under section 3124 of the internal revenue code, but only if included in federal adjusted gross income for federal income tax purposes.

(e) [placeholder. Include other additions or subtraction that achieve policy objectives. As an example, consider: “Subtract the

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amount of any social security benefits, as defined in section 86 of the internal revenue code, but only if included in federal adjusted gross income for federal income tax purposes." This is entirely a policy choice, as no federal law requires states to exclude social securing benefits. Also, it would be entirely reasonable to tax social security benefits received by those earning $1M+ in the taxable year.]

(12) "Washington taxable income" means Washington base income less the applicable standard deduction amount as provided in section 307 of this act.

NEW SECTION. **Sec. 102.** UNDEFINED TERMS - CONFORMITY WITH FEDERAL INTERNAL REVENUE CODE. Any term used in this chapter has the same meaning as when used in a comparable context in the internal revenue code, unless a different meaning is clearly required or the term is specifically defined in this chapter.

NEW SECTION. **Sec. 103.** TAX IMPOSED - RATES. (1) Beginning January 1, 2029, a tax is imposed on the receipt of Washington taxable income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) The tax imposed in this section is necessary for the support of the state government and its existing public institutions.

(3) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryback or carryover for use in the calculation of that individual's Washington taxable income in any other taxable year.

(4) The tax imposed in this section applies to the actual or constructive receipt of income by the taxpayer. The tax imposed under this section applies when the income is recognized by the taxpayer in accordance with federal tax law.

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(5) Taxes collected under this title must be deposited as follows: ...

NEW SECTION. **Sec.104.** CREDIT FOR INCOME TAXES PAID TO ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this title for the amount of any income tax imposed by another state or foreign country, or political subdivision of the state or foreign country, on income taxed under this title, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes imposed by the other jurisdiction on net income from sources within that jurisdiction; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this title before application of credits allowable by this title, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If, instead of a credit similar to the credit allowed under subsection (1) of this section, the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

[Alterative credit calculation to consider, limited to taxes paid to another *state*] NEW SECTION. **Sec. 104**. CREDIT FOR TAX PAID TO ANOTHER STATE. (1) Subject to the conditions provided in subsections

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(2) through (5) of this section, a taxpayer is allowed a credit against the tax otherwise due under this chapter for net income taxes paid to another state on income subject to tax under this chapter.

(2) The credit is allowed only for net income taxes paid to the other state on income that is derived from sources within that state and taxable under its laws irrespective of the residence or domicile of the recipient.

(3) The credit is not allowed if the other state allows residents of this state a credit against the taxes imposed by that state for taxes paid or payable under this chapter.

(4) The credit shall not exceed the proportion of the tax payable under this chapter as the income subject to tax in the other state and also taxable under this chapter bears to the taxpayer's Washington taxable income. The Department shall proscribe forms for computing the maximum credit amount.

(5) For purposes of this section:

(a) A "net income tax" means a tax imposed annually on individuals that is measured by the individual's total annual income less allowable deductions, exemptions and exclusions.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

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NEW SECTION. **Sec.105.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2029 with taxes due in 2030, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW. The credit is equal to the amount of tax imposed under chapter 82.04 or 82.16 RCW on the gross income of the business.

(2) The credit under this section is allowed in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 106.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2029 with taxes due in 2030, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 107** CARRYFORWARDS AND CARRYBACKS NOT ALLOWED. The amount of tax credits received by any taxpayer under sections 104, 105, and 106 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 406 of this act, unless the modification has the effect of duplicating an item of income or deduction.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any

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long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3) applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

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NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 309 of this act. The standard deduction must be adjusted for nonresidents as provided in section 308 of this act.

NEW SECTION. **Sec. 308.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 307 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income. The denominator of the fraction is the individual's federal

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adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 309.** INDEX FOR INFLATION. (1) Beginning October 2030 and each October thereafter, the department must adjust the standard deduction under section 307 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

NEW SECTION. **Sec. 401.** ALLOCATION AND APPORTIONMENT OF INCOME. (1) For resident individuals, all income must be allocated to this state.

(2) For nonresident individuals, income derived from sources within this state must be allocated to this state. Income derived from sources within this state means:

(a) wages and other compensation from employment within this state as provided in section 403 of this act;

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(b) compensation attributable to professional athletics as provided in section 404 of this act;

(c) amounts attributable to any business, trade, profession, or occupation carried on within this state as provided in section 405 of this act;

(d) the individual's distributive share of income from a pass-through entity operating within this state as provided in section 402 of this act;

(e) rents, gains, and other amounts attributable to the ownership or disposition of any interest in real or tangible personal property in this state; and

(f) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, to the extent that the intangible personal property was employed in a business, trade, profession, or occupation carried on within this state.

(3) Deduction with respect to expenses, capital losses, and net operating losses of a nonresident is based solely on income, gains, losses, and deductions derived from or connected with sources in this state but is otherwise determined in the same manner as the corresponding federal deduction except as provided in this title.

(4) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

NEW SECTION. **Sec. 402.** PASS-THROUGH ENTITIES. (1) Pass-through entities are not subject to tax under this title. Partners, members, or shareholders of a pass-through entity are subject to tax in their separate or individual capacities based on the partner's,

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member's, or shareholder's distributive share of pass-through income, gains, losses, and deductions.

(2) The tax due under this chapter for partners, members, or shareholders of a pass-through entity are computed by including a pro rata share of the Washington base income and the credits allowed under sections 202, 203, and 204 of this act, if the modification or credit relates to the income of the pass-through entity. Each member's, partner's, or shareholder's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the member's, partner's, or shareholder's distributive share of pass-through income. The denominator of the fraction is the total income of the pass-through entity. The fraction may never be greater than one.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

(b) "Pro rata share" means pro rata share as determined under section 1366(a) of the internal revenue code.

NEW SECTION. **Sec. 403.** GENERAL RULE FOR ALLOCATING NONRESIDENT WAGE INCOME TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of federal adjusted gross income derived from compensation for employment within the state of Washington, regardless of the location of the commercial domicile of the employer, as defined in section 405 of this act.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

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(3) Employers must maintain records sufficient to substantiate the allocation of income to this state and shall report such income to the department on an annual basis in a form and manner required by the department for those employees who are reasonably assumed to be subject to the tax under this chapter.

(4) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

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NEW SECTION. **Sec. 404.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio

to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

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(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) Income from a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be classified as either apportionable income or nonapportionable income.

(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

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(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

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(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b)

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must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

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(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(7)(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

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(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

(a) "Apportionable income" means:

(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

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(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain, loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number

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of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

PART II
TAX PREPAYMENTS

NEW SECTION. **Sec. 501.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this title that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this title.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax but do not apply to underpayments, as defined by the internal revenue code, if the tax remitted to the department is either 90 percent of the tax shown on the return or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed

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pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

PART III
CRIMES

NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this title or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this title who knowingly fails to collect, truthfully account for, or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART IV
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this title is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this title is computed by a method of accounting which in the opinion of the department fairly reflects income.

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(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this title.

NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

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(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

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(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court

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of competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under

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this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits,

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or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under (b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

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(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of

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the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

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(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or

82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day

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of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the

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refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

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(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written

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instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW

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82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this section, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If a taxpayer substantially underpays an estimated payment of tax due to section 501 of this act, there is assessed a penalty of five percent of the amount of the underpaid tax. As used in this section, "substantially underpays" means that an individual's estimated payment for taxes imposed under section 201 of this act was less than 80 percent of the actual tax due, and at least $1,000.

(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) or section 501 of this act

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and the confirmation of an extension of the filing due date required under RCW 82.87.110(5) or section 501 of this act.

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this title.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this title, all of the provisions of the internal revenue code relating to the following subjects apply to the taxes imposed under this title:

(a) Timing and amount of tax prepayments under section 501 of this act;

(b) Liability of transferees;

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this title.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this title. The rules, to the extent possible without being inconsistent with this title, must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal

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revenue code and United States treasury department regulations and rulings, in whole or in part.

Sec. 801. RCW 82.03.130 and 2005 c 253 s 7 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

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(f) Appeals from the decisions of sale price of second-class shorelands on navigable lakes by the department of natural resources pursuant to RCW ((~~79.94.210~~)) 79.125.450.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW ((~~39.88.060~~)) . . .

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(m) Appeals relating to income tax deficiencies and refunds, including penalties and interest, under Title 82A RCW (the new title created in section 1003 of this act).

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals.

Sec. 802. RCW 82.03.140 and 2023 c 28 s 1 are each amended to read as follows:

(1) A party filing an appeal with the board must elect either a formal or an informal proceeding, according to rules of practice and procedure adopted by the board. If no such election is made, the appeal must be treated as an election for an informal proceeding: PROVIDED, That nothing prevents the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within 20 days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein may be construed to modify

the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1) (c), (d), (e), (h), (i), ((~~or~~)) (j), or (m), the director of revenue may, within 10 days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW.

(2) A responding party may file a cross appeal. In the event that appeals are taken by different parties from the same decision, order, or determination, and only one party elects a formal proceeding, the appeal must be conducted as a formal proceeding.

PART V
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 901. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

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(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 902. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the

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department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 903. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise

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permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth

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individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse.

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Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 904. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable

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at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 905. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

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(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

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Sec. 906. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department

of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 907. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or

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more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 908. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under

this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 909. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to

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withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 910. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and

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41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART X

MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 710 of this act constitute a new chapter in a

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new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . ., Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** RCW 82.32.805 and 82.32.808 do not apply to this act.

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4858.2/26 2nd draft

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to investing in Washington families and businesses to fund K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, and to reduce certain sales and use taxes and certain business and occupation taxes by establishing a tax on millionaires; amending RCW 82.32.050, 82.32.060, 82.32.090, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.34.080, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, 82.08.0206, 82.04.4451, 82.32.045, 82.04.288, and 1.90.100; amending 2023 c 456 s 3 (uncodified); adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new Title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that the state, through the state's general fund, invests in K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, all of which help Washingtonians succeed and thrive.

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(2) These general fund dollars help the state meet its paramount duty to make ample provision for the education of all children in the state, including children who qualify for special education services, creating the opportunity for each child to succeed in school and achieve success in life.

(3) The general fund supports health care programs that deliver critical, life-saving medical care, provide support for those with developmental and other disabilities, offers long-term care for the elderly, and protects the long-term health and well-being of the public.

(4) Further, the general fund invests in higher education, including two and four-year colleges, apprenticeships, and other postsecondary education and training programs, ensuring Washington students remain competitive in the workforce and broader economy.

(5) The general fund also invests in human services that provide vital basic-needs assistance to the state's lowest-income households and educate the youngest learners.

(6) Therefore, the intent of this act is to maintain and preserve essential governmental services for Washingtonians, particularly within K-12 education, health care, higher education, and human services, and support working families by ensuring continued investment in the working families' tax credit by depositing revenues from this act into the general fund.

(7) The legislature further recognizes that reforming our tax code to be common sense, balanced, and sustainable is essential to the long-term economic success of Washington. The Washington tax structure, developed during the Great Depression, relies heavily on excise and consumption taxes, with consequences for equity, adequacy, and long-term fiscal stability that persist today. The legislature recognizes that more progress is needed for the state to have a fair and balanced tax system that can provide sustainable, ample funding for K-12 education, health care, higher education, human services, and other essential governmental services. Washington's tax system remains the second most regressive in the nation as it asks those with the least to pay the most as a percentage of their income. Low-income Washingtonians pay at least three times more in state and local taxes as a percentage of their income than the state's highest income households.

(8) Further, due to the action of the federal government through the passage of HR 1, Washington's highest-income households are set

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to receive an average federal tax break of $90,850 while Washington's lowest-income households are set to receive a mere $200. These tax breaks were largely funded through cuts to federal funding in health care and food security programs, negatively impacting Washington's working families.

(9) Thus, the legislature intends to limit the tax established by this act to only individuals with annual adjusted gross income of $1,000,000 or more. Washingtonians with an annual adjusted gross income of less than $1,000,000 will not owe this tax. As a result, the millionaires' tax is estimated to affect only the wealthiest one-half of one percent of the households in this state, taking a significant step toward reducing the disproportionate reliance on working people to fund K-12 education, health care, higher education, human services, the working families' tax credit, and other essential governmental services to benefit Washingtonians.

(10) The legislature further intends to exempt certain sources of income from the tax including, but not limited to, the sale of qualified family owned small businesses and the sale of all residential and other real property.

(11) It is also the intent of the legislature to rebalance the tax system by reducing taxes on consumers and businesses through small business and other business and occupation tax credits, as well as by exempting from the retail sales tax essential household items such as personal care products.

(12) Thus, to help meet the state's paramount duty of amply providing every child in the state with an education and supporting the health and well-being of Washingtonians, it is the intent of the legislature, by adopting this act, insofar as possible, to:

(a) Impose a tax on those individuals with the greatest ability to pay, specifically those earning Washington adjusted gross income during the taxable year of at least $1,000,000;

(b) Make the Washington millionaires' tax law identical in effect to the provisions of the internal revenue code relating to the measurement of adjusted gross income of individuals, modified as necessary to achieve the goals and purpose of this act;

(c) Achieve this result by the application of the various provisions of the internal revenue code relating to the definition of income, exemptions and exclusions therefrom, accounting methods, basis, depreciation, and other pertinent provisions, subject to additional exemptions and modifications as provided in this act,

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resulting in a final amount called "Washington adjusted taxable income"; and

(d) Impose a tax on residents of this state measured by Washington adjusted taxable income wherever derived and to impose a tax on nonresidents measured by Washington adjusted taxable income from sources within this state.

(13) The legislature finds that, in 2024, Washington counties were responsible for more than 90 percent of the costs associated with public defense in the state, creating a system of legal representation that varies greatly depending on where a person lives in Washington state. While fully funding public defense is not the responsibility of the state, the state is responsible under the United States Constitution for ensuring the protection of the right to counsel for all defendants. Furthermore, the Washington state supreme court's decision to modify caseload standards in 2025 will significantly increase the overall cost of providing public defense in Washington state. Through the creation and funding of the local government public defense stabilization account, the legislature intends to provide funding to help counties meet their obligations.

PART I
DEFINITIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Capital asset" has the same meaning as provided in chapter 82.87 RCW.

(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under section 62 of the internal revenue code.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

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(7) "Pass-through entity" means a disregarded entity for federal tax purposes, such as a partnership, limited liability company, or S corporation.

(8)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(9) "Taxable year" means the taxpayer's taxable year as defined under section 7701(a)(23) of the internal revenue code.

(10) "Taxpayer" means an individual receiving income subject to tax under this chapter.

(11) "Washington base income" means federal adjusted gross income as modified under sections 302 through 306 and 401 through 407 of this act.

(12) "Washington taxable income" means Washington base income as further modified by sections 307 through 310 of this act.

NEW SECTION. **Sec. 102.** UNDEFINED TERMS—CONFORMITY WITH FEDERAL INTERNAL REVENUE CODE. Any term used in this chapter has the same meaning as when used in a comparable context in the internal revenue code, unless a different meaning is clearly required or the term is specifically defined in this chapter.

PART II
DETERMINATION OF TAX

NEW SECTION. **Sec. 201.** TAX IMPOSED—RATES. (1) Beginning January 1, 2028, a tax is imposed on the receipt of Washington taxable

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income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryover for use in the calculation of that individual's Washington taxable income, for any taxable year. To the extent that a loss carryforward is included in an individual's adjusted gross income and the loss carryforward is derived from or connected with sources in this state, the loss carryforward is included in the calculation of that individual's Washington taxable income.

NEW SECTION. **Sec. 202.** DISTRIBUTION OF TAX REVENUES. (1) Taxes collected under this chapter must be deposited as follows:

(a) Seven percent to the local government public defense funding stabilization account created in section 711 of this act; and

(b) The remainder to the state general fund to fund the sales and use tax relief in sections 903 and 904 of this act, the working families' tax credit program, including its expansion in section 901 of this act, and the business and occupation tax relief in sections 905 and 906 of this act.

(2) All interest and penalties collected under this chapter must be deposited in the state general fund.

NEW SECTION. **Sec. 203.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this chapter for the amount of any income tax paid to another state, or political subdivision of the state, on income taxed under this chapter, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes paid to the other jurisdiction on net income from sources within that jurisdiction that is included in the individual's Washington base income; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this chapter before application of credits allowable by this chapter, multiplied by a fraction. The

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numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

NEW SECTION. **Sec. 204.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2028 with taxes due in 2029, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW. The credit is equal to the amount of tax paid under chapter 82.04 or 82.16 RCW for income included in both the calculation of the tax paid under chapter 82.04 or 82.16 RCW and the tax imposed under this chapter.

(2) The credit under this section is earned in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 205.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2028 with taxes due in 2029, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

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NEW SECTION. **Sec. 206.** CREDIT FOR PASS-THROUGH ENTITY TAX PAYMENTS. Beginning in tax year 2028 for taxes due in 2029, a credit is allowed against taxes due under this chapter for the amount of the tax expense incurred by a pass-through entity under section 502 of this act attributable to the owner as provided in section 502(3) of this act. For a resident, the credit under this section must be reduced by the amount of any credit claimed under section 203 of this act based on the same Washington taxable income.

NEW SECTION. **Sec. 207.** CARRYFORWARDS AND CARRYBACKS. The amount of tax credits received by any taxpayer under sections 203 through 206 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

PART III
ADJUSTED GROSS INCOME MODIFICATIONS

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 407 of this act, unless the modification has the effect of duplicating an item of income or deduction. If an item of income is excluded from federal adjusted gross income, including income derived directly from treaty-protected tribal rights, it is excluded from the tax under this chapter unless specifically included as provided in sections 302 through 306 of this act.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base

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income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3) applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced

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by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** CHARITABLE CONTRIBUTIONS. In determining a taxpayer's Washington taxable income, the taxpayer may deduct from their Washington base income the amount of charitable contributions they claimed for the taxable year under section 170 of the internal revenue code, up to a maximum deduction of $100,000 per individual, or in the case of spouses or domestic partners, their combined charitable deduction is limited to $100,000, regardless of whether they file joint or separate returns.

NEW SECTION. **Sec. 308.** PASS-THROUGH ENTITY TAX PAYMENTS. In computing a taxpayer's Washington taxable income, the taxpayer must add to the taxpayer's Washington base income the taxpayer's distributive share of the tax expense incurred by a pass-through entity under section 502 of this act to the extent the expense has been deducted in calculating the taxpayer's federal adjusted gross income.

NEW SECTION. **Sec. 309.** In determining a taxpayer's Washington taxable income, the taxpayer may deduct from the taxpayer's Washington base income the amount deposited in a capital construction fund under section 7518 of the internal revenue code if the amount has reduced the taxpayer's federal taxable income for the taxable year.

NEW SECTION. **Sec. 310.** ONE MILLION DOLLAR STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 312 of this act. The standard deduction must be adjusted for nonresidents as provided in section 311 of this act.

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NEW SECTION. **Sec. 311.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 310 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income. The denominator of the fraction is the individual's federal adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 312.** INDEX FOR INFLATION. (1) Beginning October 2029 and each October thereafter, the department must adjust the standard deduction under section 310 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

PART IV
DIVISION OF INCOME

NEW SECTION. **Sec. 401.** ALLOCATION AND APPORTIONMENT OF INCOME. (1) For resident individuals, all income must be allocated to this state.

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(2) For nonresident individuals, income derived from sources within this state must be allocated to this state. Income derived from sources within this state means:

(a) Wages and other compensation from employment within this state as provided in section 403 of this act;

(b) Compensation attributable to professional athletics as provided in section 404 of this act;

(c) Income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness as provided in section 407 of this act;

(d) Amounts attributable to any business, trade, profession, or occupation carried on within this state, including an individual's distributive share of income from a pass-through entity operating within this state as provided in section 402 of this act, to the extent determined under section 405 of this act;

(e) Rents, short-term gains, and other amounts attributable to the ownership or disposition of any interest in real or tangible personal property in this state; and

(f) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, to the extent that the intangible personal property was employed in a business, trade, profession, or occupation carried on within this state.

(3) Deductible expenses, capital losses, and net operating losses of a nonresident are based solely on income, gains, losses, and deductible expenses derived from or connected with sources in this state but are otherwise determined in the same manner as the corresponding federal deductions except as provided in this chapter.

(4) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

NEW SECTION. **Sec. 402.** PASS-THROUGH ENTITIES—DISTRIBUTIVE SHARE. (1) Income derived from sources within this state include an apportioned share of the individual's distributive share of income, gains, losses, and deductions from pass-through entities that operate in the state, as provided in subsection (2) of this section.

(2) The tax due under this chapter for partners, members, or shareholders of a pass-through entity are computed by including a pro

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rata share of the Washington base income and the credits allowed under sections 203 through 205 of this act, if the modification or credit relates to the income of the pass-through entity. Each member's, partner's, or shareholder's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the member's, partner's, or shareholder's distributive share of pass-through income. The denominator of the fraction is the total income of the pass-through entity. The fraction may never be greater than one.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

(b) "Pro rata share" means pro rata share as reflected on the member's, partner's, or shareholder's federal schedule K-1 form.

NEW SECTION. **Sec. 403.** GENERAL RULE FOR ALLOCATING NONRESIDENT INCOME DERIVED FROM COMPENSATION TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of federal adjusted gross income derived from employment within the state of Washington, regardless of the location of the commercial domicile of the employer.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an

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employer, has not ceased to be an employer as provided in this chapter.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

NEW SECTION. **Sec. 404.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

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(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including a sole proprietorship and any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) Income from a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be classified as either apportionable income or nonapportionable income.

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(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of

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such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b) must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

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(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number

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of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(7)(a) Short-term capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Short-term capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Short-term capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

(a) "Apportionable income" means:

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(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means a pass-through entity or individual conducting business activity in the state of Washington.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

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(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain, loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

NEW SECTION. **Sec. 407.** ALLOCATION AND APPORTIONMENT OF NONRESIDENT STUDENT ATHLETE INCOME. (1) The portion of adjusted gross income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness is allocated to this state if the publicity services provided by the student athlete related to such commercial use of the student athlete's name, image, or likeness primarily occur in Washington.

(2) The portion of adjusted gross income of a nonresident student athlete derived from payments by an institution of higher education representing a percentage of institutional athletic revenues shall be apportioned to Washington in a form and manner consistent with a duty-day methodology. By January 1, 2028, the department shall submit proposed legislation to the legislature that would implement an apportionment methodology as specified under this subsection (2).

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

(a) "Commercial use" means the use of an individual's name, image, or likeness for advertising, selling, or soliciting purchases of products, goods, or services.

(b) "Name, image, or likeness" means an individual's readily identifiable name, voice, signature, photograph, or likeness.

(c) "Publicity services" includes, but is not limited to, the following activities: Appearing in photoshoots; filming commercials;

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recording audio endorsements; posting sponsored content on social media platforms; attending promotional events; either wearing or using, or both, branded products; and granting rights by the student athlete to use the student athlete's name, image, or likeness in either advertisements or online campaigns, or both.

(d) "Student athlete" means an individual who is enrolled at an institution of higher education and eligible to engage in any varsity intercollegiate athletics program at the institution.

PART V
ESTIMATED TAX PAYMENTS AND PASS-THROUGH ENTITY TAX ELECTION

NEW SECTION. **Sec. 501.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this chapter that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this chapter.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax unless the estimated tax remitted to the department is either at least 90 percent of the tax shown on the return required under section 702(1) of this act or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

(6) Estimated payments are not required under this section before July 1, 2029.

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NEW SECTION. **Sec. 502.** PASS-THROUGH ENTITY TAX ELECTION. (1)(a) Beginning January 1, 2028, a tax is imposed at a rate of 9.90 percent of the taxable income of an electing entity for each taxable year in which an election under this section is in effect.

(b) The tax is paid by the electing entity.

(2)(a) A pass-through entity may elect to be subject to the tax imposed under this section by filing an election with the department on or before the due date prescribed by the department for making such election, but no later than April 15th.

(b) The election is made annually and is irrevocable for the taxable year once filed.

(c) The election must be made by: (i) In the case of a partnership or limited liability company, any person authorized to sign the entity's return; and (ii) in the case of an S corporation, an officer authorized to sign the return.

(3)(a) The taxable income of an electing entity consists of:

(i) The entire distributive share of income, gain, loss, and deduction attributable to resident owners, regardless of source; and

(ii) The state source distributive share of income, gain, loss, and deduction attributable to nonresident owners.

(b) Taxable income is determined by applying all state specific additions, subtractions, and modifications that would apply to the owners individually.

(c) Guaranteed payments, separately stated items, and investment income is included in taxable income to the same extent these items would be included in an owner's individual Washington taxable income under this chapter.

(4)(a) An electing entity shall make estimated tax payments in the same manner and at the same times as required for individual estimated tax payments under section 501 of this act.

(b) Estimated tax payments are based on the electing entity's reasonable estimate of taxable income for the taxable year.

(c) Estimated tax payments paid by the electing entity under this section are in lieu of the estimated tax payments imposed on owners under section 501 of this act with respect to the income included in the electing entity's taxable income.

(d) Estimated tax payments are not required under this subsection before July 1, 2029.

(5)(a) Each owner of an electing entity is allowed a credit against the tax imposed under this section equal to the owner's

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proportionate share of the tax paid by the electing entity under this chapter as provided in section 206 of this act.

(b) Resident owners shall include in their Washington taxable income their full distributive share of the electing entity's income, gains, losses, and deductions and shall claim the credit allowed under section 206 of this act.

(c) Nonresident owners shall include in their Washington taxable income their distributive share of the electing entity's income, gains, losses, and deductions as allocated and apportioned under section 405 of this act and shall claim the credit allowed under section 206 of this act.

(6)(a) The electing entity shall file an annual return reporting taxable income, tax due, estimated payments, and any other information required by the department in a form and manner required by the department.

(b) The department may adopt rules necessary to administer this section, which to the extent possible, must be consistent with the requirements under this chapter for individuals. The department may adopt rules to streamline and simplify the process and procedures for making an election under this section.

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

(a) "Distributive share" means the owner's share of income, gain, loss, or deduction as determined under the entity's governing documents and federal income tax law.

(b) "Electing entity" means a pass-through entity that has made a valid election under subsection (2)(c) of this section.

(c) "Nonresident owner" means an owner who is not a resident of this state for individual income tax purposes.

(d) "Owner" means a partner, member, or shareholder of a pass-through entity.

(e) "Resident owner" means an owner who is a resident of this state for individual income tax purposes.

(f) "State source income" means income, gain, or loss derived from sources within this state, determined under the allocation and apportionment provisions of section 405 of this act.

PART VI

CRIMES

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NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this chapter or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this chapter who knowingly fails to truthfully account for or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, or supply information, as required under this chapter, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART VII
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this chapter is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this chapter is computed by the cash method of accounting.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this chapter.

NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this

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section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the

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return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of

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competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

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NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the state registered domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under

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(b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month

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included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more

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than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

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(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

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(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if

the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this ((~~section~~)) subsection, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or

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willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in

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RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this ((~~section~~)) subsection, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If the total estimated tax payments under section 501 of this act for the tax year are substantially underpaid, there is assessed a penalty of five percent of the amount of the underpaid tax. If a pass-through entity makes an election under section 502 of this act, this subsection (11) applies to the estimated tax payments of the pass-through entity in lieu of the individual. As used in this subsection, "substantially underpaid" means that an individual's total annual estimated tax payments under section 501 of this act were less than 80 percent of the actual annual tax due, and at least $5,000.

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(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) and the confirmation of an extension of the filing due date required under RCW 82.87.110(5).

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this chapter.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this chapter, all of the provisions of subtitle F (procedure and administration) of the internal revenue code relating to the following subjects apply to the taxes imposed under this chapter:

(a) Timing and amount of tax prepayments under section 501 of this act;

(b) Liability of transferees; and

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this chapter.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this chapter. The rules, to the extent possible without being inconsistent with this chapter, must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue

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code and United States treasury department regulations and rulings, in whole or in part.

NEW SECTION. **Sec. 711.** LOCAL GOVERNMENT PUBLIC DEFENSE FUNDING STABILIZATION ACCOUNT. (1) The local government public defense funding stabilization account is hereby created in the state treasury. All receipts specified under section 202(1)(a) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for distributions to counties and cities for public defense services consistent with chapter 10.101 RCW. Counties and cities receiving funds must comply with the requirements of RCW 10.101.060.

(2) On a quarterly basis, the state treasurer shall distribute moneys deposited in the local government public defense funding stabilization account as follows:

(a) 10 percent to cities on a pro rata basis, based upon the annual number of misdemeanor criminal cases filed in courts under each city's jurisdiction, as determined by the office of public defense.

(b) The remainder to counties as follows:

(i) Six percent shall be distributed as a base allocation among the counties. A county's base allocation is equal to the total amount to be distributed under this subsection (2)(b)(i) divided by 39.

(ii) 94 percent shall be distributed as follows:

(A) 40 percent shall be distributed on a pro rata basis to each county based on the county's personal income ratio as determined under subsection (3) of this section; and

(B) 60 percent shall be distributed on a pro rata basis to each county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all counties, as determined under subsection (5) of this section.

(3) The office of financial management shall calculate each county's personal income ratio by December 31, 2028, and December 31st of each year thereafter, using the most recent annual county personal income data published by the federal bureau of economic analysis for the state of Washington and notify the state treasurer. The updated county personal income ratio applies to county distributions in the following calendar year.

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(4) For the purpose of this section, "county's personal income ratio" means the personal income of the county divided by the personal income of the state of Washington, as determined under subsection (3) of this section.

(5) For the purposes of this section, the annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

(6) For the purposes of this section, the annual number of misdemeanor criminal cases filed in courts under the city's jurisdiction is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

PART VIII
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 801. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4)<u>, and (5)</u> of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18

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RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 802. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

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(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 803. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse,

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child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent

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of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent

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jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 804. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 805. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

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(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 806. RCW 41.34.080 and 2012 c 159 s 23 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various

funds created by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter 247, Laws of 2000 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a ((~~notice of payroll deduction~~)) income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 807. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

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(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

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Sec. 808. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies

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with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 809. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 810. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the

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same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 811. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18

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RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART IX

TAX RELIEF

Sec. 901. RCW 82.08.0206 and 2024 c 3 s 1 are each amended to read as follows:

(1) A working families' tax credit, funded by sales and use tax imposed, is provided to eligible low-income persons for calendar years beginning on or after January 1, 2022. The credit is refundable and is calculated as provided in this section.

(2) For purposes of the credit in this section, the following definitions apply:

(a)(i) "Eligible low-income person" means an individual who:

(A) Is eligible for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code;

(B) Properly files a federal income tax return for the prior federal tax year, and was a Washington resident during the year for which the credit is claimed; and

(C) Has paid either retail sales tax under this chapter or use tax under chapter 82.12 RCW, or both. There is a rebuttable presumption that a person paid either retail sales tax under this

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chapter or use tax under chapter 82.12 RCW, or both, if they were a Washington resident during the year for which the credit is claimed.

(ii) "Eligible low-income person" also means an individual who meets the requirements provided in (a)(i)(B) of this subsection and would otherwise qualify for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code except that one or any combination of the following conditions apply:

(A) The individual filed a federal income tax return for the prior federal tax year using a valid individual taxpayer identification number in lieu of a social security number, and the individual's spouse, if any, and all qualifying children, if any, have a valid individual taxpayer identification number or a social security number; ((~~or~~))

(B) The individual filed their federal income tax return for the prior federal tax year under the married filing separately status. For purposes of the refund provided in this section, the special rule for separated spouse under Title 26 U.S.C. Sec. 32(d)(2)(B) of the internal revenue code does not apply; or

(C) The individual does not meet the age requirement under Title 26 U.S.C. Sec. 32(c)(1)(A)(ii)(II) of the internal revenue code, but is at least age 18 by the end of the prior federal tax year.

(b) "Income" means earned income as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code.

(c) "Individual" means an individual or an individual and that individual's spouse if they file a federal joint income tax return.

(d) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of June 9, 2022, or such subsequent date as the department may provide by rule consistent with the purpose of this section.

(e) "Maximum qualifying income" means the maximum federally adjusted gross income for the prior federal tax year.

(f) "Qualifying child" means a qualifying child as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code, except the child may have a valid individual taxpayer identification number in lieu of a social security number.

(g) "Washington resident" means an individual who is physically present and residing in this state for at least 183 days. "Washington resident" also includes an individual who is not physically present and residing in this state for at least 183 days but is the spouse of

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a Washington resident. For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(3)(a) Except as provided in (b) and (c) of this subsection, for calendar year 2023 and thereafter, the working families' tax credit refund amount for the prior calendar year is:

(i) $300 for eligible persons with no qualifying children;

(ii) $600 for eligible persons with one qualifying child;

(iii) $900 for eligible persons with two qualifying children; or

(iv) $1,200 for eligible persons with three or more qualifying children.

(b) Except as provided in (f) of this subsection, the refund amounts provided in (a) of this subsection will be reduced, rounded to the nearest dollar, as follows:

(i) For eligible persons with no qualifying children, beginning at $2,500 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(ii) For eligible persons with one qualifying child, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 12 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iii) For eligible persons with two qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 15 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iv) For eligible persons with three or more qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(c) If the refund for an eligible person as calculated in this section is greater than zero cents, but less than $50, the refund amount is $50.

(d) The refund amounts in this section shall be adjusted for inflation every year beginning January 1, 2024, based upon changes in the consumer price index that are published by November 15th of the

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previous year for the most recent 12-month period. The adjusted refund amounts must be rounded to the nearest $5.

(e) For purposes of this section, "consumer price index" means, for any 12-month period, the average consumer price index for that 12-month period for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(f) The percentage rate of remittance reductions in (b) of this subsection must be adjusted every year beginning January 1, 2023, based on calculations by the department that result in the minimum credit being received at the maximum qualifying income level.

(4) The working families' tax credit shall be administered as provided in this subsection.

(a) The refund paid under this section will be paid to eligible filers who apply pursuant to this subsection.

(i) Application must be made to the department in a form and manner determined by the department. If the application process is initially done electronically, the department must provide a paper application upon request. The application must include any information and documentation as required by the department. The department may use the information provided by the individual to calculate the refund amount. Income reported on the application may be rounded to the nearest dollar.

(ii) An individual applying for the credit under this section must keep records necessary for the department to verify eligibility under this section. Any information provided by the individual is subject to audit verification by the department.

(iii) In addition to information provided on the application, the department may verify that an individual qualifies as a Washington resident through the use of automated verification tools or other reasonable means.

(iv)(A) Except as provided in (a)(iv)(B) of this subsection (4), application for a refund under this section must be made in the year following the year for which the federal tax return was filed, but in no case may any refund be provided for any period before January 1, 2022.

(B)(I) A person may apply for any refund for which they were eligible but did not claim under (a)(iv)(A) of this subsection (4) for up to three additional years. A person must complete an application to claim this refund within the three calendar years

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after the end of the calendar year in which the federal income tax return for that tax year was legally due for federal income tax purposes, without regard to any federal extension.

(II) If a person seeks to increase the amount of a refund that has been made under this subsection (4), the person must apply for the amended refund within the nonclaims period established under RCW 82.32.060(1).

(v) A person may not claim a credit on behalf of a deceased individual. No individual may claim a credit under this section for any year in a disallowance period under Title 26 U.S.C. Sec. 32(k)(1) of the internal revenue code or for any year for which the individual is ineligible to claim the credit in Title 26 U.S.C. Sec. 32 of the internal revenue code by reason of Title 26 U.S.C. Sec. 32(k)(2) of the internal revenue code.

(b) The department shall protect the privacy and confidentiality of personal data of refund recipients in accordance with chapter 82.32 RCW.

(c) The department shall, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of, and requirements for, the credit provided in this section.

(d) The department must work with the internal revenue service of the United States to administer the credit on an automatic basis as soon as practicable.

(5) Receipt of a refund under this section may not be used in eligibility determinations for any state income support programs or in making public charge determinations.

(6) The department may adopt rules necessary to implement this section. This includes establishing a date by which applications will be accepted, with the aim of accepting applications as soon as possible.

(7) The department must review the application and determine eligibility for the working families' tax credit based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through information from the internal revenue service of the United States, other federal agencies, Washington state agencies, third-party entities, or other persons. The department may accept a signed attestation in a form and manner determined by the department from an individual to presumptively validate that an individual meets all the

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eligibility requirements as provided in this section. The signed attestation is subject to audit verification by the department to validate an individual's eligibility for the working families' tax credit.

(8) If, upon review of internal revenue service data or other information obtained by the department, it appears that an individual received a refund that the individual was not entitled to, or received a larger refund than the individual was entitled to, the department may assess against the individual the overpaid amount. The department may also assess such overpaid amount against the individual's spouse if the refund in question was based on both spouses filing a joint federal income tax return for the year for which the refund was claimed.

(a) Interest as provided under RCW 82.32.050 applies to assessments authorized under this subsection (8) starting six months after the date the department issued the assessment until the amount due under this subsection (8) is paid in full to the department. Except as otherwise provided in this subsection, penalties may not be assessed on amounts due under this subsection.

(b) If an amount due under this subsection is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess the applicable penalties under RCW 82.32.090. Penalties under this subsection (8)(b) may not be made due until six months after the department's issuance of the assessment.

(c) If the department finds by clear, cogent, and convincing evidence that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent claim for refund under this section, the department must assess a penalty of 50 percent of the overpaid amount. This penalty is in addition to any other applicable penalties assessed in accordance with (b) of this subsection (8).

(9) If, within the period allowed for refunds under RCW 82.32.060, the department finds that an individual received a lesser refund than the individual was entitled to, the department must remit the additional amount due under this section to the individual.

(10) Interest does not apply to refunds provided under this section.

(11) Chapter 82.32 RCW applies to the administration of this section.

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Sec. 902. 2023 c 456 s 3 (uncodified) is amended to read as follows:

(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 195, Laws of 2021 ((~~and~~)), section 1, chapter 456, Laws of 2023, and section 901, chapter . . ., Laws of 2026 (section 901 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for the preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain individuals as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to allow low-income and middle-income workers to recover some or all of the sales tax they pay to support state and local government as a way to increase their economic security and to decrease the regressivity of our state tax code. It is the legislature's intent to provide a sales and use tax credit, in the form of a remittance, to low-income and middle-income working families.

(4) The joint legislative audit and review committee shall review this preference in 2028 and every 10 years thereafter. If a review finds that the working families' tax credit does not provide meaningful financial relief to low-income and middle-income households, RCW 82.08.0206 expires at the end of the calendar year two years after the adoption of the final report containing that finding. The joint legislative audit and review committee shall provide written notice of the expiration date of RCW 82.08.0206 to the department of revenue, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the joint legislative audit and review committee. In its review of the program, the joint legislative audit and review committee should use at least the following metrics: Size of the benefit per household, number of household beneficiaries statewide, and demographic information of beneficiaries to include family size, income level, race and ethnicity, and geographic location.(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the remittance data prepared by the department of revenue.

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NEW SECTION. **Sec. 903.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.08.020 does not apply to the sales of grooming and hygiene products.

(2) For the purpose of this section, "grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the item meets the definition of "over-the-counter drug," as defined in RCW 82.08.0281.

NEW SECTION. **Sec. 904.** A new section is added to chapter 82.12 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.12.020 does not apply to the use of grooming and hygiene products.

(2) For purposes of this section, "grooming and hygiene products" has the same meaning as provided in section 903 of this act.

Sec. 905. RCW 82.04.4451 and 2022 c 295 s 1 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least 50 percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is ((~~$55~~)) $125 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least 50 percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is ((~~$160~~)) $375 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table

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shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

Sec. 906. RCW 82.32.045 and 2023 c 374 s 12 are each amended to read as follows:

(1) Except as otherwise provided in this chapter and subsection (6) of this section, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.27 RCW, along with reports and returns on forms prescribed by the department, are due monthly within 25 days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. Except as provided in subsection (3) of this section, for these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) For annual filers, tax payments, along with reports and returns on forms prescribed by the department, are due on or before April 15th of the year immediately following the end of the period covered by the return.

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

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

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than ((~~$125,000~~)) $250,000 per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than $24,000 per year; and

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

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(6)(a) Taxes imposed under chapter 82.08 or 82.12 RCW on taxable events that occur beginning January 1, 2019, through June 30, 2019, and payable by a consumer directly to the department are due, on returns prescribed by the department, by July 25, 2019.

(b) This subsection (6) does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(i) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(ii) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to subsection (5) of this section.

Sec. 907. RCW 82.04.288 and 2025 c 420 s 201 are each amended to read as follows:

(1) Beginning January 1, 2026, in addition to all other taxes imposed under this chapter, persons must pay a surcharge on Washington taxable income over $250,000,000 in a calendar year.

(2) The rate of the tax is 0.5 percent of the amount of Washington taxable income over $250,000,000.

(3)(a) Any Washington taxable income subject to the tax in RCW 82.04.29004 is exempt from the surcharge imposed in this section.

(b)(i) Any Washington taxable income subject to the manufacturing tax rates in RCW 82.04.240, 82.04.2404, 82.04.241, 82.04.260, 82.04.2602, 82.04.287, 82.04.2909, or 82.04.294(1) is exempt from the surcharge imposed in this section.

(ii) Any Washington taxable income attributable to the wholesale or retail sale of products so manufactured by a person subject to the manufacturing tax rates specified in (b)(i) of this subsection (3) is exempt from the surcharge imposed in this section.

(iii) Any Washington taxable income attributable to retail sales that are exempt from the imposition of sales tax in RCW 82.08.0293, 82.08.0297, and 82.08.0281 is exempt from the surcharge imposed in this section.

(iv) Any Washington taxable income subject to the tax rates in RCW 82.04.260(12) is exempt from the surcharge imposed in this section.

(v) Any Washington taxable income attributable to the wholesale or retail sale of petroleum products by a person who is both located in a state other than Washington and the owner of such materials processed for it in Washington by an affiliated processor for hire

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subject to the rate in RCW 82.04.280(1)(c), is exempt from the surcharge imposed in this section. For the purposes of this subsection (3)(b)(v), the following definitions apply:

(A) "Affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

(B) "Control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise; and

(C) "Petroleum product" has the same meaning as in RCW 82.21.020.

(4)(a) The surcharge imposed under this section does not apply to taxable income for which a credit is allowed under RCW 82.04.440.

(b) The surcharge imposed under this section does not apply to a person engaged in business primarily as a farmer or eligible apiarist as defined in RCW 82.04.213.

(c) The surcharge imposed under this section does not apply to a person subject to the tax imposed pursuant to RCW 82.04.299.

(d) The surcharge imposed under this section does not apply to taxable income for wholesale and retail transactions of fuel as defined in RCW 82.38.020.

(5) Any income that is exempt from the surcharge imposed under this section is not included in the calculation of Washington taxable income in subsection (1) of this section.

(6) This section expires December 31, ((~~2029~~)) 2028.

NEW SECTION. **Sec. 908.** Sections 905 and 906 of this act apply to taxes initially due and payable on or after January 1, 2029.

PART X
MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

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(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** NULL AND VOID. If a court of final jurisdiction invalidates section 201 of this act, this act is null and void in its entirety.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 711 of this act constitute a new chapter in a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . ., Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** (1) Section 901 of this act takes effect January 1, 2029.

(2) Refunds may not be provided under section 901 of this act for any period before January 1, 2028.

NEW SECTION. **Sec. 1006.** Except as provided in section 902 of this act, RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 1007.** The tax imposed in this act is necessary for the support of the state government and its existing public institutions.

NEW SECTION. **Sec. 1008.** It is the intent of the legislature for the department of revenue to spend appropriated amounts to implement this act regardless of litigation.

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4858.2/26 2nd draft

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Establishing a tax on millionaires.

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AN ACT Relating to investing in Washington families and businesses to fund K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, and to reduce certain sales and use taxes and certain business and occupation taxes by establishing a tax on millionaires; amending RCW 82.32.050, 82.32.060, 82.32.090, 2.10.180, 2.12.090, 6.15.020, 41.24.240, 41.32.052, 41.34.080, 41.35.100, 41.40.052, 41.44.240, 41.26.053, 43.43.310, 82.08.0206, 82.04.4451, 82.32.045, 82.04.288, and 1.90.100; amending 2023 c 456 s 3 (uncodified); adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new Title to the Revised Code of Washington to be codified as Title 82A RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that the state, through the state's general fund, invests in K-12 education, health care, higher education, other essential governmental services, and the working families' tax credit, all of which help Washingtonians succeed and thrive.

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(2) These general fund dollars help the state meet its paramount duty to make ample provision for the education of all children in the state, including children who qualify for special education services, creating the opportunity for each child to succeed in school and achieve success in life.

(3) The general fund supports health care programs that deliver critical, life-saving medical care, provide support for those with developmental and other disabilities, offers long-term care for the elderly, and protects the long-term health and well-being of the public.

(4) Further, the general fund invests in higher education, including two and four-year colleges, apprenticeships, and other postsecondary education and training programs, ensuring Washington students remain competitive in the workforce and broader economy.

(5) The general fund also invests in human services that provide vital basic-needs assistance to the state's lowest-income households and educate the youngest learners.

(6) Therefore, the intent of this act is to maintain and preserve essential governmental services for Washingtonians, particularly within K-12 education, health care, higher education, and human services, and support working families by ensuring continued investment in the working families' tax credit by depositing revenues from this act into the general fund.

(7) The legislature further recognizes that reforming our tax code to be common sense, balanced, and sustainable is essential to the long-term economic success of Washington. The Washington tax structure, developed during the Great Depression, relies heavily on excise and consumption taxes, with consequences for equity, adequacy, and long-term fiscal stability that persist today. The legislature recognizes that more progress is needed for the state to have a fair and balanced tax system that can provide sustainable, ample funding for K-12 education, health care, higher education, human services, and other essential governmental services. Washington's tax system remains the second most regressive in the nation as it asks those with the least to pay the most as a percentage of their income. Low-income Washingtonians pay at least three times more in state and local taxes as a percentage of their income than the state's highest income households.

(8) Further, due to the action of the federal government through the passage of HR 1, Washington's highest-income households are set

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to receive an average federal tax break of $90,850 while Washington's lowest-income households are set to receive a mere $200. These tax breaks were largely funded through cuts to federal funding in health care and food security programs, negatively impacting Washington's working families.

(9) Thus, the legislature intends to limit the tax established by this act to only individuals with annual adjusted gross income of $1,000,000 or more. Washingtonians with an annual adjusted gross income of less than $1,000,000 will not owe this tax. As a result, the millionaires' tax is estimated to affect only the wealthiest one-half of one percent of the households in this state, taking a significant step toward reducing the disproportionate reliance on working people to fund K-12 education, health care, higher education, human services, the working families' tax credit, and other essential governmental services to benefit Washingtonians.

(10) The legislature further intends to exempt certain sources of income from the tax including, but not limited to, the sale of qualified family owned small businesses and the sale of all residential and other real property.

(11) It is also the intent of the legislature to rebalance the tax system by reducing taxes on consumers and businesses through small business and other business and occupation tax credits, as well as by exempting from the retail sales tax essential household items such as personal care products.

(12) Thus, to help meet the state's paramount duty of amply providing every child in the state with an education and supporting the health and well-being of Washingtonians, it is the intent of the legislature, by adopting this act, insofar as possible, to:

(a) Impose a tax on those individuals with the greatest ability to pay, specifically those earning Washington adjusted gross income during the taxable year of at least $1,000,000;

(b) Make the Washington millionaires' tax law identical in effect to the provisions of the internal revenue code relating to the measurement of adjusted gross income of individuals, modified as necessary to achieve the goals and purpose of this act;

(c) Achieve this result by the application of the various provisions of the internal revenue code relating to the definition of income, exemptions and exclusions therefrom, accounting methods, basis, depreciation, and other pertinent provisions, subject to additional exemptions and modifications as provided in this act,

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resulting in a final amount called "Washington adjusted taxable income"; and

(d) Impose a tax on residents of this state measured by Washington adjusted taxable income wherever derived and to impose a tax on nonresidents measured by Washington adjusted taxable income from sources within this state.

(13) The legislature finds that, in 2024, Washington counties were responsible for more than 90 percent of the costs associated with public defense in the state, creating a system of legal representation that varies greatly depending on where a person lives in Washington state. While fully funding public defense is not the responsibility of the state, the state is responsible under the United States Constitution for ensuring the protection of the right to counsel for all defendants. Furthermore, the Washington state supreme court's decision to modify caseload standards in 2025 will significantly increase the overall cost of providing public defense in Washington state. Through the creation and funding of the local government public defense stabilization account, the legislature intends to provide funding to help counties meet their obligations.

PART I
DEFINITIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Capital asset" has the same meaning as provided in chapter 82.87 RCW.

(2) "Department" means the department of revenue of the state of Washington.

(3) "Federal adjusted gross income" means adjusted gross income as determined under section 62 of the internal revenue code.

(4) "Individual" means a natural person.

(5) "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect on January 1, 2026, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(6) "Long-term capital asset," "long-term capital gain," and "long-term capital loss" have the same meanings as provided in chapter 82.87 RCW.

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(7) "Pass-through entity" means a disregarded entity for federal tax purposes, such as a partnership, limited liability company, or S corporation.

(8)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than 30 days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year, but maintained a place of abode and was physically present in this state for more than 183 days during the taxable year.

(b) For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(c) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

(9) "Taxable year" means the taxpayer's taxable year as defined under section 7701(a)(23) of the internal revenue code.

(10) "Taxpayer" means an individual receiving income subject to tax under this chapter.

(11) "Washington base income" means federal adjusted gross income as modified under sections 302 through 306 and 401 through 407 of this act.

(12) "Washington taxable income" means Washington base income as further modified by sections 307 through 310 of this act.

NEW SECTION. **Sec. 102.** UNDEFINED TERMS—CONFORMITY WITH FEDERAL INTERNAL REVENUE CODE. Any term used in this chapter has the same meaning as when used in a comparable context in the internal revenue code, unless a different meaning is clearly required or the term is specifically defined in this chapter.

PART II
DETERMINATION OF TAX

NEW SECTION. **Sec. 201.** TAX IMPOSED—RATES. (1) Beginning January 1, 2028, a tax is imposed on the receipt of Washington taxable

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income. Only individuals are subject to payment of the tax, which equals 9.90 percent multiplied by an individual's Washington taxable income.

(2) If an individual's Washington taxable income is less than zero for a taxable year, no tax is due under this section and no amount is allowed as a carryover for use in the calculation of that individual's Washington taxable income, for any taxable year. To the extent that a loss carryforward is included in an individual's adjusted gross income and the loss carryforward is derived from or connected with sources in this state, the loss carryforward is included in the calculation of that individual's Washington taxable income.

NEW SECTION. **Sec. 202.** DISTRIBUTION OF TAX REVENUES. (1) Taxes collected under this chapter must be deposited as follows:

(a) Seven percent to the local government public defense funding stabilization account created in section 711 of this act; and

(b) The remainder to the state general fund to fund the sales and use tax relief in sections 903 and 904 of this act, the working families' tax credit program, including its expansion in section 901 of this act, and the business and occupation tax relief in sections 905 and 906 of this act.

(2) All interest and penalties collected under this chapter must be deposited in the state general fund.

NEW SECTION. **Sec. 203.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident individual is allowed a credit against the tax imposed under this chapter for the amount of any income tax paid to another state, or political subdivision of the state, on income taxed under this chapter, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes paid to the other jurisdiction on net income from sources within that jurisdiction that is included in the individual's Washington base income; and

(b) The amount of the credit may not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this chapter before application of credits allowable by this chapter, multiplied by a fraction. The

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numerator of the fraction is the amount of the taxpayer's federal adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total Washington base income. The fraction may never be greater than one.

(2) If the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

NEW SECTION. **Sec. 204.** CREDIT FOR BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. (1) Beginning in tax year 2028 with taxes due in 2029, to avoid taxing the same Washington taxable income under the business and occupation tax or public utility tax and the tax imposed under this chapter, a nonrefundable credit is allowed against taxes due under this chapter on income that is also subject to the tax imposed under chapter 82.04 or 82.16 RCW. The credit is equal to the amount of tax paid under chapter 82.04 or 82.16 RCW for income included in both the calculation of the tax paid under chapter 82.04 or 82.16 RCW and the tax imposed under this chapter.

(2) The credit under this section is earned in regard to income reportable for federal income tax purposes and may be claimed against taxes due under this chapter, for the tax reporting period in which the income is reportable for federal income tax purposes. The credit claimed for a tax reporting period may not exceed the tax otherwise due under this chapter for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this section.

NEW SECTION. **Sec. 205.** CREDIT FOR WASHINGTON CAPITAL GAINS TAXES. Beginning in tax year 2028 with taxes due in 2029, a nonrefundable credit is allowed against taxes due under this chapter for the amount of tax imposed on Washington capital gains for the same tax year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

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NEW SECTION. **Sec. 206.** CREDIT FOR PASS-THROUGH ENTITY TAX PAYMENTS. Beginning in tax year 2028 for taxes due in 2029, a credit is allowed against taxes due under this chapter for the amount of the tax expense incurred by a pass-through entity under section 502 of this act attributable to the owner as provided in section 502(3) of this act. For a resident, the credit under this section must be reduced by the amount of any credit claimed under section 203 of this act based on the same Washington taxable income.

NEW SECTION. **Sec. 207.** CARRYFORWARDS AND CARRYBACKS. The amount of tax credits received by any taxpayer under sections 203 through 206 of this act may not exceed the total amount of tax due for that reporting period, and no carryback or carryforward of any unused excess credits is allowed.

PART III
ADJUSTED GROSS INCOME MODIFICATIONS

NEW SECTION. **Sec. 301.** INTRODUCTORY. In computing Washington base income for a taxable year, modifications must be made to the taxpayer's federal adjusted gross income as required under sections 302 through 306 and 401 through 407 of this act, unless the modification has the effect of duplicating an item of income or deduction. If an item of income is excluded from federal adjusted gross income, including income derived directly from treaty-protected tribal rights, it is excluded from the tax under this chapter unless specifically included as provided in sections 302 through 306 of this act.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS AND LOSSES. (1) In computing a taxpayer's Washington base income, the taxpayer must deduct from the taxpayer's federal adjusted gross income any long-term capital gains that have been included in computing federal adjusted gross income.

(2) In computing a taxpayer's Washington base income, a taxpayer must add to the taxpayer's federal adjusted gross income any long-term capital losses that have been included in computing federal adjusted gross income.

(3) After making the modifications required under subsections (1) and (2) of this section, in computing a taxpayer's Washington base

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income, a taxpayer must add to the taxpayer's federal adjusted gross income the amount of Washington capital gains subject to tax under chapter 82.87 RCW for the same taxable year, plus the amounts deducted under RCW 82.87.060 (1) and (4). This subsection (3) applies only to taxpayers owing tax under chapter 82.87 RCW for that taxable year. "Washington capital gains" has the same meaning as provided in RCW 82.87.020.

NEW SECTION. **Sec. 303.** STATE AND LOCAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income any income that has been excluded under section 103 of the internal revenue code in computing federal adjusted gross income, except interest on obligations of the state of Washington or political subdivisions of the state of Washington.

NEW SECTION. **Sec. 304.** STATE AND LOCAL INCOME TAXES—BUSINESS AND OCCUPATION AND PUBLIC UTILITY TAXES. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income:

(1) Taxes on or measured by net income which have been deducted under the internal revenue code in computing federal adjusted gross income;

(2) The amount of taxes paid or accrued which have been deducted for federal purposes, but for which either a business and occupation tax credit or public utility tax credit, or both, is allowed.

NEW SECTION. **Sec. 305.** CARRYOVERS. In computing a taxpayer's Washington base income, the taxpayer must add to the taxpayer's federal adjusted gross income, any amounts that have been deducted in computing federal adjusted gross income to the extent the amounts have been carried over from taxable years ending before the effective date of this section.

NEW SECTION. **Sec. 306.** FEDERAL OBLIGATIONS. In computing a taxpayer's Washington base income, the taxpayer must deduct, to the extent included, from the taxpayer's federal adjusted gross income, any income derived from obligations of the United States that this state is prohibited by federal law from subjecting to a net income tax. However, the amount deducted under this section must be reduced

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by any expense, including amortizable bond premiums, incurred in the production of such income to the extent the expense has been deducted in calculating federal adjusted gross income.

NEW SECTION. **Sec. 307.** CHARITABLE CONTRIBUTIONS. In determining a taxpayer's Washington taxable income, the taxpayer may deduct from their Washington base income the amount of charitable contributions they claimed for the taxable year under section 170 of the internal revenue code, up to a maximum deduction of $100,000 per individual, or in the case of spouses or domestic partners, their combined charitable deduction is limited to $100,000, regardless of whether they file joint or separate returns.

NEW SECTION. **Sec. 308.** PASS-THROUGH ENTITY TAX PAYMENTS. In computing a taxpayer's Washington taxable income, the taxpayer must add to the taxpayer's Washington base income the taxpayer's distributive share of the tax expense incurred by a pass-through entity under section 502 of this act to the extent the expense has been deducted in calculating the taxpayer's federal adjusted gross income.

NEW SECTION. **Sec. 309.** In determining a taxpayer's Washington taxable income, the taxpayer may deduct from the taxpayer's Washington base income the amount deposited in a capital construction fund under section 7518 of the internal revenue code if the amount has reduced the taxpayer's federal taxable income for the taxable year.

NEW SECTION. **Sec. 310.** ONE MILLION DOLLAR STANDARD DEDUCTION. In computing a taxpayer's Washington taxable income, a taxpayer may deduct from the taxpayer's Washington base income a standard deduction of $1,000,000 per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to $1,000,000, regardless of whether they file joint or separate returns. The amount of the standard deduction must be annually adjusted pursuant to section 312 of this act. The standard deduction must be adjusted for nonresidents as provided in section 311 of this act.

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NEW SECTION. **Sec. 311.** ADJUSTMENT OF DEDUCTIONS FOR NONRESIDENTS. The deduction from Washington base income allowed under section 310 of this act for individual taxpayers who are not residents of this state for the entire taxable year must be reduced by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the individual's Washington base income. The denominator of the fraction is the individual's federal adjusted gross income from all sources. The fraction may never be greater than one.

NEW SECTION. **Sec. 312.** INDEX FOR INFLATION. (1) Beginning October 2029 and each October thereafter, the department must adjust the standard deduction under section 310 of this act by multiplying the current standard deduction amount by one plus the percentage by which the most current consumer price index available on October 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (1) would reduce the standard deduction amount, the department must not adjust the amounts for use in the following year. The department must publish the adjusted standard deduction amount on its public website by October 31st of each year. The adjusted standard deduction amount calculated under this subsection (1) takes effect for taxes due in the following calendar year.

(2) For purposes of this section, the following definitions apply:

(a) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(b) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

PART IV
DIVISION OF INCOME

NEW SECTION. **Sec. 401.** ALLOCATION AND APPORTIONMENT OF INCOME. (1) For resident individuals, all income must be allocated to this state.

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(2) For nonresident individuals, income derived from sources within this state must be allocated to this state. Income derived from sources within this state means:

(a) Wages and other compensation from employment within this state as provided in section 403 of this act;

(b) Compensation attributable to professional athletics as provided in section 404 of this act;

(c) Income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness as provided in section 407 of this act;

(d) Amounts attributable to any business, trade, profession, or occupation carried on within this state, including an individual's distributive share of income from a pass-through entity operating within this state as provided in section 402 of this act, to the extent determined under section 405 of this act;

(e) Rents, short-term gains, and other amounts attributable to the ownership or disposition of any interest in real or tangible personal property in this state; and

(f) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, to the extent that the intangible personal property was employed in a business, trade, profession, or occupation carried on within this state.

(3) Deductible expenses, capital losses, and net operating losses of a nonresident are based solely on income, gains, losses, and deductible expenses derived from or connected with sources in this state but are otherwise determined in the same manner as the corresponding federal deductions except as provided in this chapter.

(4) Compensation paid by the United States for service in the armed forces of the United States performed in this state by a nonresident does not constitute income derived from sources within this state.

NEW SECTION. **Sec. 402.** PASS-THROUGH ENTITIES—DISTRIBUTIVE SHARE. (1) Income derived from sources within this state include an apportioned share of the individual's distributive share of income, gains, losses, and deductions from pass-through entities that operate in the state, as provided in subsection (2) of this section.

(2) The tax due under this chapter for partners, members, or shareholders of a pass-through entity are computed by including a pro

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rata share of the Washington base income and the credits allowed under sections 203 through 205 of this act, if the modification or credit relates to the income of the pass-through entity. Each member's, partner's, or shareholder's pro rata share of a modification or credit is the amount of modification or credit multiplied by a fraction. The numerator of the fraction is the member's, partner's, or shareholder's distributive share of pass-through income. The denominator of the fraction is the total income of the pass-through entity. The fraction may never be greater than one.

(3) The following definitions apply throughout this section.

(a) "Pass-through income" includes both distributed and undistributed federal taxable income of the pass-through entity.

(b) "Pro rata share" means pro rata share as reflected on the member's, partner's, or shareholder's federal schedule K-1 form.

NEW SECTION. **Sec. 403.** GENERAL RULE FOR ALLOCATING NONRESIDENT INCOME DERIVED FROM COMPENSATION TO WASHINGTON. (1) Unless provided otherwise in this chapter, a nonresident individual is subject to tax on the portion of federal adjusted gross income derived from employment within the state of Washington, regardless of the location of the commercial domicile of the employer.

(2) Compensation for services performed by a nonresident as part of their employment must be allocated to this state to the extent such services are rendered within the state. If services are performed both within and outside the state, the compensation must be apportioned based on the ratio of days worked in the state to total days worked, or by another reasonable method approved by the department.

(3) For the purpose of this section, the following definitions apply:

(a) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an

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employer, has not ceased to be an employer as provided in this chapter.

(c) "Employment" means personal service, of whatever nature, as known to the common law or any other legal relationship performed for an employer by an individual for compensation or under any contract calling for the performance of personal services, written or oral, express or implied, where the employer is subject to tax under RCW 50.24.010 on any portion of compensation paid by the employer to the individual for the performance of the personal services.

NEW SECTION. **Sec. 404.** APPORTIONING INCOME FOR NONRESIDENT MEMBERS OF A PROFESSIONAL ATHLETIC TEAM. (1) For nonresident members of a professional athletic team, the portion of compensation attributable to athletic performances in the state must be apportioned to Washington as provided under this section.

(2)(a) The portion of the compensation of a member of a professional athletic team apportioned to Washington is that portion of compensation received for the tax year that bears the same ratio to total compensation received for the tax year as the number of duty days within this state bears to the total number of duty days spent both within and outside this state during the tax year.

(b) Notwithstanding the description of the portion of compensation subject to apportionment to the state of Washington under this subsection, the department may provide by rule alternative methodologies for determining the portion of compensation subject to apportionment to the state of Washington that the department determines to be fair and equitable.

(3)(a) A person who transacts business in the state of Washington and who pays wages, salary, bonuses, or other taxable income to a member of a professional athletic team, must submit a report to the department each year indicating any member of a professional athletic team who may be reasonably assumed to owe tax under this chapter for the calendar year.

(b) The report required under (a) of this subsection (3) must include:

(i) The total amount of compensation paid during the year to the members of the professional athletic team for which the report is being made;

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(ii) A roster of the members of the professional athletic team for which the report is being made who were members at any time during the year, that lists for each member:

(A) A taxpayer identification number;

(B) Compensation paid to the member; and

(C) The number of duty days in this state and the total number of duty days for the year; and

(iii) Any other information the department may require by rule.

(c) The report must be filed with the department on or before April 15th following the year for which the report is being made or at another time as the department may require by rule.

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

(a) "Compensation" means wages, salaries, bonuses, and any other income included with federal adjusted gross income and paid to a member of a professional athletic team.

(b) "Duty days" means the days during the tax year from the beginning of the official preseason training period of a professional athletic team through the last game in which the professional athletic team competes or is scheduled to compete during the tax year.

(c) "Member of a professional athletic team" means a nonresident athlete or other individual rendering service to a professional athletic team if the total compensation of the athlete or other individual exceeds $1,000,000 in a tax year.

NEW SECTION. **Sec. 405.** GENERAL RULE FOR APPORTIONING AND ALLOCATING NONRESIDENT INCOME FROM BUSINESS ACTIVITY CONDUCTED IN THE STATE. (1) The portion of federal adjusted gross income of a nonresident derived from or connected with a business, trade, or profession carried on in this state, including a sole proprietorship and any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be apportioned and allocated as provided in this section. This section does not apply to compensation received as an employee allocated under section 403 of this act.

(2) Income from a business, trade, or profession carried on in this state, including any distributive share of a pass-through entity of a business, trade, or profession carried on in this state, must be classified as either apportionable income or nonapportionable income.

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(3) All apportionable income must be apportioned to this state by multiplying the income by the receipts factor. The receipts factor is a fraction the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(a) Receipts from the sale of tangible personal property are in this state if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(b)(i) Receipts, other than receipts described in (a) of this subsection (3), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(A) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(D) In the case of intangible property:

(I) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(II) That is sold, if and to the extent the property is used in this state, if:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property must be treated as receipts from the rental, lease, or licensing of

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such intangible property under subsection (4)(a)(i) of this section; and

(3) All other receipts from a sale of intangible property must be excluded from the numerator and denominator of the receipts factor.

(c) If the state or states of assignment under (b) of this subsection (3) cannot be determined, the state or states of assignment must be reasonably approximated.

(d) If the taxpayer is not taxable in a state to which a receipt is assigned under this subsection (3), or if the state of assignment cannot be determined under (b) of this subsection (3) or reasonably approximated under (c) of this subsection (3), the receipt must be excluded from the denominator of the receipts factor.

(4)(a) If the allocation and apportionment provisions in subsection (3) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state for taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in (a) of this subsection (4), adopt rules for determining alternative allocation and apportionment methods for such taxpayers. Rules adopted pursuant to this subsection (4)(b) must be applied uniformly, except that with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the department may require, adjustment under (a) of this subsection (4).

(c)(i) The party petitioning for, or the department requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a) of this subsection (4) must prove by clear and convincing evidence:

(A) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

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(B) That the alternative to such provisions is reasonable.

(ii) The same burden of proof applies whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. However, if the department can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the department does not bear the burden of proof in imposing a different method pursuant to (a) of this subsection (4).

(iii) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department may not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(iv) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income may not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

(5) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, must be allocated as provided in subsections (6) through (9) of this section.

(6)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (i) If and to the extent that the property is utilized in this state; or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number

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of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(7)(a) Short-term capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Short-term capital gains and losses from sales of tangible personal property are allocable to this state if: (i) The property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Short-term capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(9)(a) Patent and copyright royalties are allocable to this state: (i) If and to the extent that the patent or copyright is utilized by the payer in this state; or (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

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

(a) "Apportionable income" means:

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(i) All income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means a pass-through entity or individual conducting business activity in the state of Washington.

NEW SECTION. **Sec. 406.** PRORATION OF PART-YEAR INCOME. (1) Except as provided in subsection (2) of this section, the adjusted gross income of a part-year resident is the sum of the following:

(a) For the portion of the year in which the taxpayer was a resident of Washington, the taxpayer's entire adjusted gross income; and

(b) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state, as provided in sections 403 through 405 of this act.

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(2) The adjusted gross income of a part-year resident with federal adjusted gross income that includes an item of income, gain, loss, deduction, or credit from a pass-through entity must include the sum of the following:

(a) The total amount of the item that is taken into account in federal adjusted gross income, multiplied by the ratio of the number of days the taxpayer was a resident of Washington during the tax year of the entity over the total number of days in the tax year of the entity; and

(b) The total amount of the item that is taken into account in federal adjusted gross income and that is derived from or connected with sources within this state, as determined under sections 403 through 405 of this act, multiplied by the ratio of the number of days the taxpayer was a nonresident of Washington during the tax year of the entity over the total number of days in the tax year of the entity.

NEW SECTION. **Sec. 407.** ALLOCATION AND APPORTIONMENT OF NONRESIDENT STUDENT ATHLETE INCOME. (1) The portion of adjusted gross income of a nonresident student athlete derived from the commercial use of the student athlete's name, image, or likeness is allocated to this state if the publicity services provided by the student athlete related to such commercial use of the student athlete's name, image, or likeness primarily occur in Washington.

(2) The portion of adjusted gross income of a nonresident student athlete derived from payments by an institution of higher education representing a percentage of institutional athletic revenues shall be apportioned to Washington in a form and manner consistent with a duty-day methodology. By January 1, 2028, the department shall submit proposed legislation to the legislature that would implement an apportionment methodology as specified under this subsection (2).

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

(a) "Commercial use" means the use of an individual's name, image, or likeness for advertising, selling, or soliciting purchases of products, goods, or services.

(b) "Name, image, or likeness" means an individual's readily identifiable name, voice, signature, photograph, or likeness.

(c) "Publicity services" includes, but is not limited to, the following activities: Appearing in photoshoots; filming commercials;

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recording audio endorsements; posting sponsored content on social media platforms; attending promotional events; either wearing or using, or both, branded products; and granting rights by the student athlete to use the student athlete's name, image, or likeness in either advertisements or online campaigns, or both.

(d) "Student athlete" means an individual who is enrolled at an institution of higher education and eligible to engage in any varsity intercollegiate athletics program at the institution.

PART V
ESTIMATED TAX PAYMENTS AND PASS-THROUGH ENTITY TAX ELECTION

NEW SECTION. **Sec. 501.** ESTIMATED TAX IMPOSED—DUE DATE OF ESTIMATED TAXES—AMOUNT OF ESTIMATED TAX—UNDERPAYMENT PENALTY. (1) Each individual subject to taxation by this chapter that is required by the internal revenue code to make payment of estimated taxes must pay to the department on forms prescribed by the department the estimated taxes due under this chapter.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated tax is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than $5,000. RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax unless the estimated tax remitted to the department is either at least 90 percent of the tax shown on the return required under section 702(1) of this act or 100 percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

(5) The department shall adopt rules for making estimated tax payments under this section on wages, salaries, and other compensation subject to federal income tax withholding.

(6) Estimated payments are not required under this section before July 1, 2029.

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NEW SECTION. **Sec. 502.** PASS-THROUGH ENTITY TAX ELECTION. (1)(a) Beginning January 1, 2028, a tax is imposed at a rate of 9.90 percent of the taxable income of an electing entity for each taxable year in which an election under this section is in effect.

(b) The tax is paid by the electing entity.

(2)(a) A pass-through entity may elect to be subject to the tax imposed under this section by filing an election with the department on or before the due date prescribed by the department for making such election, but no later than April 15th.

(b) The election is made annually and is irrevocable for the taxable year once filed.

(c) The election must be made by: (i) In the case of a partnership or limited liability company, any person authorized to sign the entity's return; and (ii) in the case of an S corporation, an officer authorized to sign the return.

(3)(a) The taxable income of an electing entity consists of:

(i) The entire distributive share of income, gain, loss, and deduction attributable to resident owners, regardless of source; and

(ii) The state source distributive share of income, gain, loss, and deduction attributable to nonresident owners.

(b) Taxable income is determined by applying all state specific additions, subtractions, and modifications that would apply to the owners individually.

(c) Guaranteed payments, separately stated items, and investment income is included in taxable income to the same extent these items would be included in an owner's individual Washington taxable income under this chapter.

(4)(a) An electing entity shall make estimated tax payments in the same manner and at the same times as required for individual estimated tax payments under section 501 of this act.

(b) Estimated tax payments are based on the electing entity's reasonable estimate of taxable income for the taxable year.

(c) Estimated tax payments paid by the electing entity under this section are in lieu of the estimated tax payments imposed on owners under section 501 of this act with respect to the income included in the electing entity's taxable income.

(d) Estimated tax payments are not required under this subsection before July 1, 2029.

(5)(a) Each owner of an electing entity is allowed a credit against the tax imposed under this section equal to the owner's

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proportionate share of the tax paid by the electing entity under this chapter as provided in section 206 of this act.

(b) Resident owners shall include in their Washington taxable income their full distributive share of the electing entity's income, gains, losses, and deductions and shall claim the credit allowed under section 206 of this act.

(c) Nonresident owners shall include in their Washington taxable income their distributive share of the electing entity's income, gains, losses, and deductions as allocated and apportioned under section 405 of this act and shall claim the credit allowed under section 206 of this act.

(6)(a) The electing entity shall file an annual return reporting taxable income, tax due, estimated payments, and any other information required by the department in a form and manner required by the department.

(b) The department may adopt rules necessary to administer this section, which to the extent possible, must be consistent with the requirements under this chapter for individuals. The department may adopt rules to streamline and simplify the process and procedures for making an election under this section.

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

(a) "Distributive share" means the owner's share of income, gain, loss, or deduction as determined under the entity's governing documents and federal income tax law.

(b) "Electing entity" means a pass-through entity that has made a valid election under subsection (2)(c) of this section.

(c) "Nonresident owner" means an owner who is not a resident of this state for individual income tax purposes.

(d) "Owner" means a partner, member, or shareholder of a pass-through entity.

(e) "Resident owner" means an owner who is a resident of this state for individual income tax purposes.

(f) "State source income" means income, gain, or loss derived from sources within this state, determined under the allocation and apportionment provisions of section 405 of this act.

PART VI

CRIMES

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NEW SECTION. **Sec. 601.** CRIMES. (1) Any person who knowingly attempts to evade the tax imposed under this chapter or payment thereof is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any person required to collect tax imposed under this chapter who knowingly fails to truthfully account for or pay over the tax is guilty of a class C felony as provided in chapter 9A.20 RCW.

(3) Any person who knowingly fails to pay tax, pay estimated tax, make returns, or supply information, as required under this chapter, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

PART VII
ADMINISTRATIVE PROVISIONS

NEW SECTION. **Sec. 701.** METHOD OF ACCOUNTING. (1) A taxpayer's method of accounting for purposes of the tax imposed under this chapter is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this chapter is computed by the cash method of accounting.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this chapter.

NEW SECTION. **Sec. 702.** FILING TAX RETURNS. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed. Individuals not owing tax under this chapter are not required to file a return under this section.

(b)(i) Except as provided in (b)(ii) of this subsection (1), returns and all supporting documents must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(ii) The department may waive the electronic filing requirement in this subsection for good cause as provided in RCW 82.32.080.

(2)(a) Every taxpayer owing tax under this chapter must include with the Washington return described in subsection (1) of this

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section a copy of the taxpayer's federal income tax return filed with the internal revenue service of the United States, including:

(i) All federal income tax forms, schedules, and other attachments that directly relate to the taxpayer's federal adjusted gross income; and

(ii) Any information, returns, and federal tax documents received by the taxpayer that directly relate to the taxpayer's federal adjusted gross income including, but not limited to, form W-2, form 1099-INT, form 1099-DIV, form 1099-NEC, form 1099-MISC, form 1099-B, schedule K-1 (form 1065), and schedule K-1 (form 1120-S).

(b) A taxpayer must provide to the department, upon request, other federal tax return information needed to verify the tax owed under this chapter.

(c) The department may prescribe by rule additional reporting or verification requirements under this subsection (2) to substantiate an individual's federal adjusted gross income.

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by electronic funds transfer as defined in RCW 82.32.085 or by other forms of electronic payment as may be authorized by the department. The department may waive the electronic payment requirement for good cause as provided in RCW 82.32.080. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.

(4) If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable year and the taxpayer provides the department, on or before the date fixed for the filing of the return, regardless of any filing extension, evidence satisfactory to the department confirming the federal extension, the taxpayer is entitled to the same extension of time for filing the return required under this section. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the

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return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years and the taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request.

(6) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) on a payment required under this section when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under RCW 82.32.105(1) if all of the following apply:

(a) A taxpayer requests a waiver of penalty for a payment required under this section;

(b) The taxpayer has not been contacted by the department for enforcement purposes regarding the reporting period covered by the waiver request; and

(c) The taxpayer has timely remitted payment on all tax returns due under this section during the preceding five calendar years.

(7)(a) In the event a taxpayer's federal income tax return is changed in a manner that is final after their return required under subsection (1) of this section is filed with the department and the taxpayer's federal income tax return is changed in a manner that impacts either the calculation of their Washington adjusted gross income or their tax liability under this chapter, or both, the taxpayer must amend the taxpayer's return due under subsection (1) of this section for the same tax year in which their federal income tax return is changed. For the purposes of this subsection (7), a federal income tax return is changed in a manner that is final when such change is not subject to either administrative review by the United States internal revenue service or judicial review in a court of

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competent jurisdiction, or both. A change is also final in the case of an audit finding in the following circumstances:

(i) The taxpayer has received audit findings from the internal revenue service for the tax period and the taxpayer does not timely file an administrative appeal with the internal revenue service.

(ii) The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the United States internal revenue service.

(b) If the return is not amended, as required under this subsection (7), with the department within 90 days of the federal income tax return change becoming final, the department must assess on the 91st day a penalty in the amount of five percent of any additional tax due for the taxable year covered by the return for each month or portion of a month that the return is not timely amended as required by this subsection. The total penalty assessed under this subsection (7)(b) may not exceed 25 percent of the additional tax due for the taxable year covered by the delinquent return amendment. The penalty under this subsection (7)(b) is in addition to any penalties assessed under this section.

(8)(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which a return is filed under subsection (1) of this section except:

(i) When the taxpayer's federal income tax return is changed in a manner that requires an amended return under subsection (7) of this section; or

(ii) As provided in RCW 82.32.050(4).

(b) In the event the statute of limitations is extended under (a)(i) of this subsection, no assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the year in which an amended return is filed with the department as required under subsection (7) of this section. Any assessment or correction of an assessment for additional taxes, penalties, or interest due under this subsection (8)(b) but made by the department more than four years after the year in which a return is filed under subsection (1) of this section must be directly related to the federal income tax return change described in subsection (7) of this section.

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NEW SECTION. **Sec. 703.** REQUIREMENT FOR SEPARATE OR JOINT RETURNS. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection (2), if the federal income tax liability of any individual, including either spouse of a marital community, is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) The liability for tax due under this chapter of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the state registered domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow 26 U.S.C. Sec. 6015.

(4)(a) Unless the context clearly indicates otherwise, individuals who are spouses or state registered domestic partners are not considered separate taxpayers for the purposes of this chapter regardless of whether they file a joint or separate return for the tax imposed under this chapter. The activities and assets of each spouse or state registered domestic partner are combined as if they were one individual for the purposes of determining the applicability of any threshold amounts, caps, deductions, credits, or any other amounts related to the activities or assets of an individual throughout this chapter.

(b)(i) Except as provided in (b)(ii) of this subsection (4), when an individual does not file a joint return for the tax imposed under this chapter, both spouses or state registered domestic partners must allocate between themselves their respective share of the marital community's or domestic partnership's assets and activity. The allocation must be reported to the department on any returns required to be filed pursuant to this chapter in a manner prescribed by the department.

(ii) If both spouses or state registered domestic partners cannot agree on an allocation of assets and activity as authorized under

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(b)(i) of this subsection (4), each spouse is limited to one-half of the total assets and activities of their marital community or domestic partnership.

NEW SECTION. **Sec. 704.** ADMINISTRATION OF CHAPTER CONSISTENT WITH CHAPTER 82.32 RCW. Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

Sec. 705. RCW 82.32.050 and 2025 c 409 s 12 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within 30 days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c)(i) Except as otherwise provided in this subsection (1)(c), interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month

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included in a notice if not the end of a calendar year, until the due date of the notice.

(ii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April immediately following each such annual reporting period included in the notice, until the due date of the notice.

(iii) For purposes of computing interest under (c)(i) and (ii) of this subsection (1):

(A) The same computation of interest applies regardless of whether the department grants additional time for filing any return under RCW 82.32.080(4)(a)(i).

(B) If the department extends a due date under subsection (3) of this section or RCW 82.32.080(4)(b), and payment is not made in full by the extended due date, interest is computed from the last day of the month in which the extended due date occurs until the date of payment.

(iv) If payment in full is not made by the due date of the notice, additional interest shall be computed under this subsection (1)(c) until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more

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than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, the following definitions apply:

(a) "Due date of the notice" means the date indicated in the notice by which the amount due in the notice must be paid, or such later date as provided by RCW 1.12.070(3).

(b) "Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date. "Return" also means an application for refund under RCW 82.08.0206.

Sec. 706. RCW 82.32.060 and 2025 c 409 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

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(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

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(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund;

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund; or

(iii) For interest associated with annual tax reporting periods having a due date as prescribed in RCW 82.32.045(3) ((~~and~~)), 82.87.110, and section 702 of this act, interest must be computed from the last day of April following each such annual reporting period included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 707. RCW 82.32.090 and 2025 c 409 s 14 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of 19 percent of the amount of the tax under this subsection; and if

the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of 29 percent of the amount of the tax under this subsection. No penalty so added may be less than $5.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of 15 percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the 30th day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of 25 percent of the amount of the tax under this subsection. No penalty so added may be less than $5. As used in this ((~~section~~)) subsection, "substantially underpaid" means that the taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least $1,000.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of 10 percent of the amount of the tax, but not less than $10.

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or

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willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of 10 percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of 45 days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in

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RCW 82.32.655(3), the department must assess a penalty of 35 percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due must be added.

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

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

(10) If a taxpayer substantially underpays an estimated payment of tax imposed under RCW 82.87.040 pursuant to RCW 82.87.110(3), there is assessed a penalty of five percent of the amount of the actual tax due for tax imposed under RCW 82.87.040. As used in this ((~~section~~)) subsection, "substantially underpaid" means that an individual's estimated payment for taxes imposed under RCW 82.87.040 was less than 80 percent of the actual tax due, and at least $1,000.

(11) If the total estimated tax payments under section 501 of this act for the tax year are substantially underpaid, there is assessed a penalty of five percent of the amount of the underpaid tax. If a pass-through entity makes an election under section 502 of this act, this subsection (11) applies to the estimated tax payments of the pass-through entity in lieu of the individual. As used in this subsection, "substantially underpaid" means that an individual's total annual estimated tax payments under section 501 of this act were less than 80 percent of the actual annual tax due, and at least $5,000.

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(12) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date. "Return" also includes the submission of any estimated payment of tax as provided in RCW 82.87.110(3) and the confirmation of an extension of the filing due date required under RCW 82.87.110(5).

NEW SECTION. **Sec. 708.** ESTIMATION AGREEMENTS. The department may reasonably estimate the items of business or nonbusiness income of a taxpayer having an office within the state and one or more other states or foreign countries which may be apportioned or allocated to the state and may enter into estimation agreements with such taxpayers for the determination of their liability for the tax imposed by this chapter.

NEW SECTION. **Sec. 709.** PROVISIONS OF INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this chapter, all of the provisions of subtitle F (procedure and administration) of the internal revenue code relating to the following subjects apply to the taxes imposed under this chapter:

(a) Timing and amount of tax prepayments under section 501 of this act;

(b) Liability of transferees; and

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed to be filed by the department.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this chapter.

NEW SECTION. **Sec. 710.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this chapter. The rules, to the extent possible without being inconsistent with this chapter, must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as a part of these rules any portions of the internal revenue

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code and United States treasury department regulations and rulings, in whole or in part.

NEW SECTION. **Sec. 711.** LOCAL GOVERNMENT PUBLIC DEFENSE FUNDING STABILIZATION ACCOUNT. (1) The local government public defense funding stabilization account is hereby created in the state treasury. All receipts specified under section 202(1)(a) of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for distributions to counties and cities for public defense services consistent with chapter 10.101 RCW. Counties and cities receiving funds must comply with the requirements of RCW 10.101.060.

(2) On a quarterly basis, the state treasurer shall distribute moneys deposited in the local government public defense funding stabilization account as follows:

(a) 10 percent to cities on a pro rata basis, based upon the annual number of misdemeanor criminal cases filed in courts under each city's jurisdiction, as determined by the office of public defense.

(b) The remainder to counties as follows:

(i) Six percent shall be distributed as a base allocation among the counties. A county's base allocation is equal to the total amount to be distributed under this subsection (2)(b)(i) divided by 39.

(ii) 94 percent shall be distributed as follows:

(A) 40 percent shall be distributed on a pro rata basis to each county based on the county's personal income ratio as determined under subsection (3) of this section; and

(B) 60 percent shall be distributed on a pro rata basis to each county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all counties, as determined under subsection (5) of this section.

(3) The office of financial management shall calculate each county's personal income ratio by December 31, 2028, and December 31st of each year thereafter, using the most recent annual county personal income data published by the federal bureau of economic analysis for the state of Washington and notify the state treasurer. The updated county personal income ratio applies to county distributions in the following calendar year.

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(4) For the purpose of this section, "county's personal income ratio" means the personal income of the county divided by the personal income of the state of Washington, as determined under subsection (3) of this section.

(5) For the purposes of this section, the annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

(6) For the purposes of this section, the annual number of misdemeanor criminal cases filed in courts under the city's jurisdiction is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

PART VIII
APPLICATION OF TAX TO PUBLIC PENSIONS

Sec. 801. RCW 2.10.180 and 2012 c 159 s 17 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4)<u>, and (5)</u> of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18

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RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 802. RCW 2.12.090 and 2012 c 159 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), ((~~and~~)) (4), and (5) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

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(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(5) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 803. RCW 6.15.020 and 2011 c 162 s 3 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act).

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse,

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child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law, or to collection actions for taxes imposed under Title 82A RCW (the new title created in section 1003 of this act). This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent

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of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent

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jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

Sec. 804. RCW 41.24.240 and 1995 c 11 s 13 are each amended to read as follows:

(1) The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(2) Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 805. RCW 41.32.052 and 2012 c 159 s 20 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

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(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 806. RCW 41.34.080 and 2012 c 159 s 23 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various

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funds created by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter 247, Laws of 2000 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a ((~~notice of payroll deduction~~)) income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 807. RCW 41.35.100 and 2012 c 159 s 24 are each amended to read as follows:

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(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

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Sec. 808. RCW 41.40.052 and 2012 c 159 s 26 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies

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with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 809. RCW 41.44.240 and 2012 c 159 s 27 are each amended to read as follows:

(1) The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

(3) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 810. RCW 41.26.053 and 2012 c 159 s 21 are each amended to read as follows:

(1) Subject to subsections (2) ((~~and~~)), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the

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same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

Sec. 811. RCW 43.43.310 and 2012 c 159 s 28 are each amended to read as follows:

(1) Except as provided in subsections (2) ((~~and~~)), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18

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RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) ((~~a notice of payroll deduction~~)) an income withholding order issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation.

(4) Subsection (1) of this section does not exempt any pension or other benefit received under this chapter from tax under Title 82A RCW (the new title created in section 1003 of this act).

PART IX
TAX RELIEF

Sec. 901. RCW 82.08.0206 and 2024 c 3 s 1 are each amended to read as follows:

(1) A working families' tax credit, funded by sales and use tax imposed, is provided to eligible low-income persons for calendar years beginning on or after January 1, 2022. The credit is refundable and is calculated as provided in this section.

(2) For purposes of the credit in this section, the following definitions apply:

(a)(i) "Eligible low-income person" means an individual who:

(A) Is eligible for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code;

(B) Properly files a federal income tax return for the prior federal tax year, and was a Washington resident during the year for which the credit is claimed; and

(C) Has paid either retail sales tax under this chapter or use tax under chapter 82.12 RCW, or both. There is a rebuttable presumption that a person paid either retail sales tax under this

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chapter or use tax under chapter 82.12 RCW, or both, if they were a Washington resident during the year for which the credit is claimed.

(ii) "Eligible low-income person" also means an individual who meets the requirements provided in (a)(i)(B) of this subsection and would otherwise qualify for the credit provided in Title 26 U.S.C. Sec. 32 of the internal revenue code except that one or any combination of the following conditions apply:

(A) The individual filed a federal income tax return for the prior federal tax year using a valid individual taxpayer identification number in lieu of a social security number, and the individual's spouse, if any, and all qualifying children, if any, have a valid individual taxpayer identification number or a social security number; ((~~or~~))

(B) The individual filed their federal income tax return for the prior federal tax year under the married filing separately status. For purposes of the refund provided in this section, the special rule for separated spouse under Title 26 U.S.C. Sec. 32(d)(2)(B) of the internal revenue code does not apply; or

(C) The individual does not meet the age requirement under Title 26 U.S.C. Sec. 32(c)(1)(A)(ii)(II) of the internal revenue code, but is at least age 18 by the end of the prior federal tax year.

(b) "Income" means earned income as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code.

(c) "Individual" means an individual or an individual and that individual's spouse if they file a federal joint income tax return.

(d) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of June 9, 2022, or such subsequent date as the department may provide by rule consistent with the purpose of this section.

(e) "Maximum qualifying income" means the maximum federally adjusted gross income for the prior federal tax year.

(f) "Qualifying child" means a qualifying child as defined by Title 26 U.S.C. Sec. 32 of the internal revenue code, except the child may have a valid individual taxpayer identification number in lieu of a social security number.

(g) "Washington resident" means an individual who is physically present and residing in this state for at least 183 days. "Washington resident" also includes an individual who is not physically present and residing in this state for at least 183 days but is the spouse of

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a Washington resident. For purposes of this subsection, "day" means a calendar day or any portion of a calendar day.

(3)(a) Except as provided in (b) and (c) of this subsection, for calendar year 2023 and thereafter, the working families' tax credit refund amount for the prior calendar year is:

(i) $300 for eligible persons with no qualifying children;

(ii) $600 for eligible persons with one qualifying child;

(iii) $900 for eligible persons with two qualifying children; or

(iv) $1,200 for eligible persons with three or more qualifying children.

(b) Except as provided in (f) of this subsection, the refund amounts provided in (a) of this subsection will be reduced, rounded to the nearest dollar, as follows:

(i) For eligible persons with no qualifying children, beginning at $2,500 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(ii) For eligible persons with one qualifying child, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 12 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iii) For eligible persons with two qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 15 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(iv) For eligible persons with three or more qualifying children, beginning at $5,000 of income below the federal phase-out income for the prior federal tax year, by 18 percent per additional dollar of income until the minimum credit amount as specified in (c) of this subsection is reached.

(c) If the refund for an eligible person as calculated in this section is greater than zero cents, but less than $50, the refund amount is $50.

(d) The refund amounts in this section shall be adjusted for inflation every year beginning January 1, 2024, based upon changes in the consumer price index that are published by November 15th of the

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previous year for the most recent 12-month period. The adjusted refund amounts must be rounded to the nearest $5.

(e) For purposes of this section, "consumer price index" means, for any 12-month period, the average consumer price index for that 12-month period for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(f) The percentage rate of remittance reductions in (b) of this subsection must be adjusted every year beginning January 1, 2023, based on calculations by the department that result in the minimum credit being received at the maximum qualifying income level.

(4) The working families' tax credit shall be administered as provided in this subsection.

(a) The refund paid under this section will be paid to eligible filers who apply pursuant to this subsection.

(i) Application must be made to the department in a form and manner determined by the department. If the application process is initially done electronically, the department must provide a paper application upon request. The application must include any information and documentation as required by the department. The department may use the information provided by the individual to calculate the refund amount. Income reported on the application may be rounded to the nearest dollar.

(ii) An individual applying for the credit under this section must keep records necessary for the department to verify eligibility under this section. Any information provided by the individual is subject to audit verification by the department.

(iii) In addition to information provided on the application, the department may verify that an individual qualifies as a Washington resident through the use of automated verification tools or other reasonable means.

(iv)(A) Except as provided in (a)(iv)(B) of this subsection (4), application for a refund under this section must be made in the year following the year for which the federal tax return was filed, but in no case may any refund be provided for any period before January 1, 2022.

(B)(I) A person may apply for any refund for which they were eligible but did not claim under (a)(iv)(A) of this subsection (4) for up to three additional years. A person must complete an application to claim this refund within the three calendar years

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after the end of the calendar year in which the federal income tax return for that tax year was legally due for federal income tax purposes, without regard to any federal extension.

(II) If a person seeks to increase the amount of a refund that has been made under this subsection (4), the person must apply for the amended refund within the nonclaims period established under RCW 82.32.060(1).

(v) A person may not claim a credit on behalf of a deceased individual. No individual may claim a credit under this section for any year in a disallowance period under Title 26 U.S.C. Sec. 32(k)(1) of the internal revenue code or for any year for which the individual is ineligible to claim the credit in Title 26 U.S.C. Sec. 32 of the internal revenue code by reason of Title 26 U.S.C. Sec. 32(k)(2) of the internal revenue code.

(b) The department shall protect the privacy and confidentiality of personal data of refund recipients in accordance with chapter 82.32 RCW.

(c) The department shall, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of, and requirements for, the credit provided in this section.

(d) The department must work with the internal revenue service of the United States to administer the credit on an automatic basis as soon as practicable.

(5) Receipt of a refund under this section may not be used in eligibility determinations for any state income support programs or in making public charge determinations.

(6) The department may adopt rules necessary to implement this section. This includes establishing a date by which applications will be accepted, with the aim of accepting applications as soon as possible.

(7) The department must review the application and determine eligibility for the working families' tax credit based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through information from the internal revenue service of the United States, other federal agencies, Washington state agencies, third-party entities, or other persons. The department may accept a signed attestation in a form and manner determined by the department from an individual to presumptively validate that an individual meets all the

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eligibility requirements as provided in this section. The signed attestation is subject to audit verification by the department to validate an individual's eligibility for the working families' tax credit.

(8) If, upon review of internal revenue service data or other information obtained by the department, it appears that an individual received a refund that the individual was not entitled to, or received a larger refund than the individual was entitled to, the department may assess against the individual the overpaid amount. The department may also assess such overpaid amount against the individual's spouse if the refund in question was based on both spouses filing a joint federal income tax return for the year for which the refund was claimed.

(a) Interest as provided under RCW 82.32.050 applies to assessments authorized under this subsection (8) starting six months after the date the department issued the assessment until the amount due under this subsection (8) is paid in full to the department. Except as otherwise provided in this subsection, penalties may not be assessed on amounts due under this subsection.

(b) If an amount due under this subsection is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess the applicable penalties under RCW 82.32.090. Penalties under this subsection (8)(b) may not be made due until six months after the department's issuance of the assessment.

(c) If the department finds by clear, cogent, and convincing evidence that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent claim for refund under this section, the department must assess a penalty of 50 percent of the overpaid amount. This penalty is in addition to any other applicable penalties assessed in accordance with (b) of this subsection (8).

(9) If, within the period allowed for refunds under RCW 82.32.060, the department finds that an individual received a lesser refund than the individual was entitled to, the department must remit the additional amount due under this section to the individual.

(10) Interest does not apply to refunds provided under this section.

(11) Chapter 82.32 RCW applies to the administration of this section.

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Sec. 902. 2023 c 456 s 3 (uncodified) is amended to read as follows:

(1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter 195, Laws of 2021 ((~~and~~)), section 1, chapter 456, Laws of 2023, and section 901, chapter . . ., Laws of 2026 (section 901 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for the preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain individuals as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to allow low-income and middle-income workers to recover some or all of the sales tax they pay to support state and local government as a way to increase their economic security and to decrease the regressivity of our state tax code. It is the legislature's intent to provide a sales and use tax credit, in the form of a remittance, to low-income and middle-income working families.

(4) The joint legislative audit and review committee shall review this preference in 2028 and every 10 years thereafter. If a review finds that the working families' tax credit does not provide meaningful financial relief to low-income and middle-income households, RCW 82.08.0206 expires at the end of the calendar year two years after the adoption of the final report containing that finding. The joint legislative audit and review committee shall provide written notice of the expiration date of RCW 82.08.0206 to the department of revenue, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the joint legislative audit and review committee. In its review of the program, the joint legislative audit and review committee should use at least the following metrics: Size of the benefit per household, number of household beneficiaries statewide, and demographic information of beneficiaries to include family size, income level, race and ethnicity, and geographic location.(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the remittance data prepared by the department of revenue.

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NEW SECTION. **Sec. 903.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.08.020 does not apply to the sales of grooming and hygiene products.

(2) For the purpose of this section, "grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the item meets the definition of "over-the-counter drug," as defined in RCW 82.08.0281.

NEW SECTION. **Sec. 904.** A new section is added to chapter 82.12 RCW to read as follows:

(1) Beginning January 1, 2029, the tax levied by RCW 82.12.020 does not apply to the use of grooming and hygiene products.

(2) For purposes of this section, "grooming and hygiene products" has the same meaning as provided in section 903 of this act.

Sec. 905. RCW 82.04.4451 and 2022 c 295 s 1 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least 50 percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is ((~~$55~~)) $125 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least 50 percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is ((~~$160~~)) $375 multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table

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shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

Sec. 906. RCW 82.32.045 and 2023 c 374 s 12 are each amended to read as follows:

(1) Except as otherwise provided in this chapter and subsection (6) of this section, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.27 RCW, along with reports and returns on forms prescribed by the department, are due monthly within 25 days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. Except as provided in subsection (3) of this section, for these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) For annual filers, tax payments, along with reports and returns on forms prescribed by the department, are due on or before April 15th of the year immediately following the end of the period covered by the return.

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

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

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than ((~~$125,000~~)) $250,000 per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than $24,000 per year; and

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

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(6)(a) Taxes imposed under chapter 82.08 or 82.12 RCW on taxable events that occur beginning January 1, 2019, through June 30, 2019, and payable by a consumer directly to the department are due, on returns prescribed by the department, by July 25, 2019.

(b) This subsection (6) does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(i) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(ii) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to subsection (5) of this section.

Sec. 907. RCW 82.04.288 and 2025 c 420 s 201 are each amended to read as follows:

(1) Beginning January 1, 2026, in addition to all other taxes imposed under this chapter, persons must pay a surcharge on Washington taxable income over $250,000,000 in a calendar year.

(2) The rate of the tax is 0.5 percent of the amount of Washington taxable income over $250,000,000.

(3)(a) Any Washington taxable income subject to the tax in RCW 82.04.29004 is exempt from the surcharge imposed in this section.

(b)(i) Any Washington taxable income subject to the manufacturing tax rates in RCW 82.04.240, 82.04.2404, 82.04.241, 82.04.260, 82.04.2602, 82.04.287, 82.04.2909, or 82.04.294(1) is exempt from the surcharge imposed in this section.

(ii) Any Washington taxable income attributable to the wholesale or retail sale of products so manufactured by a person subject to the manufacturing tax rates specified in (b)(i) of this subsection (3) is exempt from the surcharge imposed in this section.

(iii) Any Washington taxable income attributable to retail sales that are exempt from the imposition of sales tax in RCW 82.08.0293, 82.08.0297, and 82.08.0281 is exempt from the surcharge imposed in this section.

(iv) Any Washington taxable income subject to the tax rates in RCW 82.04.260(12) is exempt from the surcharge imposed in this section.

(v) Any Washington taxable income attributable to the wholesale or retail sale of petroleum products by a person who is both located in a state other than Washington and the owner of such materials processed for it in Washington by an affiliated processor for hire

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subject to the rate in RCW 82.04.280(1)(c), is exempt from the surcharge imposed in this section. For the purposes of this subsection (3)(b)(v), the following definitions apply:

(A) "Affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

(B) "Control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise; and

(C) "Petroleum product" has the same meaning as in RCW 82.21.020.

(4)(a) The surcharge imposed under this section does not apply to taxable income for which a credit is allowed under RCW 82.04.440.

(b) The surcharge imposed under this section does not apply to a person engaged in business primarily as a farmer or eligible apiarist as defined in RCW 82.04.213.

(c) The surcharge imposed under this section does not apply to a person subject to the tax imposed pursuant to RCW 82.04.299.

(d) The surcharge imposed under this section does not apply to taxable income for wholesale and retail transactions of fuel as defined in RCW 82.38.020.

(5) Any income that is exempt from the surcharge imposed under this section is not included in the calculation of Washington taxable income in subsection (1) of this section.

(6) This section expires December 31, ((~~2029~~)) 2028.

NEW SECTION. **Sec. 908.** Sections 905 and 906 of this act apply to taxes initially due and payable on or after January 1, 2029.

PART X
MISCELLANEOUS

Sec. 1001. RCW 1.90.100 and 2024 c 5 s 1 (Initiative Measure No. 2111) are each amended to read as follows:

(1) Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

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(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1003 of this act).

NEW SECTION. **Sec. 1002.** NULL AND VOID. If a court of final jurisdiction invalidates section 201 of this act, this act is null and void in its entirety.

NEW SECTION. **Sec. 1003.** CODIFICATION. Sections 101 through 704 and 708 through 711 of this act constitute a new chapter in a new title in the Revised Code of Washington, to be codified as Title 82A RCW.

NEW SECTION. **Sec. 1004.** CONFORMING AMENDMENTS. If any amendments in this act, or any sections enacted or affected by chapter . . ., Laws of 2026 (this act), are enacted in a 2026 legislative session that do not take cognizance of chapter . . ., Laws of 2026 (this act), the code reviser must prepare a bill for introduction in the 2027 or 2028 legislative session that incorporates any such amendments into the reorganization adopted by chapter . . ., Laws of 2026 (this act) and corrects any incorrect cross-references.

NEW SECTION. **Sec. 1005.** (1) Section 901 of this act takes effect January 1, 2029.

(2) Refunds may not be provided under section 901 of this act for any period before January 1, 2028.

NEW SECTION. **Sec. 1006.** Except as provided in section 902 of this act, RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 1007.** The tax imposed in this act is necessary for the support of the state government and its existing public institutions.

NEW SECTION. **Sec. 1008.** It is the intent of the legislature for the department of revenue to spend appropriated amounts to implement this act regardless of litigation.

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