Part VI
Remote Sellers, Referrers, and Marketplace Facilitators

Subpart A
Findings and Intent

NEW SECTION. Sec. 601. (1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogs. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

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

(3) The legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule. To achieve this objective, this act adopts a new program. Under the new program, remote sellers meeting a specified threshold of gross receipts from retail sales into this state would have the option to either collect retail sales or use tax on taxable retail sales into this state or comply with certain sales and use tax notice and reporting provisions. This option is also available to other persons such as marketplace facilitators for facilitated sales on behalf of third-party remote sellers. The sales and use tax notice and reporting provisions in this act are similar to the multistate tax commission's draft model sales and use tax notice and reporting statute and Colorado's sales and use tax notice and reporting law.

Subpart B
Sales and Use Tax Collection
NEW SECTION. Sec. 602. A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as follows:

(1)(a) Beginning January 1, 2018, and for any calendar year thereafter, remote sellers, referrers, and marketplace facilitators meeting the criteria in subsection (2) of this section or that have a physical presence in this state, must elect to either collect and remit retail sales or use tax on all taxable retail sales into this state pursuant to this chapter and chapters 82.12 and 82.32 RCW or comply with section 605 of this act.

(b) For marketplace facilitators, the election provided in (a) of this subsection (1) applies only with respect to:

(i) Retail sales through the marketplace facilitator's marketplace by or on behalf of marketplace sellers who do not have a physical presence in this state; and

(ii) A marketplace facilitator's own retail sales, if the marketplace facilitator does not have a physical presence in this state.

(c) For referrers, the election provided in (a) of this subsection (1) applies only with respect to:

(i) Retail sales directly resulting from a referral of the purchaser to a marketplace seller who does not have a physical presence in this state; and

(ii) A referrer's own retail sales, if the referrer does not have a physical presence in this state.

(d) An election under (a) of this subsection (1) to collect retail sales or use tax is binding on the remote seller, referrer, or marketplace facilitator until January 1st of the calendar year that is at least twelve consecutive months after the remote seller, referrer, or marketplace facilitator began collecting retail sales or use tax under such election. A remote seller, referrer, or marketplace facilitator who has made an election under this subsection to collect retail sales or use tax may change its election and comply with section 605 of this act by providing written notice to the department in a form and manner required by the department. Such an election change may take effect only on the first day of the calendar year that is at least thirty days following the date that the department received written notice from the remote seller, referrer, or marketplace facilitator of its change in election.
(e)(i) Remote sellers, referrers, and marketplace facilitators complying with section 605 of this act may change their election under this subsection (1) at any time by collecting and remitting retail sales or use taxes under this chapter or chapter 82.12 RCW on taxable retail sales sourced to this state. Such an election is binding as provided in (d) of this subsection (1).

(ii) Remote sellers, referrers, and marketplace facilitators electing for the first time to collect retail sales or use tax must begin collecting state and local retail sales or use taxes on taxable retail sales sourced to this state beginning on the first day of the calendar month that is at least thirty days from the date that the remote seller, referrer, or marketplace facilitator met either threshold described in subsection (2) of this section.

(f) If the department discovers that any remote seller, referrer, or marketplace facilitator required to make an election under this subsection (1) is not registered with the department and collecting retail sales or use tax, the remote seller, referrer, or marketplace facilitator is conclusively presumed to have elected to comply with the notice and reporting requirements of section 605 of this act.

(2)(a) A remote seller or marketplace facilitator is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross receipts of the remote seller or marketplace facilitator from retail sales sourced to this state under RCW 82.32.730 are at least ten thousand dollars.

(b) A referrer is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross income of the business received from the referrer's referral services apportioned to Washington under RCW 82.04.462, whether or not subject to tax under chapter 82.04 RCW, and from retail sales sourced to this state under RCW 82.32.730, if any, is at least ten thousand dollars.

(3) This section is subject to the provisions of section 613 of this act.

(4) For the purposes of this section, "marketplace facilitator," "referrer," and "remote seller" have the same meaning as provided in section 604 of this act.

NEW SECTION. Sec. 603. A new section is added to chapter 82.08 RCW to be codified between section 602 of this act and RCW 82.08.054 to read as follows:
(1) For purposes of this chapter and chapter 82.12 RCW, a marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer.

(2) A marketplace facilitator or referrer is relieved of liability under this chapter and chapter 82.12 RCW for failure to collect the correct amount of tax to the extent that the marketplace facilitator or referrer can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator or referrer by the marketplace seller, unless the marketplace facilitator, or referrer, and marketplace seller are affiliated persons. Where the marketplace facilitator or referrer is relieved of liability under this subsection (2), the marketplace seller is solely liable for the amount of uncollected tax due.

(3)(a) Subject to the limits in (b) and (c) of this subsection (3), a marketplace facilitator or referrer is relieved of liability under this chapter and chapter 82.12 RCW for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator or referrer can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace or directly resulting from a referral of the purchaser by the referrer;

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

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

(b) Liability relief for a marketplace facilitator under (a) of this subsection (3) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and...
sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(c) Liability relief for a referrer under (a) of this subsection (3) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(d) Where the marketplace facilitator or referrer is relieved of liability under this subsection (3), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection (4) of this section.

(4) A marketplace seller is relieved of its obligation to collect the taxes imposed under this chapter and chapter 82.12 RCW on all taxable retail sales through a marketplace operated by a marketplace facilitator or directly resulting from a referral of the purchaser to the marketplace seller by the referrer if the marketplace seller has obtained documentation from the marketplace facilitator or referrer indicating that the marketplace facilitator or referrer is registered with the department and will collect all applicable taxes due under this chapter and chapter 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated
by the marketplace facilitator or taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer. The documentation required by this subsection (4) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (4) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter or chapter 82.12 RCW resulting from a marketplace facilitator's or referrer's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator or referrer by the marketplace seller.

(5) A marketplace seller that is also a remote seller subject to section 602(1) of this act is relieved of its obligation to collect sales or use taxes imposed under this chapter and chapter 82.12 RCW on all taxable retail sales through a marketplace operated by a marketplace facilitator that provides the marketplace seller with written confirmation that the marketplace facilitator has elected to comply with the notice and reporting requirements of section 605 of this act in lieu of collecting sales and use taxes.

(6) No class action may be brought against a marketplace facilitator or referrer in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator or referrer, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund from the department as provided under chapter 82.32 RCW.

(7) Nothing in this section affects the obligation of any purchaser to remit sales or use tax as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax.

(8) This section is subject to the provisions of section 613 of this act.

(9) The definitions in section 604 of this act apply to this section.

NEW SECTION. Sec. 604. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliated person" means a person that, with respect to another person:
(a) Has an ownership interest of more than five percent, whether
direct or indirect, in the other person; or

(b) Is related to the other person because a third person, or
group of third persons who are affiliated persons with respect to
each other, holds an ownership interest of more than five percent,
whether direct or indirect, in the related persons.

(2) "Consumer" has the same meaning as provided in chapters
82.04, 82.08, and 82.12 RCW.

(3) "Marketplace facilitator" means a person that contracts with
sellers to facilitate for consideration, regardless of whether
deducted as fees from the transaction, the sale of the seller's
products through a physical or electronic marketplace operated by the
person, and engages:

(a) Directly or indirectly, through one or more affiliated
persons in any of the following:

(i) Transmitting or otherwise communicating the offer or
acceptance between the buyer and seller;

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

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

(iv) Software development or research and development activities
related to any of the activities described in (b) of this subsection
(3), if such activities are directly related to a physical or
electronic marketplace operated by the person or an affiliated
person; and

(b) In any of the following activities with respect to the
seller's products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with
returns or exchanges.

(4) "Marketplace seller" means a seller that makes retail sales
through any physical or electronic marketplaces operated by a
marketplace facilitator or directly resulting from a referral by a
referrer, regardless of whether the seller is required to be 
registered with the department as provided in RCW 82.32.030.

(5) "Platform" means an electronic or physical medium, including 
a web site or catalog, operated by a referrer.

(6) "Product" has the same meaning as provided in RCW 82.32.023.

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

(8) "Referral" means the transfer by a referrer of a potential 
customer to a marketplace seller who advertises or lists products for 
sale on the referrer's platform.

(9) "Referrer" means a person who contracts or otherwise agrees 
with a seller to list or advertise for sale one or more items in any 
medium, including a web site or catalog; receives a commission, fee, 
or other consideration from the seller for the listing or 
advertisement; transfers, via telephone, internet link, or other 
means, a purchaser to a seller or an affiliated person to complete 
the sale; and does not collect receipts from the purchasers for the 
transaction.

(10) "Remote seller" means any seller, other than a marketplace 
facilitator or referrer, who does not have a physical presence in 
this state and makes retail sales to purchasers.

(11) "Retail sale" and "sale" have the same meaning as provided 
in chapter 82.04 RCW.

(12) "Seller" has the same meaning as in RCW 82.08.010 and 
includes marketplace facilitators, whether making sales in their own 
right or on behalf of marketplace sellers, and referrers.

NEW SECTION. Sec. 605. (1) Except as otherwise provided in 
subsection (5) of this section, a seller that does not collect the 
tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale 
must comply with the applicable notice and reporting requirements of 
this section. For taxable retail sales made through a marketplace 
facilitator, or other agent, the marketplace facilitator, or other 
agent must comply with the notice and reporting requirements of this 
section, and the principal is not subject to the notice and reporting 
requirements of this section with respect to those sales. If the 
referrer makes an election to comply with the applicable notice and 
reporting requirements of this section, marketplace sellers to whom a 
referral is made by the referrer remain subject to the applicable 
otice and reporting requirements under this section for their sales
unless the marketplace sellers collect the tax imposed under chapter 82.08 or 82.12 RCW on taxable retail sales sourced to this state under RCW 82.32.730.

(2)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of this section must:

(i) Post a conspicuous notice on its marketplace, platform, website, catalog, or any other similar medium that informs Washington purchasers that:

(A) Sales or use tax is due on certain purchases;

(B) Washington requires the purchaser to file a use tax return; and

(C) The notice is provided under the requirements of this section; and

(ii) Provide a notice to each consumer at the time of each retail sale. The notice under this subsection (2)(a)(ii) must include the following information:

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

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

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

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

(i) Such indication is followed immediately with the notice required by (a)(ii) of this subsection (2); or

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

(3) A referrer subject to the notice and reporting requirements of this section must:

(a) Post a conspicuous notice on its platform that informs Washington purchasers:

(i) That sales or use tax is due on certain purchases;
(ii) That the seller may or may not collect and remit retail sales tax on a purchase;

(iii) That Washington requires the purchaser to file a use tax return if retail sales tax is not assessed at the time of a taxable sale by the seller;

(iv) That the notice is provided under the requirements of this section;

(v) Of the instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department; and

(vi) That if the seller to whom the purchaser is referred does not collect retail sales tax on a subsequent purchase by the purchaser, the seller may be required to provide information to the purchaser and the department about the purchaser's potential sales or use tax liability.

(b) The notice under (a) of this subsection (3) must be prominently displayed on the platform and may include pop-up boxes or notification by other means that appear when the referrer transfers a purchaser to a marketplace seller or an affiliated person to complete the sale.

(4)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of subsection (2) of this section must, no later than January 31st of each year, provide a report to each consumer for whom the seller was required to provide a notice under subsection (2)(a)(ii) of this section.

(b) The report under this subsection (4) must include:

(i) A statement that the seller did not collect sales or use tax on the consumer's transactions with the seller and that the consumer may be required to remit such tax directly to the department;

(ii) A list, by date, generally indicating the type of product purchased or leased during the immediately preceding calendar year by the consumer from the seller, sourced to this state under RCW 82.32.730, and the price of each product;

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

(iv) A statement that the seller is required to submit a report to the department pursuant to subsection (6) of this section stating
the total dollar amount of the consumer's purchases from the seller; and

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

(c)(i) The report required under this subsection (4) must be sent to the consumer's billing address or, if unknown, the consumer's shipping address, by first-class mail, in an envelope marked prominently with words indicating important tax information is enclosed.

(ii) If no billing or shipping address is known, the report must be sent electronically to the consumer's last known email address with a subject heading indicating important tax information is enclosed.

(5)(a) A referrer subject to the notice requirements under subsection (3) of this section must, no later than January 31st of each year, provide notice to each marketplace seller to whom the referrer transferred a potential purchaser located in Washington during the previous calendar year.

(b) The notice under this subsection (5) must include:

(i) A statement that Washington imposes a sales or use tax on retail sales;

(ii) A statement that a seller, meeting the threshold in section 602(2) of this act, is required to either collect and remit retail sales or use tax on all taxable retail sales sourced to this state under RCW 82.32.730 or to comply with this section; and

(iii) Instructions for obtaining additional information from the department.

(c) By January 31st of each year, a referrer required to provide the notice under this subsection must provide the department with:

(i) A list of sellers who received the referrer's notice under this subsection. The information must be provided electronically in a form and manner required by the department.

(ii) An affidavit signed under penalty of perjury from an officer of the referrer affirming that the referrer made reasonable efforts to comply with the applicable sales and use tax notice and reporting requirements of this section.

(6)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of this section must, no later than January 31st of each year, file a report with the department.
(b) The report under this subsection (6) must include, with respect to each consumer to whom the seller is required to provide a report under subsection (4) of this section by January 31st of the current calendar year:
   (i) The consumer's name;
   (ii) The billing address and, if different, the last known mailing address;
   (iii) The shipping address for each product sold or leased to such consumer for delivery to a location in this state during the immediately preceding calendar year; and
   (iv) The total dollar amount of all such purchases by such consumer.

(c) The report under this subsection (6) must also include an affidavit signed under penalty of perjury from an officer of the seller affirming that the seller made reasonable efforts to comply with the applicable sales and use tax notice and reporting requirements in this section.

(d) Except for the affidavit, the report under this subsection (6) must be filed electronically in a form and manner required by the department.

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

(8) Every seller subject to this chapter must keep and preserve, for a period of five years, suitable records as may be necessary for the department to verify the seller's compliance with this chapter. All of the seller's books, records, and invoices must be open for examination at any reasonable time by the department. The department may require the attendance of any officer of the seller or any employee of the seller having knowledge pertinent to the department's investigation of the seller's compliance with this chapter, at a time and place fixed in a subpoena issued under RCW 82.32.117, and may take the person's testimony under oath.

(9) In exercising discretion in enforcing the provisions of this chapter, the department may take into consideration available resources, whether the anticipated benefits from any potential enforcement activities are likely to exceed the department's expected enforcement costs, and any other factors the department deems appropriate.
NEW SECTION. Sec. 606. (1)(a) The department must assess a penalty against any seller, other than a referrer acting in its capacity as a referrer, that fails to provide notice to consumers pursuant to section 605(2)(a) of this act, in addition to any other applicable penalties, in the amount of twenty thousand dollars. The department may assess the penalty under this subsection only once per calendar year, regardless of the number of notices a seller fails to provide pursuant to section 605(2)(a) of this act during the calendar year. The department may apply this penalty at any time during a calendar year and no more frequently than annually.

(b) The department must assess a penalty against any referrer that fails to provide notice to consumers pursuant to section 605(3) of this act, in addition to any other applicable penalties, in the amount of twenty thousand dollars. The department may apply this penalty at any time during a calendar year and no more frequently than annually.

(2)(a) The department must assess a penalty against a seller who fails to provide a report as required by section 605(4) of this act, in addition to any other applicable penalties, in the amount of eight and one-half percent of gross receipts from sales sourced to this state under RCW 82.32.730 for the calendar year for which the report was required to be made.

(b) The department must assess a penalty against a referrer who fails to provide the notice and list required by section 605(5) of this act, in addition to any other applicable penalties, in the amount of eight and one-half percent of the gross income of the business received from the referrer's referral services apportioned to Washington under RCW 82.04.460, whether or not subject to tax under chapter 82.04 RCW, for the calendar year for which the notice and list was required to be made. The department may assess the penalty under this subsection only once per calendar year, regardless of the number of failures to comply with section 605(5) of this act during the calendar year.

(3) The department must assess a penalty against any seller, other than a referrer acting in its capacity as a referrer, who fails to provide a report to the department as required by section 605(6) of this act, in addition to any other applicable penalties, in the amount of twenty-five dollars multiplied by the number of consumers that should have been included on such report, but not less than twenty thousand dollars for any calendar year.
(4) The penalties imposed under subsections (1) through (3) of this section are cumulative.

(5) No penalty may be imposed by the department under subsections (1) through (4) of this section more than four years after the close of the calendar year in which the notice or report giving rise to the penalty was required to have been provided. This subsection (5) does not apply to penalties reassessed under subsection (9) of this section.

(6) When assessing a penalty under this section, the department may use any reasonable estimation technique where necessary or appropriate to determine the amount of any penalty.

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

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

(9)(a)(i) A seller is entitled to a conditional waiver of penalties and interest imposed under this section if the seller enters into a written agreement with the department electing to collect retail sales or use tax or fully comply with all applicable notice and reporting requirements of this chapter, beginning by a date acceptable to the department. An election to collect retail sales or use tax must be for a period of at least twelve consecutive months and is subject to the provisions of section 602 of this act.

(ii) The department may grant a waiver of penalties and interest under this subsection (9)(a) for penalties and interest assessed for a seller's failure to comply with the notice and reporting requirements for one or more violations.

(iii) The department may not grant more than one request by a seller for a waiver of penalties and interest under this subsection (9)(a).

(iv) The department must reassess penalties and interest conditionally waived under this subsection (9)(a) if the department
finds that, after the date that the seller agreed to fully comply
with the applicable notice and reporting requirements of this
chapter, the seller failed to:

(A) Provide notice under section 605(2)(a)(ii) of this act to at
least ninety-five percent of the consumers entitled to such notice in
any given calendar year or portion of the initial calendar year in
which the agreement required under this subsection was in effect if
the agreement was in effect for less than the entire calendar year;

(B) Timely provide the reports required under section 605(4) of
this act to all consumers who received notice from the seller under
section 605(2)(a)(ii) of this act during any calendar year, unless
the department finds that any such failure was due to circumstances
beyond the seller's control;

(C) Timely provide the reports required under section 605(6) of
this act during any calendar year, unless the department finds that
any such failure was due to circumstances beyond the seller's
control; or

(D) With respect to referrers, timely provide the notice required
under section 605(3) of this act and the notice and list required
under section 605(5) of this act during any calendar year, unless the
department finds that any such failure was due to circumstances
beyond the referrer's control.

(v) The department must reassess penalties and interest
conditionally waived under this subsection (9)(a) if the department
finds that, after the date that the seller elected to collect retail
sales or use tax, the seller failed to register with the department
and make a reasonable effort to comply with the requirements of RCW
82.08.050 and 82.12.040.

(vi) The department may not reassess penalties and interest
conditionally waived under this subsection (9)(a) more than four
calendar years following the calendar year in which the department
granted the conditional waiver under this subsection (9)(a).

(vii) The provisions of subsection (8) of this section apply to
penalties and interest reassessed under this subsection (9)(a). The
department may add additional interest on penalties reassessed under
this subsection (9)(a) only if the total amount of penalties
reassessed under this subsection (9)(a) is not paid in full by the
date due. Additional interest authorized under this subsection
(9)(a)(vii) applies beginning on the day immediately following the
day that the reassessed penalties were due and accrues until the total amount of reassessed penalties are paid in full.

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

(c) A request for a waiver of penalties and interest under this subsection must be received by the department in writing and before the penalties and interest for which a waiver is requested are due pursuant to subsection (8) of this section. The department must deny any request for a waiver of penalties and interest that does not fully comply with the provisions of this subsection (9)(c).

NEW SECTION. Sec. 607. Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. Sec. 608. Nothing in this chapter relieves sellers or consumers who are subject to chapter 82.08 or 82.12 RCW from any responsibilities imposed under those chapters. Nor does anything in this chapter prevent the department from administering and enforcing the taxes imposed under chapter 82.08 or 82.12 RCW with respect to any seller or consumer who is subject to such taxes.

NEW SECTION. Sec. 609. A new section is added to chapter 82.32 RCW to be codified between RCW 82.32.045 and 82.32.050 to read as follows:

(1) Except as otherwise provided in this section, taxes imposed under chapter 82.08 or 82.12 RCW and payable by a consumer directly to the department are due, on returns prescribed by the department, by the earlier of March 1st of the calendar year immediately following the calendar year in which the sale or use occurred or within thirty days of the date of a notice from the department that tax may be due.

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

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

(b) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to RCW 82.32.045(4).
NEW SECTION. Sec. 610. A new section is added to chapter 82.32 RCW to read as follows:

(1) A remote seller, referrer, or marketplace facilitator that is subject to section 602 of this act and is complying with the requirements of chapters 82.08 and 82.12 RCW may only seek a recovery of retail sales and use taxes, penalties, or interest from the department by following the recovery procedures established under RCW 82.32.060. However, no claim may be granted on the basis that the taxpayer lacked a physical presence in this state and complied with the tax collection provisions of chapters 82.08 and 82.12 RCW voluntarily.

(2) Neither the state nor any seller who elects under section 602 of this act to collect and remit retail sales or use tax is liable to a purchaser who claims that the retail sales or use tax has been over-collected because a provision of chapter . . ., Laws of 2017 (this act) is later deemed unlawful.

(3) Nothing in chapter . . ., Laws of 2017 (this act) affects the obligation of any purchaser from this state to remit retail sales or use tax as to any applicable taxable transaction in which the seller does not collect and remit retail sales or use tax.

Subpart C
Conforming Amendments

Sec. 611. RCW 82.08.050 and 2010 c 112 s 8 are each amended to read as follows:

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

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

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected
the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

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

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

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

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

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

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

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.
(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

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

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

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

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent of the unpaid tax to the amount of the tax due.
for failure of the buyer to pay the tax to the seller, regardless of
when the tax may be collected by the department. In addition to the
penalty authorized in this subsection, all of the provisions of
chapter 82.32 RCW, including those relative to interest and
penalties, apply. For the sole purpose of applying the various
provisions of chapter 82.32 RCW, the twenty-fifth day of the month
following the tax period in which the purchase was made will be
considered as the due date of the tax.

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

(a) The person’s activities in this state, whether conducted
directly or through another person, are limited to:
(i) The storage, dissemination, or display of advertising;
(ii) The taking of orders; or
(iii) The processing of payments; and
(b) The activities are conducted electronically via a web site on
a server or other computer equipment located in Washington that is
not owned or operated by the person making sales into this state nor
owned or operated by an affiliated person. "Affiliated persons" has
the same meaning as provided in RCW 82.04.424.

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

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

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

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

Sec. 612. RCW 82.12.040 and 2015 c 169 s 9 are each amended to
read as follows:
(1) Every person who ((maintains in this state a place of
business or a stock of goods, or engages in business activities
within this state)) is subject to a collection obligation under
chapter 82.08 RCW, except a person making a valid election to comply
with the notice and reporting provisions of section 605 of this act,
must obtain from the department a certificate of registration, and
must, at the time of making sales of tangible personal property,
digital goods, digital codes, digital automated services, extended
warranties, or sales of any service defined as a retail sale in RCW
82.04.050 (2) (a) or (g) or (6)((b)) (c), or making transfers of
either possession or title, or both, of tangible personal property
for use in this state, collect from the purchasers or transferees the
tax imposed under this chapter. The tax to be collected under this
section must be in an amount equal to the purchase price multiplied
by the rate in effect for the retail sales tax under RCW 82.08.020.
((For the purposes of this chapter, the phrase "maintains in this
state a place of business" includes the solicitation of sales and/or
taking of orders by sales agents or traveling representatives. For
the purposes of this chapter, "engages in business activity within
this state" includes every activity which is sufficient under the
Constitution of the United States for this state to require
collection of tax under this chapter. The department must in rules
specify activities which constitute engaging in business activity
within this state, and must keep the rules current with future court
interpretations of the Constitution of the United States.))

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

(3) The tax required to be collected by this chapter is deemed to
be held in trust by the retailer until paid to the department, and
any retailer who appropriates or converts the tax collected to the
retailer's own use or to any use other than the payment of the tax
provided herein to the extent that the money required to be collected
is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

(ii) The taking of orders; or

(iii) The processing of payments; and

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

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

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.
Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

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

NEW SECTION. Sec. 613. A new section is added to chapter 82.32 RCW to read as follows:

(1) If the department determines that a change, taking effect after the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of section 602 or 603 of this act, such conflicting provision or provisions of section 602 or 603 of this act, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with section 602 or 603 of this act if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators to the extent provided for, under section 602 or 603 of this act.

(b) A change in the streamlined sales and use tax agreement conflicts with section 602 or 603 of this act if one or more provisions of section 602 or 603 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of section 602 or 603 of this act, the department:
(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators to the fullest extent allowed under state and federal law; and

(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of section 602 or 603 of this act that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller," "referrer," and "marketplace facilitator" have the same meaning as provided in section 604 of this act.

Part VII
Expanding Individual Liability for an Entity's Unpaid Tax Obligations

Sec. 701. RCW 82.32.145 and 2015 c 188 s 121 are each amended to read as follows:

(1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid ((trust fund)) recoverable taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid ((trust fund)) recoverable taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed only for state and local ((trust fund)) recoverable taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid ((trust fund)) recoverable tax liability of the limited liability business entity.