

AN ACT Relating to the state business and occupation tax; amending RCW 82.04.220, 82.04.2907, and 82.04.460; adding new sections to chapter 82.04 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2) (a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment

and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

Sec. 2. RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended to read as follows:

(1) There is levied and ((shall-be)) collected from every person that has substantial nexus with this state a tax for the act or privilege of engaging in business activities. ((Such)) The tax ((shall-be)) is 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.

(2) A person who has substantial nexus with this state in any tax year will be deemed to have substantial nexus with this state for the following four tax years.

NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW to read as follows:

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

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

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

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

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

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

(iii) More than five hundred thousand dollars of receipts from this state; or

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

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

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

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

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

year if reasonably required to properly reflect the average value of the taxpayer's property.

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

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

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

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

(ii) The definitions in section 6 of this act apply to this subsection.

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

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

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

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

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

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

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are those amounts included in the numerator of the receipts factor under sections 5 and 6 of this act.

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of July 1, 2010, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of July 1, 2010, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from

the bureau of labor statistics of the United States department of labor.

(6) Notwithstanding anything to the contrary in this section, a person is not subject to taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, unless the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state or the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

NEW SECTION. **Sec. 5.** A new section is added to chapter 82.04 RCW to read as follows:

(1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(3)(a)(i) through (ix) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and section 6 of this act.

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or

(vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have substantial nexus with that state under the standards in section 4(1) of this act regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in section 6 of this act and subsection (4) of this section with respect to apportionable income taxable under RCW 82.04.290. For purposes of this subsection, "financial institution" has the same meaning as in section 6 of this act.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information

is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" has the same meaning as in section 6 of this act.

NEW SECTION. **Sec. 6.** A new section is added to chapter 82.04 RCW to read as follows:

(1) A financial institution must, for purposes of apportioning gross income of the business taxable under RCW 82.04.290 using the apportionment method provided in section 5(1) of this act, calculate the receipts factor as provided in this section and section 5 (4) of this act. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(3)(a)(i) through (v) and (vii) through (ix) must calculate a separate receipts factor,

as provided in section 5 of this act, for each of the other tax classifications that the financial institution is taxable under.

(2)(a)(i) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, if the real or personal property is located within this state. If the property securing the loan is located both within this state and one or more other states, the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The denominator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, wherever the property is located.

(iii) The determination of whether the real or personal property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(b) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans not secured by real or personal property if the borrower is located in this state. The denominator of the receipts factor includes gross income from interest, fees, and penalties on loans that are not secured by real or personal property, regardless of where the borrower is located.

(c) The receipts factor includes gross income from net gains, which may not be less than zero, on the sale of loans. Net gains on the sale of loans includes income recorded under the coupon stripping rules of 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as existing on July 1, 2010.

(i) The amount of net gains, which may not be less than zero, on the sale of loans secured by real property, personal property, or both real and personal property, included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(ii) The amount of net gains, which may not be less than zero, from the sale of loans not secured by real or personal property included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (b) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (b) of this subsection (2).

(iii) The denominator of the receipts factor includes gross income from net gains, which may not be less than zero, on all sales of loans.

(d) Loan servicing fees are included in the receipts factor as provided in (d)(i) and (ii) of this subsection (2).

(i)(A)(I) The numerator of the receipts factor includes gross income from loan servicing fees derived from loans secured by real property, personal property, or both real and personal property, multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(II) The denominator of the receipts factor includes gross income from all loan servicing fees derived from loans secured by real property, personal property, or both real and personal property.

(B)(I) The numerator of the receipts factor includes gross income from loan servicing fees derived from loans not secured by real or personal property multiplied by a fraction. The numerator of the

fraction is the amount included in the numerator of the receipts factor under (b) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (b) of this subsection (2).

(II) The denominator of the receipts factor includes gross income from all loan servicing fees derived from loans not secured by real or personal property.

(ii) If the financial institution receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state. The denominator of the receipts factor includes all such fees.

(e)(i) Interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities and from trading assets and activities, as provided in this subsection (2)(e), are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions.

(ii) The numerator of the receipts factor includes gross income from interest, dividends, net gains (which may not be less than zero), and other receipts from investment assets and activities and from trading assets and activities described in (e)(i) of this subsection (2) that are attributable to this state. The denominator of the receipts factor includes all such gross income wherever earned.

(A) The amount of interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction. The numerator of the fraction is the average value of such assets that are properly assigned to a regular place of business of

the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(B)(I) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such funds and such securities.

(II) The amount used for purposes of making the calculation in (e)(ii)(B)(I) of this subsection (2) is the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(C)(I) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in (e)(ii)(A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(C)(II) of this subsection (2) by a fraction. The numerator of the fraction is the average value of such trading assets that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(II) The amount used for purposes of making the calculation in (e)(ii)(C)(I) of this subsection (2) is the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency

transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(D) For purposes of this subsection (2)(e)(ii), average value must be determined using the rules for determining the average value of property set forth in section 4(2) of this act.

(iii) In lieu of using the method set forth in (e)(ii) of this subsection (2), the financial institution may elect, or the department may require, in order to fairly represent the business activity of the financial institution in this state, the use of the method set forth in this subsection (2)(e)(iii).

(A) The amount of interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction. The numerator of the fraction is the gross income from such assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the gross income from such funds and such securities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in

(e) (ii) (A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e) (ii) (C) (II) of this subsection (2) by a fraction. The numerator of the fraction is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such assets and activities.

(iv) If the financial institution elects or is required by the department to use the method set forth in (e) (iii) of this subsection (2), it must use this method for subsequent tax returns unless the financial institution receives prior permission from the department to use, or the department requires, a different method.

(v) The financial institution has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the financial institution.

(f) The numerator of the receipts factor includes gross income from interest, fees, and penalties on credit card receivables, and gross income from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state. The denominator of the receipts factor includes gross income from interest, fees, and penalties on all credit card receivables, and

gross income from fees charged to all cardholders, such as annual fees.

(g)(i) The numerator of the receipts factor includes gross income from net gains, which may not be less than zero, from the sale of credit card receivables multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income from net gains, which may not be less than zero, from all sales of credit card receivables.

(h)(i) The numerator of the receipts factor includes gross income from all credit card issuer's reimbursement fees multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income from all credit card issuer's reimbursement fees.

(i) The numerator of the receipts factor includes gross income from merchant discounts if the commercial domicile of the merchant is in this state. The denominator of the receipts factor includes gross income from all merchant discounts. For purposes of this subsection (2)(i), gross income must be computed net of any cardholder charge backs but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.

(j) Apportionable income that would be attributable under this subsection (2) to a state in which the financial institution is not taxable must be excluded from the denominator of the receipts factor if at least some of the activity that generated the income is performed in this state, and the gross income is attributable under this subsection (2) to a state in which the taxpayer is not taxable.

For purposes of this subsection (2)(j), "not taxable" has the same meaning as in section 5 of this act.

(k)(i) The numerator of the receipts factor includes apportionable income not otherwise included in the receipts factor under this subsection (2) if the activity producing the apportionable income is performed in this state. If the activity is performed both inside and outside this state, the numerator of the receipts factor includes apportionable income not otherwise included in the receipts factor under this subsection (2) if a greater proportion of the activity producing the apportionable income is performed in this state based on cost of performance.

(ii) The denominator of the receipts factor includes apportionable income from activities performed everywhere, where the apportionable income is not otherwise included in the receipts factor under this subsection (2).

(3) Except as otherwise provided in subsection (4) of this section, the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions, adopted November 17, 1994, as existing on the effective date of this act, apply to this section.

(4) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Apportionable income" has the same meaning as in RCW 82.04.460.

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

(c) "Financial institution" has the same meaning as in WAC 458-20-14601. However, the department may not make any substantive changes to the definition of "financial institution" in WAC 458-20-14601 unless the changes implement a legislative amendment to this definition of financial institution.

(d) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

Sec. 7. RCW 82.04.2907 and 2009 c 535 s 407 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties (~~((or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees))~~), the amount of tax with respect to ~~((such))~~ the business (~~((shall be))~~) is equal to the gross income from royalties (~~((or charges in the nature of royalties from the business))~~) multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "gross income from royalties" means compensation for the use of intangible property, ~~((such as))~~ including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. ~~((It))~~ "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing (~~((or use))~~) of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

Sec. 8. RCW 82.04.460 and 2004 c 174 s 6 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person (~~((rendering services))~~) earning apportionable income taxable under (~~((RCW 82.04.290 or 82.04.2908))~~) this chapter and (~~((maintaining places of business both within and without this state which contribute to the rendition of such services shall))~~) also taxable in another state, must, for the purpose of computing tax liability under (~~((RCW 82.04.290 or 82.04.2908))~~) this chapter, apportion to this state, in accordance with section 5 of this act, that portion of the person's (~~((gross))~~) apportionable income (~~((which is))~~) derived from (~~((services rendered))~~) business activities performed within this state. (~~((Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of~~

~~the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.))~~

~~(2) ((Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.~~

~~—(3)) The department ((shall)) may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service((s)) taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. ((The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.)) The rule must provide for an equitable and constitutionally permissible division of the tax base.~~

(3) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

(i) RCW 82.04.255;
(ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);
(iii) RCW 82.04.280(5);
(iv) RCW 82.04.285;
(v) RCW 82.04.286;
(vi) RCW 82.04.290;
(vii) RCW 82.04.2907;
(viii) RCW 82.04.2908; and
(ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and 82.04.280(1) did not exist.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in section 4(1) of this act.

(ii) For purposes of this subsection (3)(b):

(A) "Business activities tax" has the same meaning as in section 5 of this act; and

(B) "State" has the same meaning as in section 6 of this act.

NEW SECTION. Sec. 9. (1) Except as provided in subsection (2) of this section, 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.

(2) If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 4(1)(c) of this act unconstitutional or otherwise invalid, this act is null and void in its entirety.

NEW SECTION. **Sec. 10.** This act applies with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after July 1, 2010. For purposes of calculating the thresholds in section 4(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

NEW SECTION. **Sec. 11.** This act takes effect July 1, 2010.