

SHB 2075 - H AMD
By Representative Orcutt

FAILED 04/13/2009

1 Strike everything after page 3, line 3, and insert the following:

2 "PART II
3 DIGITAL PRODUCTS DEFINITIONS

4 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.04
5 RCW to be codified between RCW 82.04.010 and 82.04.220 to read as
6 follows:

7 (1) "Digital audio works" means works that result from the fixation
8 of a series of musical, spoken, or other sounds, including ringtones.

9 (2) "Digital audio-visual works" means a series of related images
10 which, when shown in succession, impart an impression of motion,
11 together with accompanying sounds, if any.

12 (3) "Digital books" means works that are generally recognized in
13 the ordinary and usual sense as books.

14 (4) "Digital code" means a code that provides a purchaser with the
15 right to obtain one or more digital products, if all of the digital
16 products to be obtained through the use of the code have the same sales
17 and use tax treatment. "Digital code" does not include a code that
18 represents a stored monetary value that is deducted from a total as it
19 is used by the purchaser. "Digital code" also does not include a code
20 that represents a redeemable card, gift card, or gift certificate that
21 entitles the holder to select digital products of an indicated cash
22 value. A digital code may be obtained by any means, including e-mail
23 or by tangible means regardless of its designation as song code, video
24 code, book code, or some other term.

25 (5)(a) "Digital goods," except as provided in (b) of this
26 subsection (5), means sounds, images, data, facts, or information, or
27 any combination thereof, transferred electronically by download,
28 including, but not limited to, digital audio works, digital audio-
29 visual works, digital books, and standard information.

1 (b) The term "digital goods" does not include:

2 (i) Telecommunications services and ancillary services as those
3 terms are defined in RCW 82.04.065;

4 (ii) Computer software as defined in RCW 82.04.215;

5 (iii) Internet access as defined in RCW 82.04.297;

6 (iv) The representation of a professional service in electronic
7 form, such as an electronic copy of an engineering report prepared by
8 an engineer, that primarily involves the application of human effort,
9 and the human effort originated after the customer requested the
10 service; and

11 (v) Information services. For purposes of this subsection,
12 "information services" means data, facts, or information, or any
13 combination thereof, generated or compiled solely for the specific
14 needs of a single client or customer.

15 (6) "Digital products" means digital goods and digital codes.

16 (7) "Electronically transferred" or "transferred electronically"
17 means obtained by the purchaser by means other than tangible storage
18 media. It is not necessary that a copy of the product be physically
19 transferred to the purchaser. So long as the purchaser may access the
20 product, it will be considered to have been electronically transferred
21 to the purchaser.

22 (8) "Standard information" means works consisting primarily of
23 data, facts, or information, or any combination thereof, not generated
24 or compiled for a specific client or customer.

25 **PART III**

26 **IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS**

27 **Sec. 301.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are
28 each reenacted and amended to read as follows:

29 (1) "Sale at retail" or "retail sale" means every sale of tangible
30 personal property (including articles produced, fabricated, or
31 imprinted) to all persons irrespective of the nature of their business
32 and including, among others, without limiting the scope hereof, persons
33 who install, repair, clean, alter, improve, construct, or decorate real
34 or personal property of or for consumers other than a sale to a person
35 who presents a resale certificate under RCW 82.04.470 and who:

1 (a) Purchases for the purpose of resale as tangible personal
2 property in the regular course of business without intervening use by
3 such person, but a purchase for the purpose of resale by a regional
4 transit authority under RCW 81.112.300 is not a sale for resale; or

5 (b) Installs, repairs, cleans, alters, imprints, improves,
6 constructs, or decorates real or personal property of or for consumers,
7 if such tangible personal property becomes an ingredient or component
8 of such real or personal property without intervening use by such
9 person; or

10 (c) Purchases for the purpose of consuming the property purchased
11 in producing for sale a new article of tangible personal property or
12 substance, of which such property becomes an ingredient or component or
13 is a chemical used in processing, when the primary purpose of such
14 chemical is to create a chemical reaction directly through contact with
15 an ingredient of a new article being produced for sale; or

16 (d) Purchases for the purpose of consuming the property purchased
17 in producing ferrosilicon which is subsequently used in producing
18 magnesium for sale, if the primary purpose of such property is to
19 create a chemical reaction directly through contact with an ingredient
20 of ferrosilicon; or

21 (e) Purchases for the purpose of providing the property to
22 consumers as part of competitive telephone service, as defined in RCW
23 82.04.065. The term shall include every sale of tangible personal
24 property which is used or consumed or to be used or consumed in the
25 performance of any activity classified as a "sale at retail" or "retail
26 sale" even though such property is resold or utilized as provided in
27 (a), (b), (c), (d), or (e) of this subsection following such use. The
28 term also means every sale of tangible personal property to persons
29 engaged in any business which is taxable under RCW 82.04.280 (2) and
30 (7), 82.04.290, and 82.04.2908; or

31 (f) Purchases for the purpose of satisfying the person's
32 obligations under an extended warranty as defined in subsection (7) of
33 this section, if such tangible personal property replaces or becomes an
34 ingredient or component of property covered by the extended warranty
35 without intervening use by such person.

36 (2) The term "sale at retail" or "retail sale" (~~shall include~~)
37 includes the sale of or charge made for tangible personal property

1 consumed and/or for labor and services rendered in respect to the
2 following:

3 (a) The installing, repairing, cleaning, altering, imprinting, or
4 improving of tangible personal property of or for consumers, including
5 charges made for the mere use of facilities in respect thereto, but
6 excluding charges made for the use of self-service laundry facilities,
7 and also excluding sales of laundry service to nonprofit health care
8 facilities, and excluding services rendered in respect to live animals,
9 birds and insects;

10 (b) The constructing, repairing, decorating, or improving of new or
11 existing buildings or other structures under, upon, or above real
12 property of or for consumers, including the installing or attaching of
13 any article of tangible personal property therein or thereto, whether
14 or not such personal property becomes a part of the realty by virtue of
15 installation, and shall also include the sale of services or charges
16 made for the clearing of land and the moving of earth excepting the
17 mere leveling of land used in commercial farming or agriculture;

18 (c) The constructing, repairing, or improving of any structure
19 upon, above, or under any real property owned by an owner who conveys
20 the property by title, possession, or any other means to the person
21 performing such construction, repair, or improvement for the purpose of
22 performing such construction, repair, or improvement and the property
23 is then reconveyed by title, possession, or any other means to the
24 original owner;

25 (d) The cleaning, fumigating, razing, or moving of existing
26 buildings or structures, but (~~shall~~) may not include the charge made
27 for janitorial services; and for purposes of this section the term
28 "janitorial services" shall mean those cleaning and caretaking services
29 ordinarily performed by commercial janitor service businesses
30 including, but not limited to, wall and window washing, floor cleaning
31 and waxing, and the cleaning in place of rugs, drapes and upholstery.
32 The term "janitorial services" does not include painting, papering,
33 repairing, furnace or septic tank cleaning, snow removal or
34 sandblasting;

35 (e) Automobile towing and similar automotive transportation
36 services, but not in respect to those required to report and pay taxes
37 under chapter 82.16 RCW;

1 (f) The furnishing of lodging and all other services by a hotel,
2 rooming house, tourist court, motel, trailer camp, and the granting of
3 any similar license to use real property, as distinguished from the
4 renting or leasing of real property, and it (~~shall be~~) is presumed
5 that the occupancy of real property for a continuous period of one
6 month or more constitutes a rental or lease of real property and not a
7 mere license to use or enjoy the same. For the purposes of this
8 subsection, it shall be presumed that the sale of and charge made for
9 the furnishing of lodging for a continuous period of one month or more
10 to a person is a rental or lease of real property and not a mere
11 license to enjoy the same;

12 (g) The installing, repairing, altering, or improving of digital
13 products for consumers;

14 (h) Persons taxable under (a), (b), (c), (d), (e), (~~and~~) (f), and
15 (g) of this subsection when such sales or charges are for property,
16 labor and services which are used or consumed in whole or in part by
17 such persons in the performance of any activity defined as a "sale at
18 retail" or "retail sale" even though such property, labor and services
19 may be resold after such use or consumption. Nothing contained in this
20 subsection shall be construed to modify subsection (1) of this section
21 and nothing contained in subsection (1) of this section (~~shall~~) may
22 be construed to modify this subsection.

23 (3) The term "sale at retail" or "retail sale" (~~shall include~~)
24 includes the sale of or charge made for personal, business, or
25 professional services including amounts designated as interest, rents,
26 fees, admission, and other service emoluments however designated,
27 received by persons engaging in the following business activities:

28 (a) Amusement and recreation services including but not limited to
29 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
30 for sightseeing purposes, and others, when provided to consumers;

31 (b) Abstract, title insurance, and escrow services;

32 (c) Credit bureau services;

33 (d) Automobile parking and storage garage services;

34 (e) Landscape maintenance and horticultural services but excluding
35 (i) horticultural services provided to farmers and (ii) pruning,
36 trimming, repairing, removing, and clearing of trees and brush near
37 electric transmission or distribution lines or equipment, if performed
38 by or at the direction of an electric utility;

1 (f) Service charges associated with tickets to professional
2 sporting events; and

3 (g) The following personal services: Physical fitness services,
4 tanning salon services, tattoo parlor services, steam bath services,
5 turkish bath services, escort services, and dating services.

6 (4)(a) The term (~~shall~~) also includes:

7 (i) The renting or leasing of tangible personal property to
8 consumers; and

9 (ii) Providing tangible personal property along with an operator
10 for a fixed or indeterminate period of time. A consideration of this
11 is that the operator is necessary for the tangible personal property to
12 perform as designed. For the purpose of this subsection (4)(a)(ii), an
13 operator must do more than maintain, inspect, or set up the tangible
14 personal property.

15 (b) The term (~~shall~~) does not include the renting or leasing of
16 tangible personal property where the lease or rental is for the purpose
17 of sublease or subrent.

18 (5) The term (~~shall~~) also includes the providing of "competitive
19 telephone service," "telecommunications service," or "ancillary
20 services," as those terms are defined in RCW 82.04.065, to consumers.

21 (6) The term (~~shall~~) also includes the sale of prewritten
22 computer software other than a sale to a person who presents a resale
23 certificate under RCW 82.04.470, regardless of the method of delivery
24 to the end user(~~, but shall~~).

25 The term "retail sale" does not include the sale of or charge made
26 for:

27 (a) Custom software; or

28 (b) The customization of prewritten computer software.

29 (7) The term (~~shall~~) also includes the sale of or charge made for
30 an extended warranty to a consumer. For purposes of this subsection,
31 "extended warranty" means an agreement for a specified duration to
32 perform the replacement or repair of tangible personal property at no
33 additional charge or a reduced charge for tangible personal property,
34 labor, or both, or to provide indemnification for the replacement or
35 repair of tangible personal property, based on the occurrence of
36 specified events. The term "extended warranty" does not include an
37 agreement, otherwise meeting the definition of extended warranty in
38 this subsection, if no separate charge is made for the agreement and

1 the value of the agreement is included in the sales price of the
2 tangible personal property covered by the agreement. For purposes of
3 this subsection, "sales price" has the same meaning as in RCW
4 82.08.010.

5 (8)(a) The term also includes the following sales to consumers of
6 digital products:

7 (i) Sales in which the seller has granted the purchaser the right
8 of permanent use;

9 (ii) Sales in which the seller has granted the purchaser a right of
10 use that is less than permanent;

11 (iii) Sales in which the purchaser is not obligated to make
12 continued payment as a condition of the sale; and

13 (iv) Sales in which the purchaser is obligated to make continued
14 payment as a condition of the sale.

15 (b) For purposes of this subsection, "permanent" means perpetual or
16 for an indefinite or unspecified length of time. A right of permanent
17 use is presumed to have been granted unless the agreement between the
18 seller and the purchaser specifies or the circumstances surrounding the
19 transaction suggest or indicate that the right to use terminates on the
20 occurrence of a condition subsequent.

21 (9) The term ((shall)) does not include the sale of or charge made
22 for labor and services rendered in respect to the building, repairing,
23 or improving of any street, place, road, highway, easement, right-of-
24 way, mass public transportation terminal or parking facility, bridge,
25 tunnel, or trestle which is owned by a municipal corporation or
26 political subdivision of the state or by the United States and which is
27 used or to be used primarily for foot or vehicular traffic including
28 mass transportation vehicles of any kind.

29 ((+9)) (10) The term ((shall)) also does not include sales of
30 chemical sprays or washes to persons for the purpose of postharvest
31 treatment of fruit for the prevention of scald, fungus, mold, or decay,
32 nor ((shall)) does it include sales of feed, seed, seedlings,
33 fertilizer, agents for enhanced pollination including insects such as
34 bees, and spray materials to: (a) Persons who participate in the
35 federal conservation reserve program, the environmental quality
36 incentives program, the wetlands reserve program, and the wildlife
37 habitat incentives program, or their successors administered by the
38 United States department of agriculture; (b) farmers for the purpose of

1 producing for sale any agricultural product; and (c) farmers acting
2 under cooperative habitat development or access contracts with an
3 organization exempt from federal income tax under Title 26 U.S.C. Sec.
4 501(c)(3) or the Washington state department of fish and wildlife to
5 produce or improve wildlife habitat on land that the farmer owns or
6 leases.

7 ~~((+10+))~~ (11) The term ~~((shall))~~ does not include the sale of or
8 charge made for labor and services rendered in respect to the
9 constructing, repairing, decorating, or improving of new or existing
10 buildings or other structures under, upon, or above real property of or
11 for the United States, any instrumentality thereof, or a county or city
12 housing authority created pursuant to chapter 35.82 RCW, including the
13 installing, or attaching of any article of tangible personal property
14 therein or thereto, whether or not such personal property becomes a
15 part of the realty by virtue of installation. Nor ~~((shall))~~ does the
16 term include the sale of services or charges made for the clearing of
17 land and the moving of earth of or for the United States, any
18 instrumentality thereof, or a county or city housing authority. Nor
19 ~~((shall))~~ does the term include the sale of services or charges made
20 for cleaning up for the United States, or its instrumentalities,
21 radioactive waste and other byproducts of weapons production and
22 nuclear research and development.

23 ~~((+11+))~~ (12) The term ~~((shall))~~ does not include the sale of or
24 charge made for labor, services, or tangible personal property pursuant
25 to agreements providing maintenance services for bus, rail, or rail
26 fixed guideway equipment when a regional transit authority is the
27 recipient of the labor, services, or tangible personal property, and a
28 transit agency, as defined in RCW 81.104.015, performs the labor or
29 services.

30 **Sec. 302.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to
31 read as follows:

32 "Consumer" means the following:
33 (1) Any person who purchases, acquires, owns, holds, or uses any
34 article of tangible personal property irrespective of the nature of the
35 person's business and including, among others, without limiting the
36 scope hereof, persons who install, repair, clean, alter, improve,
37 construct, or decorate real or personal property of or for consumers

1 other than for the purpose (a) of resale as tangible personal property
2 in the regular course of business or (b) of incorporating such property
3 as an ingredient or component of real or personal property when
4 installing, repairing, cleaning, altering, imprinting, improving,
5 constructing, or decorating such real or personal property of or for
6 consumers or (c) of consuming such property in producing for sale a new
7 article of tangible personal property or a new substance, of which such
8 property becomes an ingredient or component or as a chemical used in
9 processing, when the primary purpose of such chemical is to create a
10 chemical reaction directly through contact with an ingredient of a new
11 article being produced for sale or (d) of consuming the property
12 purchased in producing ferrosilicon which is subsequently used in
13 producing magnesium for sale, if the primary purpose of such property
14 is to create a chemical reaction directly through contact with an
15 ingredient of ferrosilicon or (e) of satisfying the person's
16 obligations under an extended warranty as defined in RCW 82.04.050(7),
17 if such tangible personal property replaces or becomes an ingredient or
18 component of property covered by the extended warranty without
19 intervening use by such person;

20 (2)(a) Any person engaged in any business activity taxable under
21 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
22 uses any competitive telephone service, ancillary services, or
23 telecommunications service as those terms are defined in RCW 82.04.065,
24 other than for resale in the regular course of business; (c) any person
25 who purchases, acquires, or uses any service defined in RCW
26 82.04.050(2) (a) or (g), other than for resale in the regular course of
27 business or for the purpose of satisfying the person's obligations
28 under an extended warranty as defined in RCW 82.04.050(7); (d) any
29 person who purchases, acquires, or uses any amusement and recreation
30 service defined in RCW 82.04.050(3)(a), other than for resale in the
31 regular course of business; (e) any person who is an end user of
32 software; and (f) any person who purchases or acquires an extended
33 warranty as defined in RCW 82.04.050(7) other than for resale in the
34 regular course of business;

35 (3) Any person engaged in the business of contracting for the
36 building, repairing or improving of any street, place, road, highway,
37 easement, right-of-way, mass public transportation terminal or parking
38 facility, bridge, tunnel, or trestle which is owned by a municipal

1 corporation or political subdivision of the state of Washington or by
2 the United States and which is used or to be used primarily for foot or
3 vehicular traffic including mass transportation vehicles of any kind as
4 defined in RCW 82.04.280, in respect to tangible personal property when
5 such person incorporates such property as an ingredient or component of
6 such publicly owned street, place, road, highway, easement,
7 right-of-way, mass public transportation terminal or parking facility,
8 bridge, tunnel, or trestle by installing, placing or spreading the
9 property in or upon the right-of-way of such street, place, road,
10 highway, easement, bridge, tunnel, or trestle or in or upon the site of
11 such mass public transportation terminal or parking facility;

12 (4) Any person who is an owner, lessee or has the right of
13 possession to or an easement in real property which is being
14 constructed, repaired, decorated, improved, or otherwise altered by a
15 person engaged in business, excluding only (a) municipal corporations
16 or political subdivisions of the state in respect to labor and services
17 rendered to their real property which is used or held for public road
18 purposes, and (b) the United States, instrumentalities thereof, and
19 county and city housing authorities created pursuant to chapter 35.82
20 RCW in respect to labor and services rendered to their real property.
21 Nothing contained in this or any other subsection of this definition
22 shall be construed to modify any other definition of "consumer";

23 (5) Any person who is an owner, lessee, or has the right of
24 possession to personal property which is being constructed, repaired,
25 improved, cleaned, imprinted, or otherwise altered by a person engaged
26 in business;

27 (6) Any person engaged in the business of constructing, repairing,
28 decorating, or improving new or existing buildings or other structures
29 under, upon, or above real property of or for the United States, any
30 instrumentality thereof, or a county or city housing authority created
31 pursuant to chapter 35.82 RCW, including the installing or attaching of
32 any article of tangible personal property therein or thereto, whether
33 or not such personal property becomes a part of the realty by virtue of
34 installation; also, any person engaged in the business of clearing land
35 and moving earth of or for the United States, any instrumentality
36 thereof, or a county or city housing authority created pursuant to
37 chapter 35.82 RCW. Any such person shall be a consumer within the
38 meaning of this subsection in respect to tangible personal property

1 incorporated into, installed in, or attached to such building or other
2 structure by such person, except that consumer does not include any
3 person engaged in the business of constructing, repairing, decorating,
4 or improving new or existing buildings or other structures under, upon,
5 or above real property of or for the United States, or any
6 instrumentality thereof, if the investment project would qualify for
7 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
8 private entity;

9 (7) Any person who is a lessor of machinery and equipment, the
10 rental of which is exempt from the tax imposed by RCW 82.08.020 under
11 RCW 82.08.02565, with respect to the sale of or charge made for
12 tangible personal property consumed in respect to repairing the
13 machinery and equipment, if the tangible personal property has a useful
14 life of less than one year. Nothing contained in this or any other
15 subsection of this section shall be construed to modify any other
16 definition of "consumer";

17 (8) Any person engaged in the business of cleaning up for the
18 United States, or its instrumentalities, radioactive waste and other
19 byproducts of weapons production and nuclear research and development;
20 ((and))

21 (9) Any person who is an owner, lessee, or has the right of
22 possession of tangible personal property that, under the terms of an
23 extended warranty as defined in RCW 82.04.050(7), has been repaired or
24 is replacement property, but only with respect to the sale of or charge
25 made for the repairing of the tangible personal property or the
26 replacement property;

27 (10)(a) Any end user of a digital product.

28 (b)(i) For purposes of this subsection, "end user" means any
29 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
30 by contract a digital good for further commercial broadcast,
31 rebroadcast, transmission, retransmission, licensing, relicensing,
32 distribution, redistribution or exhibition of the product, in whole or
33 in part, to others. A person that purchases digital goods or digital
34 codes for the purpose of giving away such goods or codes will not be
35 considered to have engaged in the distribution or redistribution of
36 such goods or codes and will be treated as an end user;

37 (ii) If a purchaser of a digital code does not receive the
38 contractual right to further redistribute, after the digital code is

1 redeemed, the underlying digital good to which the digital code
2 relates, then the purchaser of the digital code is an end user. If the
3 purchaser of the digital code receives the contractual right to further
4 redistribute, after the digital code is redeemed, the underlying
5 digital good to which the digital code relates, then the purchaser of
6 the digital code is not an end user. A purchaser of a digital code who
7 has the contractual right to further redistribute the digital code is
8 an end user if that purchaser does not have the right to further
9 redistribute, after the digital code is redeemed, the underlying
10 digital good to which the digital code relates.

11 **Sec. 303.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to
12 read as follows:

13 For the purposes of this chapter:

14 (1)(a) "Selling price" includes "sales price." "Sales price" means
15 the total amount of consideration, except separately stated trade-in
16 property of like kind, including cash, credit, property, and services,
17 for which tangible personal property, extended warranties, digital
18 products, or services defined as a "retail sale" under RCW 82.04.050
19 are sold, leased, or rented, valued in money, whether received in money
20 or otherwise. No deduction from the total amount of consideration is
21 allowed for the following: (i) The seller's cost of the property sold;
22 (ii) the cost of materials used, labor or service cost, interest,
23 losses, all costs of transportation to the seller, all taxes imposed on
24 the seller, and any other expense of the seller; (iii) charges by the
25 seller for any services necessary to complete the sale, other than
26 delivery and installation charges; (iv) delivery charges; and (v)
27 installation charges.

28 When tangible personal property is rented or leased under
29 circumstances that the consideration paid does not represent a
30 reasonable rental for the use of the articles so rented or leased, the
31 "selling price" shall be determined as nearly as possible according to
32 the value of such use at the places of use of similar products of like
33 quality and character under such rules as the department may prescribe;

34 (b) "Selling price" or "sales price" does not include: Discounts,
35 including cash, term, or coupons that are not reimbursed by a third
36 party that are allowed by a seller and taken by a purchaser on a sale;
37 interest, financing, and carrying charges from credit extended on the

1 sale of tangible personal property, extended warranties, digital
2 products, or services, if the amount is separately stated on the
3 invoice, bill of sale, or similar document given to the purchaser; and
4 any taxes legally imposed directly on the consumer that are separately
5 stated on the invoice, bill of sale, or similar document given to the
6 purchaser;

7 (c) "Selling price" or "sales price" includes consideration
8 received by the seller from a third party if:

9 (i) The seller actually receives consideration from a party other
10 than the purchaser, and the consideration is directly related to a
11 price reduction or discount on the sale;

12 (ii) The seller has an obligation to pass the price reduction or
13 discount through to the purchaser;

14 (iii) The amount of the consideration attributable to the sale is
15 fixed and determinable by the seller at the time of the sale of the
16 item to the purchaser; and

17 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

18 (A) The purchaser presents a coupon, certificate, or other
19 documentation to the seller to claim a price reduction or discount
20 where the coupon, certificate, or documentation is authorized,
21 distributed, or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate, or documentation is presented;

24 (B) The purchaser identifies himself or herself to the seller as a
25 member of a group or organization entitled to a price reduction or
26 discount, however a "preferred customer" card that is available to any
27 patron does not constitute membership in such a group; or

28 (C) The price reduction or discount is identified as a third party
29 price reduction or discount on the invoice received by the purchaser or
30 on a coupon, certificate, or other documentation presented by the
31 purchaser;

32 (2)(a) "Seller" means every person, including the state and its
33 departments and institutions, making sales at retail or retail sales to
34 a buyer, purchaser, or consumer, whether as agent, broker, or
35 principal, except "seller" does not mean:

36 (i) The state and its departments and institutions when making
37 sales to the state and its departments and institutions; or

1 (ii) A professional employer organization when a covered employee
2 coemployed with the client under the terms of a professional employer
3 agreement engages in activities that constitute a sale at retail that
4 is subject to the tax imposed by this chapter. In such cases, the
5 client, and not the professional employer organization, is deemed to be
6 the seller and is responsible for collecting and remitting the tax
7 imposed by this chapter.

8 (b) For the purposes of (a) of this subsection, the terms "client,"
9 "covered employee," "professional employer agreement," and
10 "professional employer organization" have the same meanings as in RCW
11 82.04.540;

12 (3) "Buyer," "purchaser," and "consumer" include, without limiting
13 the scope hereof, every individual, receiver, assignee, trustee in
14 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
15 company, joint stock company, business trust, corporation, association,
16 society, or any group of individuals acting as a unit, whether mutual,
17 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
18 quasi municipal corporation, and also the state, its departments and
19 institutions and all political subdivisions thereof, irrespective of
20 the nature of the activities engaged in or functions performed, and
21 also the United States or any instrumentality thereof;

22 (4) "Delivery charges" means charges by the seller of personal
23 property or services for preparation and delivery to a location
24 designated by the purchaser of personal property or services including,
25 but not limited to, transportation, shipping, postage, handling,
26 crating, and packing;

27 (5) "Direct mail" means printed material delivered or distributed
28 by United States mail or other delivery service to a mass audience or
29 to addressees on a mailing list provided by the purchaser or at the
30 direction of the purchaser when the cost of the items are not billed
31 directly to the recipients. "Direct mail" includes tangible personal
32 property supplied directly or indirectly by the purchaser to the direct
33 mail seller for inclusion in the package containing the printed
34 material. "Direct mail" does not include multiple items of printed
35 material delivered to a single address;

36 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
37 year," "taxable year," "person," "company," "sale," "sale at retail,"
38 "retail sale," "sale at wholesale," "wholesale," "business," "engaging

1 in business," "cash discount," "successor," "consumer," "in this state"
2 and "within this state" shall apply equally to the provisions of this
3 chapter;

4 (7) For the purposes of the taxes imposed under this chapter and
5 under chapter 82.12 RCW, "tangible personal property" means personal
6 property that can be seen, weighed, measured, felt, or touched, or that
7 is in any other manner perceptible to the senses. Tangible personal
8 property includes electricity, water, gas, steam, and prewritten
9 computer software;

10 (8) "Extended warranty" has the same meaning as in RCW
11 82.04.050(7);

12 (9) The definitions in section 201 of this act apply to this
13 chapter; and

14 (10) For the purposes of the taxes imposed under this chapter and
15 chapter 82.12 RCW, whenever the terms "property" or "personal property"
16 are used, those terms must be construed to include digital products
17 unless:

18 (a) It is clear from the context that the term "personal property"
19 is intended only to refer to tangible personal property;

20 (b) It is clear from the context that the term "property" is
21 intended only to refer to tangible personal property, real property, or
22 both; or

23 (c) To construe the term "property" or "personal property" as
24 including digital products would yield unlikely, absurd, or strained
25 consequences.

26 **Sec. 304.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to
27 read as follows:

28 For the purposes of this chapter:

29 (1) "Purchase price" means the same as sales price as defined in
30 RCW 82.08.010((-));

31 (2)(a) "Value of the article used" shall be the purchase price for
32 the article of tangible personal property, the use of which is taxable
33 under this chapter. The term also includes, in addition to the
34 purchase price, the amount of any tariff or duty paid with respect to
35 the importation of the article used. In case the article used is
36 acquired by lease or by gift or is extracted, produced, or manufactured
37 by the person using the same or is sold under conditions wherein the

1 purchase price does not represent the true value thereof, the value of
2 the article used shall be determined as nearly as possible according to
3 the retail selling price at place of use of similar products of like
4 quality and character under such rules as the department may prescribe.

5 (b) In case the articles used are acquired by bailment, the value
6 of the use of the articles so used shall be in an amount representing
7 a reasonable rental for the use of the articles so bailed, determined
8 as nearly as possible according to the value of such use at the places
9 of use of similar products of like quality and character under such
10 rules as the department of revenue may prescribe. In case any such
11 articles of tangible personal property are used in respect to the
12 construction, repairing, decorating, or improving of, and which become
13 or are to become an ingredient or component of, new or existing
14 buildings or other structures under, upon, or above real property of or
15 for the United States, any instrumentality thereof, or a county or city
16 housing authority created pursuant to chapter 35.82 RCW, including the
17 installing or attaching of any such articles therein or thereto,
18 whether or not such personal property becomes a part of the realty by
19 virtue of installation, then the value of the use of such articles so
20 used shall be determined according to the retail selling price of such
21 articles, or in the absence of such a selling price, as nearly as
22 possible according to the retail selling price at place of use of
23 similar products of like quality and character or, in the absence of
24 either of these selling price measures, such value may be determined
25 upon a cost basis, in any event under such rules as the department of
26 revenue may prescribe.

27 (c) In the case of articles owned by a user engaged in business
28 outside the state which are brought into the state for no more than one
29 hundred eighty days in any period of three hundred sixty-five
30 consecutive days and which are temporarily used for business purposes
31 by the person in this state, the value of the article used shall be an
32 amount representing a reasonable rental for the use of the articles,
33 unless the person has paid tax under this chapter or chapter 82.08 RCW
34 upon the full value of the article used, as defined in (a) of this
35 subsection.

36 (d) In the case of articles manufactured or produced by the user
37 and used in the manufacture or production of products sold or to be

1 sold to the department of defense of the United States, the value of
2 the articles used shall be determined according to the value of the
3 ingredients of such articles.

4 (e) In the case of an article manufactured or produced for purposes
5 of serving as a prototype for the development of a new or improved
6 product, the value of the article used shall be determined by: (i) The
7 retail selling price of such new or improved product when first offered
8 for sale; or (ii) the value of materials incorporated into the
9 prototype in cases in which the new or improved product is not offered
10 for sale.

11 (f) In the case of an article purchased with a direct pay permit
12 under RCW 82.32.087, the value of the article used shall be determined
13 by the purchase price of such article if, but for the use of the direct
14 pay permit, the transaction would have been subject to sales tax;

15 (3) "Value of the service used" means the purchase price for the
16 service, the use of which is taxable under this chapter. If the
17 service is received by gift or under conditions wherein the purchase
18 price does not represent the true value thereof, the value of the
19 service used shall be determined as nearly as possible according to the
20 retail selling price at place of use of similar services of like
21 quality and character under rules the department may prescribe;

22 (4) "Value of the extended warranty used" means the purchase price
23 for the extended warranty, the use of which is taxable under this
24 chapter. If the extended warranty is received by gift or under
25 conditions wherein the purchase price does not represent the true value
26 of the extended warranty, the value of the extended warranty used shall
27 be determined as nearly as possible according to the retail selling
28 price at place of use of similar extended warranties of like quality
29 and character under rules the department may prescribe;

30 (5) "Value of the digital product used" means the purchase price
31 for the digital product, the use of which is taxable under this
32 chapter. If the digital product is acquired other than by purchase,
33 the value of the digital product must be determined as nearly as
34 possible according to the retail selling price at place of use of
35 similar digital products of like quality and character under rules the
36 department may prescribe;

37 (6) "Use," "used," "using," or "put to use" (~~shall~~) have their
38 ordinary meaning, and (~~shall~~) mean:

1 (a) With respect to tangible personal property, the first act
2 within this state by which the taxpayer takes or assumes dominion or
3 control over the article of tangible personal property (as a consumer),
4 and include installation, storage, withdrawal from storage,
5 distribution, or any other act preparatory to subsequent actual use or
6 consumption within this state;

7 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
8 first act within this state after the service has been performed by
9 which the taxpayer takes or assumes dominion or control over the
10 article of tangible personal property upon which the service was
11 performed (as a consumer), and includes installation, storage,
12 withdrawal from storage, distribution, or any other act preparatory to
13 subsequent actual use or consumption of the article within this state;
14 (~~and~~)

15 (c) With respect to an extended warranty, the first act within this
16 state after the extended warranty has been acquired by which the
17 taxpayer takes or assumes dominion or control over the article of
18 tangible personal property to which the extended warranty applies, and
19 includes installation, storage, withdrawal from storage, distribution,
20 or any other act preparatory to subsequent actual use or consumption of
21 the article within this state;

22 (d) With respect to a digital product, the first act within this
23 state by which the taxpayer, as a consumer, downloads or otherwise
24 possesses the digital product; and

25 (e) With respect to a service defined as a retail sale in RCW
26 82.04.050(2)(g), the first act within this state after the service has
27 been performed by which the taxpayer, as a consumer, uses the digital
28 product upon which the service was performed;

29 (~~(+6)~~) (7) "Taxpayer" and "purchaser" include all persons included
30 within the meaning of the word "buyer" and the word "consumer" as
31 defined in chapters 82.04 and 82.08 RCW;

32 (~~(+7)~~) (8)(a)(i) Except as provided in (a)(ii) of this subsection
33 (~~(+7)~~) (8), "retailer" means every seller as defined in RCW 82.08.010
34 and every person engaged in the business of selling tangible personal
35 property at retail and every person required to collect from purchasers
36 the tax imposed under this chapter.

37 (ii) "Retailer" does not include a professional employer
38 organization when a covered employee coemployed with the client under

1 the terms of a professional employer agreement engages in activities
2 that constitute a sale of tangible personal property, extended
3 warranty, digital product, or a sale of any service defined as a retail
4 sale in RCW 82.04.050 (2)(a) or (g) or (3)(a) that is subject to the
5 tax imposed by this chapter. In such cases, the client, and not the
6 professional employer organization, is deemed to be the retailer and is
7 responsible for collecting and remitting the tax imposed by this
8 chapter.

9 (b) For the purposes of (a) of this subsection, the terms "client,"
10 "covered employee," "professional employer agreement," and
11 "professional employer organization" have the same meanings as in RCW
12 82.04.540;

13 ~~((+8))~~ (9) "Extended warranty" has the same meaning as in RCW
14 82.04.050(7);

15 ~~((+9))~~ (10) The meaning ascribed to words and phrases in chapters
16 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
17 effect with respect to taxes imposed under the provisions of this
18 chapter. "Consumer," in addition to the meaning ascribed to it in
19 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
20 person who distributes or displays, or causes to be distributed or
21 displayed, any article of tangible personal property, except
22 newspapers, the primary purpose of which is to promote the sale of
23 products or services. With respect to property distributed to persons
24 within this state by a consumer as defined in this subsection ~~((+9))~~
25 (10), the use of the property shall be deemed to be by such consumer.

26 **Sec. 305.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to
27 read as follows:

28 (1) There is hereby levied and there shall be collected from every
29 person in this state a tax or excise for the privilege of using within
30 this state as a consumer any:

31 (a) ~~((Any))~~ Article of tangible personal property purchased at
32 retail, or acquired by lease, gift, repossession, or bailment, or
33 extracted or produced or manufactured by the person so using the same,
34 or otherwise furnished to a person engaged in any business taxable
35 under RCW 82.04.280 (2) or (7), including tangible personal property
36 acquired at a casual or isolated sale, and including byproducts used by

1 the manufacturer thereof, except as otherwise provided in this chapter,
2 irrespective of whether the article or similar articles are
3 manufactured or are available for purchase within this state;

4 (b) ~~((any))~~ Prewritten computer software, regardless of the method
5 of delivery, but excluding prewritten computer software that is either
6 provided free of charge or is provided for temporary use in viewing
7 information, or both; ~~((or))~~

8 (c) ~~((any))~~ Services defined as a retail sale in RCW 82.04.050
9 (2)(a) or (g) or (3)(a);

10 (d) Extended warranty; or

11 (e)(i) Digital product.

12 (ii) With respect to the use of digital products acquired by
13 purchase, the tax imposed in this subsection (1)(e) applies in respect
14 to:

15 (A) Sales in which the seller has granted the purchaser the right
16 of permanent use;

17 (B) Sales in which the seller has granted the purchaser a right of
18 use that is less than permanent;

19 (C) Sales in which the purchaser is not obligated to make continued
20 payment as a condition of the sale; and

21 (D) Sales in which the purchaser is obligated to make continued
22 payment as a condition of the sale.

23 (iii) With respect to the use of digital products acquired other
24 than by purchase, the tax imposed in this subsection (1)(e) applies
25 regardless of whether or not the consumer has a right of permanent use
26 or is obligated to make continued payment as a condition of use.

27 ~~(2) ((This tax shall apply to the use of every extended warranty,~~
28 ~~service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), and~~
29 ~~the use of every article of tangible personal property, including~~
30 ~~property acquired at a casual or isolated sale, and including~~
31 ~~byproducts used by the manufacturer thereof, except as hereinafter~~
32 ~~provided, irrespective of whether the article or similar articles are~~
33 ~~manufactured or are available for purchase within this state.~~

34 ~~(3))~~ The provisions of this chapter do not apply in respect to the
35 use of any article of tangible personal property, extended warranty,
36 digital product, or service taxable under RCW 82.04.050 (2)(a) or (g)
37 or (3)(a), ~~((purchased at retail or acquired by lease, gift, or~~
38 bailment)) if the sale to, or the use by, the present user or ~~((his))~~

1 the present user's bailor or donor has already been subjected to the
2 tax under chapter 82.08 RCW or this chapter and the tax has been paid
3 by the present user or by ~~((his))~~ the present user's bailor or donor.

4 ~~((+4))~~ (3)(a) Except as provided in this section, payment of the
5 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or
6 user of tangible personal property, extended warranty, digital product,
7 or service ~~((of the tax imposed by chapter 82.08 or 82.12 RCW shall))~~
8 does not have the effect of exempting any other purchaser or user of
9 the same property, extended warranty, digital product, or service from
10 the taxes imposed by such chapters.

11 (b) The tax imposed by this chapter does not apply:

12 (i) If the sale to, or the use by, the present user or his or her
13 bailor or donor has already been subjected to the tax under chapter
14 82.08 RCW or this chapter and the tax has been paid by the present user
15 or by his or her bailor or donor; ~~((or))~~

16 (ii) In respect to the use of any article of tangible personal
17 property acquired by bailment and the tax has once been paid based on
18 reasonable rental as determined by RCW 82.12.060 measured by the value
19 of the article at time of first use multiplied by the tax rate imposed
20 by chapter 82.08 RCW or this chapter as of the time of first use;
21 ~~((or))~~

22 (iii) In respect to the use of any article of tangible personal
23 property acquired by bailment, if the property was acquired by a
24 previous bailee from the same bailor for use in the same general
25 activity and the original bailment was prior to June 9, 1961~~((, the tax~~
26 ~~imposed by this chapter does not apply))~~; or

27 (iv) To the use of digital goods, which were obtained through the
28 use of a digital code, if the sale of the digital code to, or the use
29 of the digital code by, the present user or the present user's bailor
30 or donor has already been subjected to the tax under chapter 82.08 RCW
31 or this chapter and the tax has been paid by the present user or by the
32 present user's bailor or donor.

33 ~~((+5))~~ (4)(a) Except as provided in (b) of this subsection (4),
34 the tax ~~((shall be))~~ is levied and must be collected in an amount equal
35 to the value of the article used, value of the digital product used,
36 value of the extended warranty used, or value of the service used by
37 the taxpayer, multiplied by the applicable rates in effect for the
38 retail sales tax under RCW 82.08.020~~((, except))~~.

1 aluminum provided by that person's customer(~~(:—PROVIDED FURTHER,~~
2 ~~That)~~). For the purposes of this subsection (2)(b), "aluminum master
3 alloy" means an alloy registered with the aluminum association as a
4 grain refiner or a hardener alloy using the American national standards
5 institute designating system H35.3.

6 (3) A nonresident of this state who is the owner of materials
7 processed for it in this state by a processor for hire shall not be
8 deemed to be engaged in business in this state as a manufacturer
9 because of the performance of such processing work for it in this
10 state(~~(:—PROVIDED FURTHER, That)~~).

11 (4) The owner of materials from which a nuclear fuel assembly is
12 made for it by a processor for hire shall not be subject to tax under
13 this chapter as a manufacturer of the fuel assembly.

14 ~~((For the purposes of this section, "aluminum master alloy" means~~
15 ~~an alloy registered with the Aluminum Association as a grain refiner or~~
16 ~~a hardener alloy using the American National Standards Institute~~
17 ~~designating system H35.3.))~~

18 (5) For purposes of this section, the terms "articles,"
19 "substances," "materials," "ingredients," and "commodities" do not
20 include digital goods.

21 **Sec. 405.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to
22 read as follows:

23 "To manufacture" embraces all activities of a commercial or
24 industrial nature wherein labor or skill is applied, by hand or
25 machinery, to materials so that as a result thereof a new, different or
26 useful substance or article of tangible personal property is produced
27 for sale or commercial or industrial use, and shall include: (1) The
28 production or fabrication of special made or custom made articles; (2)
29 the production or fabrication of dental appliances, devices,
30 restorations, substitutes, or other dental laboratory products by a
31 dental laboratory or dental technician; (3) cutting, delimiting, and
32 measuring of felled, cut, or taken trees; and (4) crushing and/or
33 blending of rock, sand, stone, gravel, or ore.

34 "To manufacture" shall not include: Conditioning of seed for use
35 in planting; cubing hay or alfalfa; activities which consist of
36 cutting, grading, or ice glazing seafood which has been cooked, frozen,
37 or canned outside this state; the growing, harvesting, or producing of

1 agricultural products; packing of agricultural products, including
2 sorting, washing, rinsing, grading, waxing, treating with fungicide,
3 packaging, chilling, or placing in controlled atmospheric storage; the
4 production of digital goods; or the production of computer software if
5 the computer software is delivered from the seller to the purchaser by
6 means other than tangible storage media, including the delivery by use
7 of a tangible storage media where the tangible storage media is not
8 physically transferred to the purchaser.

9 **Sec. 406.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to
10 read as follows:

11 (1) Upon every person engaging within this state in the business of
12 receiving income from royalties or charges in the nature of royalties
13 for the granting of intangible rights, such as copyrights, licenses,
14 patents, or franchise fees, the amount of tax with respect to such
15 business shall be equal to the gross income from royalties or charges
16 in the nature of royalties from the business multiplied by the rate of
17 0.484 percent.

18 (2) For the purposes of this section, "royalties" means
19 compensation for the use of intangible property, such as copyrights,
20 patents, licenses, franchises, trademarks, trade names, and similar
21 items. It does not include compensation for any natural resource
22 ~~((or)), the licensing of ((earned))~~ prewritten computer software to the
23 end user, or the licensing or use of digital products.

24 **Sec. 407.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to
25 read as follows:

26 (1) The provision of internet ~~((services))~~ access is subject to tax
27 under RCW 82.04.290(2).

28 ~~(2) "Internet" ((means the international computer network of both~~
29 ~~federal and nonfederal interoperable packet switched data networks,~~
30 ~~including the graphical subnetwork called the world wide web))~~ and
31 "internet access" have the same meaning as those terms are defined in
32 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
33 existing on July 1, 2009.

34 ~~(3) ("Internet service" means a service that includes computer~~
35 ~~processing applications, provides the user with additional or~~
36 ~~restructured information, or permits the user to interact with stored~~

1 information through the internet or a proprietary subscriber network.
2 "Internet service" includes provision of internet electronic mail,
3 access to the internet for information retrieval, and hosting of
4 information for retrieval over the internet or the graphical subnetwork
5 called the world wide web)) Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 **Sec. 408.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to
9 read as follows:

10 This chapter does not apply to amounts received by a nonprofit
11 organization from the sale or furnishing of the following items at a
12 camp or conference center conducted on property exempt from property
13 tax under RCW 84.36.030 (1), (2), or (3):

14 (1) Lodging, conference and meeting rooms, camping facilities,
15 parking, and similar licenses to use real property;

16 (2) Food and meals;

17 (3) Books, tapes, and other products, including books and other
18 products that are transferred electronically, that are available
19 exclusively to the participants at the camp, conference, or meeting and
20 are not available to the public at large.

21 **Sec. 409.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to
22 read as follows:

23 In computing tax there may be deducted from the measure of tax
24 amounts derived from bona fide (1) initiation fees, (2) dues, (3)
25 contributions, (4) donations, (5) tuition fees, (6) charges made by a
26 nonprofit trade or professional organization for attending or occupying
27 space at a trade show, convention, or educational seminar sponsored by
28 the nonprofit trade or professional organization, which trade show,
29 convention, or educational seminar is not open to the general public,
30 (7) charges made for operation of privately operated kindergartens, and
31 (8) endowment funds. This section (~~shall~~) may not be construed to
32 exempt any person, association, or society from tax liability upon
33 selling tangible personal property, digital products, or upon providing
34 facilities or services for which a special charge is made to members or
35 others. If dues are in exchange for any significant amount of goods or
36 services rendered by the recipient thereof to members without any

1 additional charge to the member, or if the dues are graduated upon the
2 amount of goods or services rendered, the value of such goods or
3 services shall not be considered as a deduction under this section.

4 **Sec. 410.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
5 read as follows:

6 (1) Unless a seller has taken from the buyer a resale certificate,
7 the burden of proving that a sale (~~of tangible personal property, or~~
8 ~~of services, was not a sale at retail shall be~~) is a wholesale sale
9 rather than a retail sale is upon the person who made it.

10 (2) If a seller does not receive a resale certificate at the time
11 of the sale, have a resale certificate on file at the time of the sale,
12 or obtain a resale certificate from the buyer within a reasonable time
13 after the sale, the seller shall remain liable for the tax as provided
14 in RCW 82.08.050, unless the seller can demonstrate facts and
15 circumstances according to rules adopted by the department of revenue
16 that show the sale was properly made without payment of sales tax.

17 (3) The department may provide by rule for suggested forms for
18 resale certificates or equivalent documents containing the information
19 that will be accepted as resale certificates. The department shall
20 provide by rule the categories of items or services that must be
21 specified on resale certificates and the business classifications that
22 may use a blanket resale certificate.

23 (4) As used in this section, "resale certificate" means
24 documentation provided by a buyer to a seller stating that the purchase
25 is for resale in the regular course of business, or that the buyer is
26 exempt from retail sales tax, and containing the following information:

27 (a) The name and address of the buyer;

28 (b) The uniform business identifier or revenue registration number
29 of the buyer, if the buyer is required to be registered;

30 (c) The type of business engaged in;

31 (d) The categories of items or services to be purchased for resale
32 or that are exempt, unless the buyer presents a blanket resale
33 certificate;

34 (e) The date on which the certificate was provided;

35 (f) A statement that the items or services purchased either: (i)
36 Are purchased for resale in the regular course of business; or (ii) are
37 exempt from tax pursuant to statute;

1 (g) A statement that the buyer acknowledges that the buyer is
2 solely responsible for purchasing within the categories specified on
3 the certificate and that misuse of the resale or exemption privilege
4 claimed on the certificate subjects the buyer to a penalty of fifty
5 percent of the tax due, in addition to the tax, interest, and any other
6 penalties imposed by law;

7 (h) The name of the individual authorized to sign the certificate,
8 printed in a legible fashion;

9 (i) The signature of the authorized individual; and

10 (j) The name of the seller.

11 (5) Subsection (4)(h), (i), and (j) of this section does not apply
12 if the certificate is provided in a format other than paper. If the
13 certificate is provided in a format other than paper, the name of the
14 individual providing the certificate must be included in the
15 certificate.

16 **Sec. 411.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each
17 amended to read as follows:

18 (1) Every consignee, bailee, factor, or auctioneer having either
19 actual or constructive possession of (~~tangible~~) personal property, or
20 having possession of the documents of title thereto, with power to sell
21 such (~~tangible~~) personal property in (~~his or its~~) that person's own
22 name and actually so selling, (~~shall be~~) is deemed the seller of such
23 (~~tangible~~) personal property within the meaning of this chapter(~~+~~
24 ~~and further,~~). Furthermore, the consignor, bailor, principal, or
25 owner (~~shall be~~) is deemed a seller of such property to the
26 consignee, bailee, factor, or auctioneer.

27 (2) The burden (~~shall be upon~~) is on the taxpayer in every case
28 to establish the fact that (~~he~~) the taxpayer is not engaged in the
29 business of (~~selling tangible personal property~~) making retail sales
30 or wholesale sales but is acting merely as broker or agent in promoting
31 sales for a principal. Such claim will be allowed only when the
32 taxpayer's accounting records are kept in such manner as required by
33 rule by the department (~~of revenue shall by general regulation~~
34 ~~provide~~)).

35 (3) For purposes of this section, "personal property" means
36 tangible personal property, digital products, and extended warranties.

1 **Sec. 412.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to
2 read as follows:

3 (1) "Competitive telephone service" means the providing by any
4 person of telecommunications equipment or apparatus, or service related
5 to that equipment or apparatus such as repair or maintenance service,
6 if the equipment or apparatus is of a type which can be provided by
7 persons that are not subject to regulation as telephone companies under
8 Title 80 RCW and for which a separate charge is made.

9 (2) "Ancillary services" means services that are associated with or
10 incidental to the provision of "telecommunications services," including
11 but not limited to "detailed telecommunications billing," "directory
12 assistance," "vertical service," and "voice mail services."

13 (3) "Conference-bridging service" means an ancillary service that
14 links two or more participants of an audio or video conference call and
15 may include the provision of a telephone number. "Conference-bridging
16 service" does not include the telecommunications services used to reach
17 the conference bridge.

18 (4) "Detailed telecommunications billing service" means an
19 ancillary service of separately stating information pertaining to
20 individual calls on a customer's billing statement.

21 (5) "Directory assistance" means an ancillary service of providing
22 telephone number information, and/or address information.

23 (6) "Vertical service" means an ancillary service that is offered
24 in connection with one or more telecommunications services, that offers
25 advanced calling features that allow customers to identify callers and
26 to manage multiple calls and call connections, including conference-
27 bridging services.

28 (7) "Voice mail service" means an ancillary service that enables
29 the customer to store, send, or receive recorded messages. "Voice mail
30 service" does not include any vertical services that the customer may
31 be required to have in order to use the voice mail service.

32 (8) "Telecommunications service" means the electronic transmission,
33 conveyance, or routing of voice, data, audio, video, or any other
34 information or signals to a point, or between or among points.
35 "Telecommunications service" includes such transmission, conveyance, or
36 routing in which computer processing applications are used to act on
37 the form, code, or protocol of the content for purposes of
38 transmission, conveyance, or routing without regard to whether such

1 service is referred to as voice over internet protocol services or is
2 classified by the federal communications commission as enhanced or
3 value added. "Telecommunications service" does not include:

4 (a) Data processing and information services that allow data to be
5 generated, acquired, stored, processed, or retrieved and delivered by
6 an electronic transmission to a purchaser where such purchaser's
7 primary purpose for the underlying transaction is the processed data or
8 information;

9 (b) Installation or maintenance of wiring or equipment on a
10 customer's premises;

11 (c) Tangible personal property;

12 (d) Advertising, including but not limited to directory
13 advertising;

14 (e) Billing and collection services provided to third parties;

15 (f) Internet access service;

16 (g) Radio and television audio and video programming services,
17 regardless of the medium, including the furnishing of transmission,
18 conveyance, and routing of such services by the programming service
19 provider. Radio and television audio and video programming services
20 include but are not limited to cable service as defined in 47 U.S.C.
21 Sec. 522(6) and audio and video programming services delivered by
22 commercial mobile radio service providers, as defined in section 20.3,
23 Title 47 C.F.R.;

24 (h) Ancillary services; (~~(e)~~)

25 (i) Digital products delivered electronically, including but not
26 limited to (~~(software,)~~) music, video, reading materials, or ring
27 tones; or

28 (j) Software delivered electronically.

29 (9) "800 service" means a telecommunications service that allows a
30 caller to dial a toll-free number without incurring a charge for the
31 call. The service is typically marketed under the name "800," "855,"
32 "866," "877," and "888" toll-free calling, and any subsequent numbers
33 designated by the federal communications commission.

34 (10) "900 service" means an inbound toll "telecommunications
35 service" purchased by a subscriber that allows the subscriber's
36 customers to call in to the subscriber's prerecorded announcement or
37 live service. "900 service" does not include the charge for:
38 Collection services provided by the seller of the telecommunications

1 services to the subscriber, or services or products sold by the
2 subscriber to the subscriber's customer. The service is typically
3 marketed under the name "900" service, and any subsequent numbers
4 designated by the federal communications commission.

5 (11) "Fixed wireless service" means a telecommunications service
6 that provides radio communication between fixed points.

7 (12) "Mobile wireless service" means a telecommunications service
8 that is transmitted, conveyed, or routed regardless of the technology
9 used, whereby the origination and/or termination points of the
10 transmission, conveyance, or routing are not fixed, including, by way
11 of example only, telecommunications services that are provided by a
12 commercial mobile radio service provider.

13 (13) "Paging service" means a telecommunications service that
14 provides transmission of coded radio signals for the purpose of
15 activating specific pagers; these transmissions may include messages
16 and/or sounds.

17 (14) "Prepaid calling service" means the right to access
18 exclusively telecommunications services, which must be paid for in
19 advance and which enable the origination of calls using an access
20 number or authorization code, whether manually or electronically
21 dialed, and that is sold in predetermined units or dollars of which the
22 number declines with use in a known amount.

23 (15) "Prepaid wireless calling service" means a telecommunications
24 service that provides the right to use mobile wireless service as well
25 as other nontelecommunications services including the download of
26 digital products delivered electronically, content, and ancillary
27 services, which must be paid for in advance and that is sold in
28 predetermined units or dollars of which the number declines with use in
29 a known amount.

30 (16) "Private communications service" means a telecommunications
31 service that entitles the customer to exclusive or priority use of a
32 communications channel or group of channels between or among
33 termination points, regardless of the manner in which the channel or
34 channels are connected, and includes switching capacity, extension
35 lines, stations, and any other associated services that are provided in
36 connection with the use of the channel or channels.

37 (17) "Value-added nonvoice data service" means a service that
38 otherwise meets the definition of telecommunications services in which

1 computer processing applications are used to act on the form, content,
2 code, or protocol of the information or data primarily for a purpose
3 other than transmission, conveyance, or routing.

4 (18) "Charges for mobile telecommunications services" means any
5 charge for, or associated with, the provision of commercial mobile
6 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
7 on June 1, 1999, or any charge for, or associated with, a service
8 provided as an adjunct to a commercial mobile radio service, regardless
9 of whether individual transmissions originate or terminate within the
10 licensed service area of the mobile telecommunications service
11 provider.

12 (19) "Customer" means: (a) The person or entity that contracts
13 with the home service provider for mobile telecommunications services;
14 or (b) the end user of the mobile telecommunications service, if the
15 end user of mobile telecommunications services is not the contracting
16 party, but this subsection (19)(b) applies only for the purpose of
17 determining the place of primary use. The term does not include a
18 reseller of mobile telecommunications service, or a serving carrier
19 under an arrangement to serve the customer outside the home service
20 provider's licensed service area.

21 (20) "Designated database provider" means a person representing all
22 the political subdivisions of the state that is:

23 (a) Responsible for providing an electronic database prescribed in
24 4 U.S.C. Sec. 119(a) if the state has not provided an electronic
25 database; and

26 (b) Approved by municipal and county associations or leagues of the
27 state whose responsibility it would otherwise be to provide a database
28 prescribed by 4 U.S.C. Secs. 116 through 126.

29 (21) "Enhanced zip code" means a United States postal zip code of
30 nine or more digits.

31 (22) "Home service provider" means the facilities-based carrier or
32 reseller with whom the customer contracts for the provision of mobile
33 telecommunications services.

34 (23) "Licensed service area" means the geographic area in which the
35 home service provider is authorized by law or contract to provide
36 commercial mobile radio service to the customer.

37 (24) "Mobile telecommunications service" means commercial mobile

1 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
2 on June 1, 1999.

3 (25) "Mobile telecommunications service provider" means a home
4 service provider or a serving carrier.

5 (26) "Place of primary use" means the street address representative
6 of where the customer's use of the mobile telecommunications service
7 primarily occurs, which must be:

8 (a) The residential street address or the primary business street
9 address of the customer; and

10 (b) Within the licensed service area of the home service provider.

11 (27) "Prepaid telephone calling service" means the right to
12 purchase exclusively telecommunications services that must be paid for
13 in advance, that enables the origination of calls using an access
14 number, authorization code, or both, whether manually or electronically
15 dialed, if the remaining amount of units of service that have been
16 prepaid is known by the provider of the prepaid service on a continuous
17 basis.

18 (28) "Reseller" means a provider who purchases telecommunications
19 services from another telecommunications service provider and then
20 resells, uses as a component part of, or integrates the purchased
21 services into a mobile telecommunications service. "Reseller" does not
22 include a serving carrier with whom a home service provider arranges
23 for the services to its customers outside the home service provider's
24 licensed service area.

25 (29) "Serving carrier" means a facilities-based carrier providing
26 mobile telecommunications service to a customer outside a home service
27 provider's or reseller's licensed service area.

28 (30) "Taxing jurisdiction" means any of the several states, the
29 District of Columbia, or any territory or possession of the United
30 States, any municipality, city, county, township, parish,
31 transportation district, or assessment jurisdiction, or other political
32 subdivision within the territorial limits of the United States with the
33 authority to impose a tax, charge, or fee.

34 **PART V**

35 **SALES TAX EXEMPTIONS**

1 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.08
2 RCW to read as follows:

3 The tax imposed by RCW 82.08.020 does not apply to the sale of a
4 digital code for one or more digital goods if the sale of the digital
5 goods to which the digital code relates is exempt from the tax levied
6 by RCW 82.08.020.

7 NEW SECTION. **Sec. 502.** A new section is added to chapter 82.08
8 RCW to read as follows:

9 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
10 audio or video programming by a radio or television broadcaster.

11 (2) For purposes of this section, "radio or television broadcaster"
12 includes satellite radio providers, satellite television providers,
13 cable television providers, and providers of subscription internet
14 television.

15 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
18 digital products for purposes of consuming the digital products in
19 producing for sale a new product, where the digital products become an
20 ingredient or component of the new product. A digital code becomes an
21 ingredient or component of a new product if the digital good acquired
22 through the use of the digital code becomes an ingredient or component
23 of a new product.

24 (2) The exemption is available only when the buyer provides the
25 seller with an exemption certificate in a form and manner prescribed by
26 the department. The seller must retain a copy of the certificate for
27 the seller's files.

28 NEW SECTION. **Sec. 504.** A new section is added to chapter 82.08
29 RCW to read as follows:

30 (1) The tax imposed by RCW 82.08.020 does not apply to the sale to
31 a business of standard digital information and services rendered in
32 respect to standard digital information, where the standard digital
33 information and services are purchased solely for business purposes.

34 (2) The exemption is available only when the buyer provides the

1 seller with an exemption certificate in a form and manner prescribed by
2 the department. The seller must retain a copy of the certificate for
3 the seller's files.

4 (3) For purposes of this section, the following definitions apply:

5 (a) "Business purposes" means any purpose relevant to the business
6 needs of the taxpayer claiming an exemption under this section.
7 Business purposes do not include any personal, family, or household
8 purpose. The term also does not include any activity conducted by a
9 government entity as that term is defined in RCW 7.25.005; and

10 (b) "Standard digital information" means a digital good consisting
11 primarily of data, facts, or information, or any combination thereof,
12 not generated or compiled for a specific client or customer.

13 **Sec. 505.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to
14 read as follows:

15 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to the
16 sale of public records by state and local agencies, as the terms are
17 defined in RCW 42.17.020, that are copied or transferred electronically
18 under a request for the record for which no fee is charged other than
19 a statutorily set fee or a fee to reimburse the agency for its actual
20 costs directly incident to the copying. A request for a record
21 includes a request for a document not available to the public but
22 available to those persons who by law are allowed access to the
23 document, such as requests for fire reports, law enforcement reports,
24 taxpayer information, and academic transcripts.

25 **Sec. 506.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to
26 read as follows:

27 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to:

28 (a) The distribution and newsstand sale of printed newspapers; and

29 (b) The sale of newspapers transferred electronically, provided
30 that the electronic version of a printed newspaper:

31 (i) Shares content with the printed newspaper; and

32 (ii) Is prominently identified by the same name as the printed
33 newspaper or otherwise conspicuously indicates that it is a complement
34 to the printed newspaper.

35 (2) For purposes of this section, "printed newspaper" means a
36 publication issued regularly at stated intervals at least twice a month

1 and printed on newsprint in tabloid or broadsheet format folded loosely
2 together without stapling, glue, or any other binding of any kind,
3 including any supplement of a printed newspaper.

4 **Sec. 507.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each
5 amended to read as follows:

6 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to (~~the~~)
7 subscription sales (and distribution) of magazines or periodicals
8 (~~by subscription~~), including magazines and periodicals transferred
9 electronically to the buyer, for the purposes of fund-raising by (1)
10 educational institutions as defined in RCW 82.04.170, or (2) nonprofit
11 organizations engaged in activities primarily for the benefit of boys
12 and girls nineteen years and younger.

13 **Sec. 508.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to
14 read as follows:

15 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
16 of academic transcripts by educational institutions, including academic
17 transcripts transferred electronically.

18 **Sec. 509.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to
19 read as follows:

20 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
21 (including transfers of title through decree of appropriation)
22 heretofore or hereafter made of the entire operating property of a
23 publicly or privately owned public utility, or of a complete operating
24 integral section thereof, to the state or a political subdivision
25 thereof for use in conducting any business defined in RCW 82.16.010
26 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For
27 purposes of this section, "operating property" includes digital
28 products.

29 **Sec. 510.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to
30 read as follows:

31 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
32 sales to a manufacturer or processor for hire of machinery and
33 equipment used directly in a manufacturing operation or research and
34 development operation, to sales to a person engaged in testing for a

1 manufacturer or processor for hire of machinery and equipment used
2 directly in a testing operation, or to sales of or charges made for
3 labor and services rendered in respect to installing, repairing,
4 cleaning, altering, or improving the machinery and equipment, but only
5 when the purchaser provides the seller with an exemption certificate in
6 a form and manner prescribed by the department by rule. The seller
7 (~~shall~~) must retain a copy of the certificate for the seller's files.

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

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

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

- 19 (i) Hand-powered tools;
- 20 (ii) Property with a useful life of less than one year;
- 21 (iii) Buildings, other than machinery and equipment that is
22 permanently affixed to or becomes a physical part of a building; and
- 23 (iv) Building fixtures that are not integral to the manufacturing
24 operation, testing operation, or research and development operation
25 that are permanently affixed to and become a physical part of a
26 building, such as utility systems for heating, ventilation, air
27 conditioning, communications, plumbing, or electrical.

28 (c) Machinery and equipment is "used directly" in a manufacturing
29 operation, testing operation, or research and development operation if
30 the machinery and equipment:

- 31 (i) Acts upon or interacts with an item of tangible personal
32 property;
- 33 (ii) Conveys, transports, handles, or temporarily stores an item of
34 tangible personal property at the manufacturing site or testing site;
- 35 (iii) Controls, guides, measures, verifies, aligns, regulates, or
36 tests tangible personal property at the site or away from the site;
- 37 (iv) Provides physical support for or access to tangible personal
38 property;

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

2 (vi) Produces another item of tangible personal property for use in
3 the manufacturing operation, testing operation, or research and
4 development operation;

5 (vii) Places tangible personal property in the container, package,
6 or wrapping in which the tangible personal property is normally sold or
7 transported; or

8 (viii) Is integral to research and development as defined in RCW
9 82.63.010.

10 (d) "Manufacturing operation" means the manufacturing of articles,
11 substances, or commodities for sale as tangible personal property. A
12 manufacturing operation begins at the point where the raw materials
13 enter the manufacturing site and ends at the point where the processed
14 material leaves the manufacturing site. The term also includes that
15 portion of a cogeneration project that is used to generate power for
16 consumption within the manufacturing site of which the cogeneration
17 project is an integral part. The term does not include the production
18 of electricity by a light and power business as defined in RCW
19 82.16.010 or the preparation of food products on the premises of a
20 person selling food products at retail.

21 (e) "Cogeneration" means the simultaneous generation of electrical
22 energy and low-grade heat from the same fuel.

23 (f) "Research and development operation" means engaging in research
24 and development as defined in RCW 82.63.010 by a manufacturer or
25 processor for hire.

26 (g) "Testing" means activities performed to establish or determine
27 the properties, qualities, and limitations of tangible personal
28 property.

29 (h) "Testing operation" means the testing of tangible personal
30 property for a manufacturer or processor for hire. A testing operation
31 begins at the point where the tangible personal property enters the
32 testing site and ends at the point where the tangible personal property
33 leaves the testing site. The term also includes that portion of a
34 cogeneration project that is used to generate power for consumption
35 within the site of which the cogeneration project is an integral part.
36 The term does not include the production of electricity by a light and
37 power business as defined in RCW 82.16.010 or the preparation of food
38 products on the premises of a person selling food products at retail.

1 personal property and service. All of the requirements in subsections
2 (1) and (3) through (6) of this section apply to this subsection.

3 (3)(a) Any person claiming exemption from retail sales tax under
4 the provisions of this section must display proof of his or her current
5 nonresident status as provided in this section.

6 (b) Acceptable proof of a nonresident person's status (~~shall~~)
7 includes one piece of identification such as a valid driver's license
8 from the jurisdiction in which the out-of-state residency is claimed or
9 a valid identification card which has a photograph of the holder and is
10 issued by the out-of-state jurisdiction. Identification under this
11 subsection (3)(b) must show the holder's residential address and have
12 as one of its legal purposes the establishment of residency in that
13 out-of-state jurisdiction.

14 (4) Nothing in this section requires the vendor to make tax exempt
15 retail sales to nonresidents. A vendor may choose to make sales to
16 nonresidents, collect the sales tax, and remit the amount of sales tax
17 collected to the state as otherwise provided by law. If the vendor
18 chooses to make a sale to a nonresident without collecting the sales
19 tax, the vendor shall, in good faith, examine the proof of
20 nonresidence, determine whether the proof is acceptable under
21 subsection (3)(b) of this section, and maintain records for each
22 nontaxable sale which shall show the type of proof accepted, including
23 any identification numbers where appropriate, and the expiration date,
24 if any.

25 (5)(a) Any person making fraudulent statements, which includes the
26 offer of fraudulent identification or fraudulently procured
27 identification to a vendor, in order to purchase goods without paying
28 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

29 (b) Any person making tax exempt purchases under this section by
30 displaying proof of identification not his or her own, or counterfeit
31 identification, with intent to violate the provisions of this section,
32 is guilty of a misdemeanor and, in addition, (~~shall be~~) is liable for
33 the tax and subject to a penalty equal to the greater of one hundred
34 dollars or the tax due on such purchases.

35 (6)(a) Any vendor who makes sales without collecting the tax to a
36 person who does not hold valid identification establishing out-of-state
37 residency, and any vendor who fails to maintain records of sales to

1 nonresidents as provided in this section, (~~shall be~~) is personally
2 liable for the amount of tax due.

3 (b) Any vendor who makes sales without collecting the retail sales
4 tax under this section and who has actual knowledge that the
5 purchaser's proof of identification establishing out-of-state residency
6 is fraudulent is guilty of a misdemeanor and, in addition, (~~shall be~~)
7 is liable for the tax and subject to a penalty equal to the greater of
8 one thousand dollars or the tax due on such sales. In addition, both
9 the purchaser and the vendor (~~shall be~~) are liable for any penalties
10 and interest assessable under chapter 82.32 RCW.

11 **Sec. 513.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to
12 read as follows:

13 (1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~)
14 personal property used at an aluminum smelter, tangible personal
15 property that will be incorporated as an ingredient or component of
16 buildings or other structures at an aluminum smelter, or for labor and
17 services rendered with respect to such buildings, structures, or
18 (~~tangible~~) personal property, is eligible for an exemption from the
19 state share of the tax in the form of a credit, as provided in this
20 section. A person claiming an exemption must pay the tax and may then
21 take a credit equal to the state share of retail sales tax paid under
22 RCW 82.08.020. The person shall submit information, in a form and
23 manner prescribed by the department, specifying the amount of
24 qualifying purchases or acquisitions for which the exemption is claimed
25 and the amount of exempted tax.

26 (2) For the purposes of this section, "aluminum smelter" has the
27 same meaning as provided in RCW 82.04.217.

28 (3) Credits may not be claimed under this section for taxable
29 events occurring on or after January 1, 2012.

30 **Sec. 514.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to
31 read as follows:

32 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
33 (~~tangible~~) personal property and services provided by a public
34 corporation, commission, or authority created under RCW 35.21.660 or
35 35.21.730 to an eligible entity.

1 (2) For purposes of this section, "eligible entity" means a limited
2 liability company, a limited partnership, or a single asset entity,
3 described in RCW 82.04.615.

4 NEW SECTION. **Sec. 515.** RCW 82.08.705 (Exemptions--Financial
5 information delivered electronically) and 2007 c 182 s 1 are each
6 repealed.

7 **PART VI**

8 **USE TAX EXEMPTIONS**

9 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.12
10 RCW to read as follows:

11 The provisions of this chapter do not apply in respect to the use
12 of a digital code for one or more digital goods, if the use of the
13 digital goods to which the digital code relates is exempt from the tax
14 levied by RCW 82.12.020.

15 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.12
16 RCW to read as follows:

17 (1) The provisions of this chapter do not apply to the use of audio
18 or video programming provided by a radio or television broadcaster.

19 (2) For purposes of this section, "radio or television broadcaster"
20 includes satellite radio providers, satellite television providers,
21 cable television providers, providers of subscription internet
22 television, and persons who provide radio or television broadcasting to
23 listeners or viewers for no charge.

24 NEW SECTION. **Sec. 603.** A new section is added to chapter 82.12
25 RCW to read as follows:

26 The provisions of this chapter do not apply to the use by students
27 of digital products furnished by a public or private elementary or
28 secondary school, or an institution of higher education as defined in
29 sections 1001 or 1002 of the federal higher education act of 1965
30 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

31 NEW SECTION. **Sec. 604.** A new section is added to chapter 82.12
32 RCW to read as follows:

1 The provisions of this chapter do not apply to the use of digital
2 products for purposes of consuming the digital products in producing
3 for sale a new product, where the digital products become an ingredient
4 or component of the new product. A digital code becomes an ingredient
5 or component of a new product if the digital good acquired through the
6 use of the digital code becomes an ingredient or component of a new
7 product.

8 NEW SECTION. **Sec. 605.** A new section is added to chapter 82.12
9 RCW to read as follows:

10 The provisions of this chapter do not apply in respect to the use
11 of digital products or digital codes obtained by the end user free of
12 charge.

13 NEW SECTION. **Sec. 606.** A new section is added to chapter 82.12
14 RCW to read as follows:

15 (1) The provisions of this chapter do not apply to the use by a
16 business of standard digital information and services rendered in
17 respect to standard digital information, where the standard digital
18 information and services are used solely for business purposes.

19 (2) For purposes of this section, the definitions in section 504 of
20 this act apply.

21 NEW SECTION. **Sec. 607.** A new section is added to chapter 82.12
22 RCW to read as follows:

23 (1) The provisions of this chapter do not apply in respect to the
24 use of digital goods that are:

25 (a) Of a noncommercial nature, such as personal e-mail
26 communications;

27 (b) Created solely for an internal audience; or

28 (c) Created solely for the business needs of the person who created
29 the digital good and is not the type of digital good that is offered
30 for sale, including business e-mail communications.

31 (2) This section does not apply to the use of any digital goods
32 purchased by the user, the user's donor, or anybody on the user's
33 behalf.

1 **Sec. 608.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to
2 read as follows:

3 The provisions of this chapter (~~shall~~) do not apply in respect to
4 the use:

5 (1) Of any article of tangible personal property, (~~and~~) or
6 digital product, and any services that were rendered in respect to such
7 property, brought into the state of Washington by a nonresident thereof
8 for his or her use or enjoyment while temporarily within the state of
9 Washington unless such property is used in conducting a nontransitory
10 business activity within the state of Washington;

11 (2) By a nonresident of Washington of a motor vehicle or trailer
12 which is registered or licensed under the laws of the state of his or
13 her residence, and which is not required to be registered or licensed
14 under the laws of Washington, including motor vehicles or trailers
15 exempt pursuant to a declaration issued by the department of licensing
16 under RCW 46.85.060, and services rendered outside the state of
17 Washington in respect to such property;

18 (3) Of household goods, including digital products, personal
19 effects, (~~and~~) private motor vehicles, and services rendered in
20 respect to such property, by a bona fide resident of Washington, or
21 nonresident members of the armed forces who are stationed in Washington
22 pursuant to military orders, if such articles and services were
23 acquired and used by such person in another state while a bona fide
24 resident thereof and such acquisition and use occurred more than ninety
25 days prior to the time he or she entered Washington. For purposes of
26 this subsection, private motor vehicles do not include motor homes;

27 (4) Of an extended warranty, to the extent that the property
28 covered by the extended warranty is exempt under this section from the
29 tax imposed under this chapter.

30 For purposes of this section, "state" means a state of the United
31 States, any political subdivision thereof, the District of Columbia,
32 and any foreign country or political subdivision thereof, and
33 "services" means services defined as retail sales in RCW 82.04.050(2)
34 (a) or (g).

35 **Sec. 609.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to
36 read as follows:

37 The provisions of this chapter (~~shall~~) do not apply with respect

1 to the use of public records sold by state and local agencies, as the
2 terms are defined in RCW 42.17.020, including public records
3 transferred electronically that are obtained under a request for the
4 record for which no fee is charged other than a statutorily set fee or
5 a fee to reimburse the agency for its actual costs directly incident to
6 the copying. A request for a record includes a request for a document
7 not available to the public but available to those persons who by law
8 are allowed access to the document, such as requests for fire reports,
9 law enforcement reports, taxpayer information, and academic
10 transcripts.

11 **Sec. 610.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to
12 read as follows:

13 The provisions of this chapter (~~shall~~) do not apply in respect to
14 the use of any article of tangible personal property, extended
15 warranty, digital product, or service which the state is prohibited
16 from taxing under the Constitution of the state or under the
17 Constitution or laws of the United States.

18 **Sec. 611.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to
19 read as follows:

20 The provisions of this chapter (~~shall~~) do not apply in respect to
21 the use of any article of (~~tangible~~) personal property included
22 within the transfer of the title to the entire operating property of a
23 publicly or privately owned public utility, or of a complete operating
24 integral section thereof, by the state or a political subdivision
25 thereof in conducting any business defined in RCW 82.16.010 (1), (2),
26 (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of
27 this section, "operating property" includes digital products.

28 **Sec. 612.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to
29 read as follows:

30 The provisions of this chapter (~~shall~~) do not apply in respect to
31 the use of (~~tangible~~) personal property (including household goods)
32 (~~which have~~) that has been used in conducting a farm activity, if
33 such property was purchased from a farmer at an auction sale held or
34 conducted by an auctioneer upon a farm and not otherwise.

1 **Sec. 613.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read
2 as follows:

3 The provisions of this chapter (~~(shall)~~) do not apply in respect to
4 the use of (~~(tangible)~~) personal property or the use of services
5 defined in RCW 82.04.050(2) (a) or (g) by corporations (~~(which)~~) that
6 have been incorporated under any act of the congress of the United
7 States and whose principal purposes are to furnish volunteer aid to
8 members of the armed forces of the United States and also to carry on
9 a system of national and international relief and to apply the same in
10 mitigating the sufferings caused by pestilence, famine, fire, flood,
11 and other national calamities and to devise and carry on measures for
12 preventing the same.

13 **Sec. 614.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to
14 read as follows:

15 (1) This chapter does not apply to the use by a nonprofit
16 charitable organization or state or local governmental entity of (~~(any~~
17 ~~item of tangible)~~) personal property that has been donated to the
18 nonprofit charitable organization or state or local governmental
19 entity, or to the subsequent use of the property by a person to whom
20 the property is donated or bailed in furtherance of the purpose for
21 which the property was originally donated.

22 (2) This chapter does not apply to the donation of (~~(tangible)~~)
23 personal property without intervening use to a nonprofit charitable
24 organization, or to the incorporation of tangible personal property
25 without intervening use into real or personal property of or for a
26 nonprofit charitable organization in the course of installing,
27 repairing, cleaning, altering, imprinting, improving, constructing, or
28 decorating the real or personal property for no charge.

29 (3) This chapter does not apply to the use by a nonprofit
30 charitable organization of labor and services rendered in respect to
31 installing, repairing, cleaning, altering, imprinting, or improving
32 personal property provided to the charitable organization at no charge,
33 or to the donation of such services.

34 (4) This chapter does not apply to the donation of amusement and
35 recreation services without intervening use to a nonprofit organization
36 or state or local governmental entity, to the use by a nonprofit
37 organization or state or local governmental entity of amusement and

1 recreation services, or to the subsequent use of the services by a
2 person to whom the services are donated or bailed in furtherance of the
3 purpose for which the services were originally donated. As used in
4 this subsection, "amusement and recreation services" has the meaning in
5 RCW 82.04.050(3)(a).

6 **Sec. 615.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to
7 read as follows:

8 The provisions of this chapter (~~(shall)~~) do not apply in respect to
9 the use of (~~(tangible)~~) personal property held for sale and displayed
10 in single trade shows for a period not in excess of thirty days, the
11 primary purpose of which is to promote the sale of products or
12 services.

13 **Sec. 616.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to
14 read as follows:

15 The provisions of this chapter (~~(shall)~~) do not apply in respect to
16 the use of computers, computer components, computer accessories, (~~(or)~~)
17 computer software, or digital products, irrevocably donated to any
18 public or private nonprofit school or college, as defined under chapter
19 84.36 RCW, in this state. For purposes of this section, "computer" and
20 "computer software" have the same meaning as in RCW 82.04.215.

21 **Sec. 617.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to
22 read as follows:

23 (1) The provisions of this chapter shall not apply in respect to
24 the use of:

25 (a) Production equipment rented to a motion picture or video
26 production business;

27 (b) Production equipment acquired and used by a motion picture or
28 video production business in another state, if the acquisition and use
29 occurred more than ninety days before the time the motion picture or
30 video production business entered this state; and

31 (c) Production services that are within the scope of RCW
32 82.04.050(2) (a) or (g) and are sold to a motion picture or video
33 production business.

34 (2) As used in this section, "production equipment," "production

1 services," and "motion picture or video production business" have the
2 meanings given in RCW 82.08.0315.

3 (3) The exemption provided for in this section shall not apply to
4 the use of production equipment rented to, or production equipment or
5 production services that are within the scope of RCW 82.04.050(2) (a)
6 or (g) acquired and used by, a motion picture or video production
7 business that is engaged, to any degree, in the production of erotic
8 material, as defined in RCW 9.68.050.

9 **Sec. 618.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to
10 read as follows:

11 The tax imposed by RCW 82.12.020 (~~shall~~) does not apply in
12 respect to the use of:

- 13 (1) Printed newspapers as defined in RCW 82.08.0253; and
- 14 (2) Newspapers transferred electronically, provided that the
15 electronic version of a printed newspaper:
 - 16 (a) Shares content with the printed newspaper; and
 - 17 (b) Is prominently identified by the same name as the printed
18 newspaper or otherwise conspicuously indicates that it is a complement
19 to the printed newspaper.

20 **Sec. 619.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to
21 read as follows:

22 The provisions of this chapter (~~shall~~) do not apply in respect to
23 the use of academic transcripts, including academic transcripts
24 transferred electronically.

25 **Sec. 620.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to
26 read as follows:

27 (1) A person who is subject to tax under RCW 82.12.020 for
28 (~~tangible~~) personal property used at an aluminum smelter, or for
29 tangible personal property that will be incorporated as an ingredient
30 or component of buildings or other structures at an aluminum smelter,
31 or for labor and services rendered with respect to such buildings,
32 structures, or (~~tangible~~) personal property, is eligible for an
33 exemption from the state share of the tax in the form of a credit, as
34 provided in this section. The amount of the credit shall be equal to
35 the state share of use tax computed to be due under RCW 82.12.020. The

1 person shall submit information, in a form and manner prescribed by the
2 department, specifying the amount of qualifying purchases or
3 acquisitions for which the exemption is claimed and the amount of
4 exempted tax.

5 (2) For the purposes of this section, "aluminum smelter" has the
6 same meaning as provided in RCW 82.04.217.

7 (3) Credits may not be claimed under this section for taxable
8 events occurring on or after January 1, 2012.

9 **Sec. 621.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read
10 as follows:

11 (1) This chapter does not apply to state credit unions with respect
12 to the use of any article of tangible personal property, digital
13 product, service defined as a retail sale in RCW 82.04.050 (2)(a) or
14 (g) or (3)(a), or extended warranty, acquired from a federal credit
15 union, foreign credit union, or out-of-state credit union as a result
16 of a merger or conversion.

17 (2) For purposes of this section, the following definitions apply:

18 (a) "Federal credit union" means a credit union organized and
19 operating under the laws of the United States.

20 (b) "Foreign credit union" means a credit union organized and
21 operating under the laws of another country or other foreign
22 jurisdiction.

23 (c) "Out-of-state credit union" means a credit union organized and
24 operating under the laws of another state or United States territory or
25 possession.

26 (d) "State credit union" means a credit union organized and
27 operating under the laws of this state.

28 **Sec. 622.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to
29 read as follows:

30 (1) The provisions of this chapter do not apply with respect to the
31 use of (~~tangible~~) personal property and services provided by a public
32 corporation, commission, or authority created under RCW 35.21.660 or
33 35.21.730 to an eligible entity.

34 (2) For purposes of this section, "eligible entity" means a limited
35 liability company, a limited partnership, or a single asset entity,
36 described in RCW 82.04.615.

1 determined by the address from which tangible personal property was
2 shipped, from which the digital good or digital code or the computer
3 software delivered electronically was first available for transmission
4 by the seller, or from which the extended warranty or service defined
5 as a retail sale under RCW 82.04.050 was provided, disregarding for
6 these purposes any location that merely provided the digital transfer
7 of the product sold.

8 (2) The lease or rental of tangible personal property, other than
9 property identified in subsection (3) or (4) of this section, shall be
10 sourced as provided in this subsection.

11 (a) For a lease or rental that requires recurring periodic
12 payments, the first periodic payment is sourced the same as a retail
13 sale in accordance with subsection (1) of this section. Periodic
14 payments made subsequent to the first payment are sourced to the
15 primary property location for each period covered by the payment. The
16 primary property location shall be as indicated by an address for the
17 property provided by the lessee that is available to the lessor from
18 its records maintained in the ordinary course of business, when use of
19 this address does not constitute bad faith. The property location is
20 not altered by intermittent use at different locations, such as use of
21 business property that accompanies employees on business trips and
22 service calls.

23 (b) For a lease or rental that does not require recurring periodic
24 payments, the payment is sourced the same as a retail sale in
25 accordance with subsection (1) of this section.

26 (c) This subsection (2) does not affect the imposition or
27 computation of sales or use tax on leases or rentals based on a lump
28 sum or accelerated basis, or on the acquisition of property for lease.

29 (3) The lease or rental of motor vehicles, trailers, semitrailers,
30 or aircraft that do not qualify as transportation equipment shall be
31 sourced as provided in this subsection.

32 (a) For a lease or rental that requires recurring periodic
33 payments, each periodic payment is sourced to the primary property
34 location. The primary property location is as indicated by an address
35 for the property provided by the lessee that is available to the lessor
36 from its records maintained in the ordinary course of business, when
37 use of this address does not constitute bad faith. This location is
38 not altered by intermittent use at different locations.

1 (b) For a lease or rental that does not require recurring periodic
2 payments, the payment is sourced the same as a retail sale in
3 accordance with subsection (1) of this section.

4 (c) This subsection does not affect the imposition or computation
5 of sales or use tax on leases or rentals based on a lump sum or
6 accelerated basis, or on the acquisition of property for lease.

7 (4) The retail sale, including lease or rental, of transportation
8 equipment shall be sourced the same as a retail sale in accordance with
9 subsection (1) of this section.

10 (5)(a) A purchaser of direct mail that is not a holder of a direct
11 pay permit shall provide to the seller in conjunction with the purchase
12 either a direct mail form or information that shows the jurisdictions
13 to which the direct mail is delivered to recipients.

14 (i) Upon receipt of the direct mail form, the seller is relieved of
15 all obligations to collect, pay, or remit the applicable tax and the
16 purchaser is obligated to pay or remit the applicable tax on a direct
17 pay basis. A direct mail form shall remain in effect for all future
18 sales of direct mail by the seller to the purchaser until it is revoked
19 in writing.

20 (ii) Upon receipt of information from the purchaser showing the
21 jurisdictions to which the direct mail is delivered to recipients, the
22 seller shall collect the tax according to the delivery information
23 provided by the purchaser. In the absence of bad faith, the seller is
24 relieved of any further obligation to collect tax on any transaction
25 where the seller has collected tax pursuant to the delivery information
26 provided by the purchaser.

27 (b) If the purchaser of direct mail does not have a direct pay
28 permit and does not provide the seller with either a direct mail form
29 or delivery information as required by (a) of this subsection, the
30 seller shall collect the tax according to subsection (1)(e) of this
31 section. This subsection does not limit a purchaser's obligation for
32 sales or use tax to any state to which the direct mail is delivered.

33 (c) If a purchaser of direct mail provides the seller with
34 documentation of direct pay authority, the purchaser is not required to
35 provide a direct mail form or delivery information to the seller.

36 (6) The following are sourced to the location at or from which
37 delivery is made to the consumer:

38 (a) A retail sale of watercraft;

1 (b) A retail sale of a modular home, manufactured home, or mobile
2 home;

3 (c) A retail sale, excluding the lease and rental, of a motor
4 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
5 transportation equipment; and

6 (d) Florist sales. In the case of a sale in which one florist
7 takes an order from a customer and then communicates that order to
8 another florist who delivers the items purchased to the place
9 designated by the customer, the location at or from which the delivery
10 is made to the consumer is deemed to be the location of the florist
11 originally taking the order.

12 (7) A retail sale of the providing of telecommunications services
13 or ancillary services, as those terms are defined in RCW 82.04.065,
14 shall be sourced in accordance with RCW 82.32.520.

15 (8) The definitions in this subsection apply throughout this
16 section.

17 (a) "Delivered electronically" means delivered to the purchaser by
18 means other than tangible storage media.

19 (b) "Direct mail" means printed material delivered or distributed
20 by United States mail or other delivery service to a mass audience or
21 to addressees on a mailing list provided by the purchaser or at the
22 direction of the purchaser when the cost of the items are not billed
23 directly to the recipients. "Direct mail" includes tangible personal
24 property supplied directly or indirectly by the purchaser to the direct
25 mail seller for inclusion in the package containing the printed
26 material. "Direct mail" does not include multiple items of printed
27 material delivered to a single address.

28 (c) "Florist sales" means the retail sale of tangible personal
29 property by a florist. For purposes of this subsection (8)(c),
30 "florist" means a person whose primary business activity is the retail
31 sale of fresh cut flowers, potted ornamental plants, floral
32 arrangements, floral bouquets, wreaths, or any similar products, used
33 for decorative and not landscaping purposes.

34 (d) "Receive" and "receipt" mean taking possession of tangible
35 personal property, making first use of services, or taking possession
36 or making first use of digital goods or digital codes, whichever comes
37 first. "Receive" and "receipt" do not include possession by a shipping
38 company on behalf of the purchaser.

1 (e) "Transportation equipment" means:

2 (i) Locomotives and railcars that are used for the carriage of
3 persons or property in interstate commerce;

4 (ii) Trucks and truck tractors with a gross vehicle weight rating
5 of ten thousand one pounds or greater, trailers, semitrailers, or
6 passenger buses that are:

7 (A) Registered through the international registration plan; and

8 (B) Operated under authority of a carrier authorized and
9 certificated by the United States department of transportation or
10 another federal authority to engage in the carriage of persons or
11 property in interstate commerce;

12 (iii) Aircraft that are operated by air carriers authorized and
13 certificated by the United States department of transportation or
14 another federal or foreign authority to engage in the carriage of
15 persons or property in interstate or foreign commerce; or

16 (iv) Containers designed for use on and component parts attached or
17 secured on the items described in (e)(i) through (iii) of this
18 subsection.

19 (9) In those instances where there is no obligation on the part of
20 a seller to collect or remit this state's sales or use tax, the use of
21 tangible personal property, digital product, or of a service, subject
22 to use tax, is sourced to the place of first use in this state. The
23 definition of use in RCW 82.12.010 applies to this subsection.

24 **PART VIII**

25 **MISCELLANEOUS AMENDMENTS**

26 **Sec. 801.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to
27 read as follows:

28 ~~((Until July 1, 2006, a city or town may not impose any new taxes
29 or fees specific to internet service providers.))~~ A city or town may
30 tax internet ~~((service))~~ access providers under generally applicable
31 business taxes or fees, at a rate not to exceed the rate applied to a
32 general service classification. For the purposes of this section,
33 "internet ~~((service))~~ access" has the same meaning as in RCW 82.04.297.

34 **Sec. 802.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to
35 read as follows:

1 (1) As to insurers, other than title insurers and taxpayers under
2 RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all
3 other taxes, except as otherwise provided in this section.

4 (2) Subsection (1) of this section does not apply with respect to:

5 (a) Taxes on real and tangible personal property;

6 (b) Excise taxes on the sale, purchase, use, or possession of (i)
7 real property; (ii) tangible personal property; (iii) extended
8 warranties; ~~((and))~~ (iv) services; and (v) digital products as defined
9 in section 201 of this act; and

10 (c) The tax imposed in RCW 82.04.260(10), regarding public and
11 nonprofit hospitals.

12 (3) For the purposes of this section, the term "taxes" includes
13 taxes imposed by the state or any county, city, town, municipal
14 corporation, quasi-municipal corporation, or other political
15 subdivision.

16 **Sec. 803.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to
17 read as follows:

18 Except only as expressly provided in chapters 67.28, 81.104, and
19 82.14 RCW, the state preempts the field of imposing retail sales and
20 use taxes and taxes upon ~~((retail sales of tangible personal property,~~
21 ~~the use of tangible personal property,))~~ parimutuel wagering authorized
22 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
23 town, or other municipal subdivision shall have the right to impose
24 taxes of that nature. Except as provided in RCW 64.34.440 and
25 82.02.050 through 82.02.090, no county, city, town, or other municipal
26 corporation shall impose any tax, fee, or charge, either direct or
27 indirect, on the construction or reconstruction of residential
28 buildings, commercial buildings, industrial buildings, or on any other
29 building or building space or appurtenance thereto, or on the
30 development, subdivision, classification, or reclassification of land.
31 However, this section does not preclude dedications of land or
32 easements within the proposed development or plat which the county,
33 city, town, or other municipal corporation can demonstrate are
34 reasonably necessary as a direct result of the proposed development or
35 plat to which the dedication of land or easement is to apply.

36 This section does not prohibit voluntary agreements with counties,
37 cities, towns, or other municipal corporations that allow a payment in

1 lieu of a dedication of land or to mitigate a direct impact that has
2 been identified as a consequence of a proposed development,
3 subdivision, or plat. A local government shall not use such voluntary
4 agreements for local off-site transportation improvements within the
5 geographic boundaries of the area or areas covered by an adopted
6 transportation program authorized by chapter 39.92 RCW. Any such
7 voluntary agreement is subject to the following provisions:

8 (1) The payment shall be held in a reserve account and may only be
9 expended to fund a capital improvement agreed upon by the parties to
10 mitigate the identified, direct impact;

11 (2) The payment shall be expended in all cases within five years of
12 collection; and

13 (3) Any payment not so expended shall be refunded with interest to
14 be calculated from the original date the deposit was received by the
15 county and at the same rate applied to tax refunds pursuant to RCW
16 84.69.100; however, if the payment is not expended within five years
17 due to delay attributable to the developer, the payment shall be
18 refunded without interest.

19 No county, city, town, or other municipal corporation shall require
20 any payment as part of such a voluntary agreement which the county,
21 city, town, or other municipal corporation cannot establish is
22 reasonably necessary as a direct result of the proposed development or
23 plat.

24 Nothing in this section prohibits cities, towns, counties, or other
25 municipal corporations from collecting reasonable fees from an
26 applicant for a permit or other governmental approval to cover the cost
27 to the city, town, county, or other municipal corporation of processing
28 applications, inspecting and reviewing plans, or preparing detailed
29 statements required by chapter 43.21C RCW.

30 This section does not limit the existing authority of any county,
31 city, town, or other municipal corporation to impose special
32 assessments on property specifically benefitted thereby in the manner
33 prescribed by law.

34 Nothing in this section prohibits counties, cities, or towns from
35 imposing or permits counties, cities, or towns to impose water, sewer,
36 natural gas, drainage utility, and drainage system charges(~~(+~~
37 ~~PROVIDED, That~~)). However, no such charge shall exceed the
38 proportionate share of such utility or system's capital costs which the

1 county, city, or town can demonstrate are attributable to the property
2 being charged(~~(:—PROVIDED FURTHER, That)~~). Furthermore, these
3 provisions (~~(shall)~~) may not be interpreted to expand or contract any
4 existing authority of counties, cities, or towns to impose such
5 charges.

6 Nothing in this section prohibits a transportation benefit district
7 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
8 the legislative authority of a county, city, or town from approving the
9 imposition of such fees within a transportation benefit district.

10 Nothing in this section prohibits counties, cities, or towns from
11 imposing transportation impact fees authorized pursuant to chapter
12 39.92 RCW.

13 Nothing in this section prohibits counties, cities, or towns from
14 requiring property owners to provide relocation assistance to tenants
15 under RCW 59.18.440 and 59.18.450.

16 Nothing in this section limits the authority of counties, cities,
17 or towns to implement programs consistent with RCW 36.70A.540, nor to
18 enforce agreements made pursuant to such programs.

19 This section does not apply to special purpose districts formed and
20 acting pursuant to Title(~~(s)~~) 54, 57, or 87 RCW, nor is the authority
21 conferred by these titles affected.

22 **Sec. 804.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to
23 read as follows:

24 (1) Subject to the limits in this section, an eligible person is
25 allowed a credit against the tax due under this chapter. The credit is
26 based on qualified employment positions in eligible areas. The credit
27 is available to persons who are engaged in international services as
28 defined in this section. In order to receive the credit, the
29 international service activities must take place at a business within
30 the eligible area.

31 (2)(a) The credit shall equal three thousand dollars for each
32 qualified employment position created after July 1, 1998, in an
33 eligible area. A credit is earned for the calendar year the person is
34 hired to fill the position, plus the four subsequent consecutive years,
35 if the position is maintained for those four years.

36 (b) Credit may not be taken for hiring of persons into positions
37 that exist on July 1, 1998. Credit is authorized for new employees

1 hired for new positions created after July 1, 1998. New positions
2 filled by existing employees are eligible for the credit under this
3 section only if the position vacated by the existing employee is filled
4 by a new hire.

5 (c) When a position is newly created, if it is filled before July
6 1st, this position is eligible for the full yearly credit. If it is
7 filled after June 30th, this position is eligible for half of the
8 credit.

9 (d) Credit may be accrued and carried over until it is used. No
10 refunds may be granted for credits under this section.

11 (3) For the purposes of this section:

12 (a) "Eligible area" means: (i) A community empowerment zone under
13 RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets
14 the unemployment and poverty criteria of RCW 43.31C.030 and is
15 designated under subsection (4) of this section;

16 (b) "Eligible person" means a person, as defined in RCW 82.04.030,
17 who in an eligible area at a specific location is engaged in the
18 business of providing international services;

19 (c)(i) "International services" means the provision of a service,
20 as defined under (c)(iii) of this subsection, that is subject to tax
21 under RCW 82.04.290 (2) or (3), and either:

22 (A) Is for a person domiciled outside the United States; or

23 (B) The service itself is for use primarily outside of the United
24 States.

25 (ii) "International services" excludes any service taxable under
26 RCW 82.04.290(1).

27 (iii) Eligible services are: Computer; data processing;
28 information; legal; accounting and tax preparation; engineering;
29 architectural; business consulting; business management; public
30 relations and advertising; surveying; geological consulting; real
31 estate appraisal; or financial services. For the purposes of this
32 section these services mean the following:

33 (A) "Computer services" are services such as computer programming,
34 custom software modification, customization of canned software, custom
35 software installation, custom software maintenance, custom software
36 repair, training in the use of software, computer systems design, and
37 custom software update services;

1 (B) "Data processing services" are services such as word
2 processing, data entry, data retrieval, data search, information
3 compilation, payroll processing, business accounts processing, data
4 production, and other computerized data and information storage or
5 manipulation. "Data processing services" also includes the use of a
6 computer or computer time for data processing whether the processing is
7 performed by the provider of the computer or by the purchaser or other
8 beneficiary of the service;

9 (C) "Information services" are services such as electronic data
10 retrieval or research that entails furnishing financial or legal
11 information, data or research, internet (~~(service)~~) access as defined
12 in RCW 82.04.297, general or specialized news, or current information;

13 (D) "Legal services" are services such as representation by an
14 attorney, or other person when permitted, in an administrative or legal
15 proceeding, legal drafting, paralegal services, legal research
16 services, and court reporting services, arbitration, and mediation
17 services;

18 (E) "Accounting and tax preparation services" are services such as
19 accounting, auditing, actuarial, bookkeeping, or tax preparation
20 services;

21 (F) "Engineering services" are services such as civil, electrical,
22 mechanical, petroleum, marine, nuclear, and design engineering, machine
23 designing, machine tool designing, and sewage disposal system designing
24 services;

25 (G) "Architectural services" are services such as structural or
26 landscape design or architecture, interior design, building design,
27 building program management, and space planning services;

28 (H) "Business consulting services" are services such as primarily
29 providing operating counsel, advice, or assistance to the management or
30 owner of any business, private, nonprofit, or public organization,
31 including but not limited to those in the following areas:
32 Administrative management consulting; general management consulting;
33 human resource consulting or training; management engineering
34 consulting; management information systems consulting; manufacturing
35 management consulting; marketing consulting; operations research
36 consulting; personnel management consulting; physical distribution
37 consulting; site location consulting; economic consulting; motel,

1 hotel, and resort consulting; restaurant consulting; government affairs
2 consulting; and lobbying;

3 (I) "Business management services" are services such as
4 administrative management, business management, and office management.
5 "Business management services" does not include property management or
6 property leasing, motel, hotel, and resort management, or automobile
7 parking management;

8 (J) "Public relations and advertising services" are services such
9 as layout, art direction, graphic design, copy writing, mechanical
10 preparation, opinion research, marketing research, marketing, or
11 production supervision;

12 (K) "Surveying services" are services such as land surveying;

13 (L) "Geological consulting services" are services rendered for the
14 oil, gas, and mining industry and other earth resource industries, and
15 other services such as soil testing;

16 (M) "Real estate appraisal services" are services such as market
17 appraisal and other real estate valuation; and

18 (N) "Financial services" are services such as banking, loan,
19 security, investment management, investment advisory, mortgage
20 servicing, contract collection, and finance leasing services, engaged
21 in by financial businesses, or businesses similar to or in competition
22 with financial businesses; and

23 (d) "Qualified employment position" means a permanent full-time
24 position to provide international services. If an employee is either
25 voluntarily or involuntarily separated from employment, the employment
26 position is considered filled on a full-time basis if the employer is
27 either training or actively recruiting a replacement employee.

28 (4) By ordinance, the legislative authority of a city, or
29 legislative authorities of contiguous cities by ordinance of each
30 city's legislative authority, with population greater than eighty
31 thousand, located in a county containing no community empowerment zones
32 as designated under RCW 43.31C.020, may designate a contiguous group of
33 census tracts within the city or cities as an eligible area under this
34 section. Each of the census tracts must meet the unemployment and
35 poverty criteria of RCW 43.31C.030. Upon making the designation, the
36 city or cities shall transmit to the department of revenue a
37 certification letter and a map, each explicitly describing the

1 boundaries of the census tract. This designation must be made by
2 December 31, 1998.

3 (5) No application is necessary for the tax credit. The person
4 must keep records necessary for the department to verify eligibility
5 under this section. This information includes:

6 (a) Employment records for the previous six years;

7 (b) Information relating to description of international service
8 activity engaged in at the eligible location by the person; and

9 (c) Information relating to customers of international service
10 activity engaged in at that location by the person.

11 (6) If at any time the department finds that a person is not
12 eligible for tax credit under this section, the amount of taxes for
13 which a credit has been used shall be immediately due. The department
14 shall assess interest, but not penalties, on the credited taxes for
15 which the person is not eligible. The interest shall be assessed at
16 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
17 shall be assessed retroactively to the date the tax credit was taken,
18 and shall accrue until the taxes for which a credit has been used are
19 repaid.

20 (7) The employment security department shall provide to the
21 department of revenue such information needed by the department of
22 revenue to verify eligibility under this section.

23 **Sec. 805.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each
24 amended to read as follows:

25 (1) Every consignee, bailee, factor, or auctioneer (~~((authorized,~~
26 ~~engaged, or employed to sell or call))~~) selling or calling for bids on
27 ~~((tangible))~~ personal property belonging to another, ~~((and so selling~~
28 ~~or calling, shall be))~~ is deemed the seller of such ~~((tangible))~~
29 personal property within the meaning of this chapter ~~((and)).~~ All
30 sales made by such persons are subject to ~~((its))~~ the provisions of
31 this chapter even though the sale would have been exempt from the tax
32 ~~((hereunder))~~ imposed in this chapter had it been made directly by the
33 owner of the property sold.

34 (2)(a) Except as provided in (b) of this subsection (2), every
35 consignee, bailee, factor, or auctioneer ~~((shall))~~ must collect and
36 remit the amount of tax due under this chapter with respect to sales
37 made or called by ~~((him: PROVIDED,))~~ that seller.

1 or his or her bailor or donor has paid a legally imposed retail sales
2 or use tax with respect to such property, extended warranty, digital
3 product, or service defined as a retail sale in RCW 82.04.050 (2)(a) or
4 (g) or (3)(a) to any other state, possession, territory, or
5 commonwealth of the United States, any political subdivision thereof,
6 the District of Columbia, and any foreign country or political
7 subdivision thereof(~~(, prior to the use of such property, extended~~
8 ~~warranty, or service in Washington)~~).

9 **Sec. 808.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to
10 read as follows:

11 (1) Every person who maintains in this state a place of business or
12 a stock of goods, or engages in business activities within this state,
13 shall obtain from the department a certificate of registration, and
14 shall, at the time of making sales of tangible personal property,
15 digital products, extended warranties, or sales of any service defined
16 as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), or making
17 transfers of either possession or title, or both, of tangible personal
18 property for use in this state, collect from the purchasers or
19 transferees the tax imposed under this chapter. The tax to be
20 collected under this section (~~(shall)~~) must be in an amount equal to
21 the purchase price multiplied by the rate in effect for the retail
22 sales tax under RCW 82.08.020. For the purposes of this chapter, the
23 phrase "maintains in this state a place of business" shall include the
24 solicitation of sales and/or taking of orders by sales agents or
25 traveling representatives. For the purposes of this chapter, "engages
26 in business activity within this state" includes every activity which
27 is sufficient under the Constitution of the United States for this
28 state to require collection of tax under this chapter. The department
29 (~~(shall)~~) must in rules specify activities which constitute engaging in
30 business activity within this state, and (~~(shall)~~) must keep the rules
31 current with future court interpretations of the Constitution of the
32 United States.

33 (2) Every person who engages in this state in the business of
34 acting as an independent selling agent for persons who do not hold a
35 valid certificate of registration, and who receives compensation by
36 reason of sales of tangible personal property, digital products,
37 extended warranties, or sales of any service defined as a retail sale

1 in RCW 82.04.050 (2)(a) or (g) or (3)(a), of his or her principals for
2 use in this state, (~~shall~~) must, at the time such sales are made,
3 collect from the purchasers the tax imposed on the purchase price under
4 this chapter, and for that purpose shall be deemed a retailer as
5 defined in this chapter.

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

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

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

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

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

30 (ii) The taking of orders; or

31 (iii) The processing of payments; and

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

37 (6) Subsection (5) of this section expires when: (a) The United
38 States congress grants individual states the authority to impose sales

1 and use tax collection duties on remote sellers; or (b) it is
2 determined by a court of competent jurisdiction, in a judgment not
3 subject to review, that a state can impose sales and use tax collection
4 duties on remote sellers.

5 **Sec. 809.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to
6 read as follows:

7 (1) A city, town, or county that creates a benefit zone and
8 finances public improvements pursuant to chapter 39.100 RCW may impose
9 a sales and use tax in accordance with the terms of this chapter and
10 subject to the criteria set forth in this section. Except as provided
11 in this section, the tax is in addition to other taxes authorized by
12 law and shall be collected from those persons who are taxable by the
13 state under chapters 82.08 and 82.12 RCW upon the occurrence of any
14 taxable event within the taxing jurisdiction of the city, town, or
15 county. The rate of tax shall not exceed the rate provided in RCW
16 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~
17 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of
18 any other taxes imposed on the same events that are credited against
19 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax
20 rate shall be no higher than what is reasonably necessary for the local
21 government to receive its entire annual state contribution in a ten-
22 month period of time.

23 (2) The tax imposed under subsection (1) of this section shall be
24 deducted from the amount of tax otherwise required to be collected or
25 paid over to the department under chapter 82.08 or 82.12 RCW. The
26 department shall perform the collection of such taxes on behalf of the
27 city, town, or county at no cost to the city, town, or county.

28 (3) No tax may be imposed under this section before July 1, 2007.
29 Before imposing a tax under this section, the city, town, or county
30 shall first have received tax allocation revenues during the preceding
31 calendar year. The tax imposed under this section shall expire on the
32 earlier of the date: (a) The tax allocation revenues are no longer
33 used for public improvements and public improvement costs; (b) the
34 bonds issued under the authority of chapter 39.100 RCW are retired, if
35 the bonds are issued; or (c) that is thirty years after the tax is
36 first imposed.

1 (4) An ordinance adopted by the legislative authority of a city,
2 town, or county imposing a tax under this section shall provide that:

3 (a) The tax shall first be imposed on the first day of a fiscal
4 year;

5 (b) The amount of tax received by the local government in any
6 fiscal year shall not exceed the amount of the state contribution;

7 (c) The tax shall cease to be distributed for the remainder of any
8 fiscal year in which either:

9 (i) The amount of tax distributions totals the amount of the state
10 contribution;

11 (ii) The amount of tax distributions totals the amount of local
12 public sources, dedicated in the previous calendar year to finance
13 public improvements authorized under chapter 39.100 RCW, expended in
14 the previous year for public improvement costs or used to pay for other
15 bonds issued to pay for public improvements; or

16 (iii) The amount of revenue from taxes imposed under this section
17 by all cities, towns, and counties totals the annual state credit limit
18 as provided in RCW 82.32.700(3);

19 (d) The tax shall be distributed again, should it cease to be
20 distributed for any of the reasons provided in (c) of this subsection,
21 at the beginning of the next fiscal year, subject to the restrictions
22 in this section; and

23 (e) Any revenue generated by the tax in excess of the amounts
24 specified in (b) and (c) of this subsection shall belong to the state
25 of Washington.

26 (5) If both a county and a city or town impose a tax under this
27 section, the tax imposed by the city, town, or county shall be credited
28 as follows:

29 (a) If the county has created a benefit zone before the city or
30 town, the tax imposed by the county shall be credited against the tax
31 imposed by the city or town, the purpose of such credit is to give
32 priority to the county tax; and

33 (b) If the city or town has created a benefit zone before the
34 county, the tax imposed by the city or town shall be credited against
35 the tax imposed by the county, the purpose of such credit is to give
36 priority to the city or town tax.

37 (6) The department shall determine the amount of tax distributions
38 attributable to each city, town, and county imposing a sales and use

1 tax under this section and shall advise a city, town, or county when
2 the tax will cease to be distributed for the remainder of the fiscal
3 year as provided in subsection (4)(c) of this section. Determinations
4 by the department of the amount of taxes attributable to a city, town,
5 or county are final and shall not be used to challenge the validity of
6 any tax imposed under this section. The department shall remit any tax
7 revenues in excess of the amounts specified in subsection (4)(b) and
8 (c) of this section to the state treasurer who shall deposit the moneys
9 in the general fund.

10 (7) The definitions in this subsection apply throughout this
11 section and RCW 82.14.470 unless the context clearly requires
12 otherwise.

13 (a) "Base year" means the calendar year immediately following the
14 creation of a benefit zone.

15 (b) "Benefit zone" has the same meaning as provided in RCW
16 39.100.010.

17 (c) "Excess local excise taxes" has the same meaning as provided in
18 RCW 39.100.050.

19 (d) "Excess state excise taxes" means the amount of excise taxes
20 received by the state during the measurement year from taxable activity
21 within the benefit zone over and above the amount of excise taxes
22 received by the state during the base year from taxable activity within
23 the benefit zone. However, if a local government creates the benefit
24 zone and reasonably determines that no activity subject to tax under
25 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
26 preceding the creation of the benefit zone within the boundaries of the
27 area that became the benefit zone, "excess state excise taxes" means
28 the entire amount of state excise taxes the state receives during a
29 calendar year period beginning with the calendar year immediately
30 following the creation of the benefit zone and continuing with each
31 measurement year thereafter.

32 (e) "State excise taxes" means revenues derived from state retail
33 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
34 of tax distributions from all local retail sales and use taxes imposed
35 on the same taxable events that are credited against the state retail
36 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
37 local tax authorized in this section.

1 (f) "Fiscal year" has the same meaning as provided in RCW
2 39.100.030.

3 (g) "Measurement year" means a calendar year, beginning with the
4 calendar year following the base year and each calendar year
5 thereafter, that is used annually to measure the amount of excess state
6 excise taxes and excess local excise taxes.

7 (h) "State contribution" means the lesser of two million dollars or
8 an amount equal to excess state excise taxes received by the state
9 during the preceding calendar year.

10 (i) "Tax allocation revenues" has the same meaning as provided in
11 RCW 39.100.010.

12 (j) "Public improvements" and "public improvement costs" have the
13 same meanings as provided in RCW 39.100.010.

14 (k) "Local public sources" includes, but is not limited to, private
15 monetary contributions, assessments, dedicated local government funds,
16 and tax allocation revenues. "Local public sources" does not include
17 local government funds derived from any state loan or state grant, any
18 local tax that is credited against the state sales and use taxes, or
19 any other state funds.

20 **Sec. 810.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to
21 read as follows:

22 For the purposes of this chapter, unless otherwise required by the
23 context:

24 (1) "Railroad business" means the business of operating any
25 railroad, by whatever power operated, for public use in the conveyance
26 of persons or property for hire. It shall not, however, include any
27 business herein defined as an urban transportation business.

28 (2) "Express business" means the business of carrying property for
29 public hire on the line of any common carrier operated in this state,
30 when such common carrier is not owned or leased by the person engaging
31 in such business.

32 (3) "Railroad car business" means the business of operating stock
33 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
34 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
35 other kinds of cars used for transportation of property or persons upon
36 the line of any railroad operated in this state when such railroad is
37 not owned or leased by the person engaging in such business.

1 (4) "Water distribution business" means the business of operating
2 a plant or system for the distribution of water for hire or sale.

3 (5) "Light and power business" means the business of operating a
4 plant or system for the generation, production or distribution of
5 electrical energy for hire or sale and/or for the wheeling of
6 electricity for others.

7 (6) "Telegraph business" means the business of affording
8 telegraphic communication for hire.

9 (7) "Gas distribution business" means the business of operating a
10 plant or system for the production or distribution for hire or sale of
11 gas, whether manufactured or natural.

12 (8) "Motor transportation business" means the business (except
13 urban transportation business) of operating any motor propelled vehicle
14 by which persons or property of others are conveyed for hire, and
15 includes, but is not limited to, the operation of any motor propelled
16 vehicle as an auto transportation company (except urban transportation
17 business), common carrier, or contract carrier as defined by RCW
18 81.68.010 and 81.80.010(~~(+---PROVIDED, That)~~). However, "motor
19 transportation business" (~~(shall)~~) does not mean or include the
20 transportation of logs or other forest products exclusively upon
21 private roads or private highways.

22 (9) "Urban transportation business" means the business of operating
23 any vehicle for public use in the conveyance of persons or property for
24 hire, insofar as (a) operating entirely within the corporate limits of
25 any city or town, or within five miles of the corporate limits thereof,
26 or (b) operating entirely within and between cities and towns whose
27 corporate limits are not more than five miles apart or within five
28 miles of the corporate limits of either thereof. Included herein, but
29 without limiting the scope hereof, is the business of operating
30 passenger vehicles of every type and also the business of operating
31 cartage, pickup, or delivery services, including in such services the
32 collection and distribution of property arriving from or destined to a
33 point within or without the state, whether or not such collection or
34 distribution be made by the person performing a local or interstate
35 line-haul of such property.

36 (10)(a) "Public service business" means any of the businesses
37 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)
38 of this section or any business subject to control by the state, or

1 having the powers of eminent domain and the duties incident thereto, or
2 any business hereafter declared by the legislature to be of a public
3 service nature, except telephone business and low-level radioactive
4 waste site operating companies as redefined in RCW 81.04.010. It
5 includes, among others, without limiting the scope hereof: Airplane
6 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
7 road, water transportation and wharf businesses.

8 (b) The definitions in this subsection (10)(b) apply throughout
9 this subsection (10).

10 (i) "Competitive telephone service" has the same meaning as in RCW
11 82.04.065.

12 (ii) "Network telephone service" means the providing by any person
13 of access to a telephone network, telephone network switching service,
14 toll service, or coin telephone services, or the providing of
15 telephonic, video, data, or similar communication or transmission for
16 hire, via a telephone network, toll line or channel, cable, microwave,
17 or similar communication or transmission system. "Network telephone
18 service" includes the provision of transmission to and from the site of
19 an internet provider via a telephone network, toll line or channel,
20 cable, microwave, or similar communication or transmission system.
21 "Network telephone service" does not include the providing of
22 competitive telephone service, the providing of cable television
23 service, the providing of broadcast services by radio or television
24 stations, nor the provision of internet (~~service~~) access as defined
25 in RCW 82.04.297, including the reception of dial-in connection,
26 provided at the site of the internet service provider.

27 (iii) "Telephone business" means the business of providing network
28 telephone service. It includes cooperative or farmer line telephone
29 companies or associations operating an exchange.

30 (iv) "Telephone service" means competitive telephone service or
31 network telephone service, or both, as defined in (b)(i) and (ii) of
32 this subsection.

33 (11) "Tugboat business" means the business of operating tugboats,
34 towboats, wharf boats or similar vessels in the towing or pushing of
35 vessels, barges or rafts for hire.

36 (12) "Gross income" means the value proceeding or accruing from the
37 performance of the particular public service or transportation business
38 involved, including operations incidental thereto, but without any

1 deduction on account of the cost of the commodity furnished or sold,
2 the cost of materials used, labor costs, interest, discount, delivery
3 costs, taxes, or any other expense whatsoever paid or accrued and
4 without any deduction on account of losses.

5 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
6 year," "person," "value proceeding or accruing," "business," "engaging
7 in business," "in this state," "within this state," "cash discount" and
8 "successor" shall apply equally in the provisions of this chapter.

9 **Sec. 811.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to
10 read as follows:

11 For the purposes of this chapter:

12 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
13 the words and phrases "tax year," "taxable year," "person," "company,"
14 "gross proceeds of sales," "gross income of the business," "business,"
15 "engaging in business," "successor," "gross operating revenue," "gross
16 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
17 "extended warranty," and "value of products" shall apply equally to the
18 provisions of this chapter.

19 (2) Whenever "property" or "personal property" is used, those terms
20 must be construed to include digital products unless: (a) It is clear
21 from the context that the term "personal property" is intended only to
22 refer to tangible personal property; (b) it is clear from the context
23 that the term "property" is intended only to refer to tangible personal
24 property, real property, or both; or (c) to construe the term
25 "property" or "personal property" as including digital products would
26 yield unlikely, absurd, or strained consequences.

27 (3) The definitions in this subsection apply throughout this
28 chapter, unless the context clearly requires otherwise.

29 (a) "Agreement" means the streamlined sales and use tax agreement.

30 (b) "Associate member" means a petitioning state that is found to
31 be in compliance with the agreement and changes to its laws, rules, or
32 other authorities necessary to bring it into compliance are not in
33 effect, but are scheduled to take effect on or before January 1, 2008.
34 The petitioning states, by majority vote, may also grant associate
35 member status to a petitioning state that does not receive an
36 affirmative vote of three-fourths of the petitioning states upon a
37 finding that the state has achieved substantial compliance with the

1 terms of the agreement as a whole, but not necessarily each required
2 provision, measured qualitatively, and there is a reasonable
3 expectation that the state will achieve compliance by January 1, 2008.

4 (c) "Certified automated system" means software certified under the
5 agreement to calculate the tax imposed by each jurisdiction on a
6 transaction, determine the amount of tax to remit to the appropriate
7 state, and maintain a record of the transaction.

8 (d) "Certified service provider" means an agent certified under the
9 agreement to perform all of the seller's sales and use tax functions,
10 other than the seller's obligation to remit tax on its own purchases.

11 (e)(i) "Member state" means a state that:

12 (A) Has petitioned for membership in the agreement and submitted a
13 certificate of compliance; and

14 (B) Before the effective date of the agreement, has been found to
15 be in compliance with the requirements of the agreement by an
16 affirmative vote of three-fourths of the other petitioning states; or

17 (C) After the effective date of the agreement, has been found to be
18 in compliance with the agreement by a three-fourths vote of the entire
19 governing board of the agreement.

20 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
21 is effective on the first day of a calendar quarter at least sixty days
22 after at least ten states comprising at least twenty percent of the
23 total population, as determined by the 2000 federal census, of all
24 states imposing a state sales tax have petitioned for membership and
25 have either been found in compliance with the agreement or have been
26 found to be an associate member under section 704 of the agreement.

27 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection
28 is effective on the state's proposed date of entry or the first day of
29 the calendar quarter after its petition is approved by the governing
30 board, whichever is later, and is at least sixty days after its
31 petition is approved.

32 (f) "Model 1 seller" means a seller that has selected a certified
33 service provider as its agent to perform all the seller's sales and use
34 tax functions, other than the seller's obligation to remit tax on its
35 own purchases.

36 (g) "Model 2 seller" means a seller that has selected a certified
37 automated system to perform part of its sales and use tax functions,
38 but retains responsibility for remitting the tax.

1 (h) "Model 3 seller" means a seller that has sales in at least five
2 member states, has total annual sales revenue of at least five hundred
3 million dollars, has a proprietary system that calculates the amount of
4 tax due each jurisdiction, and has entered into a performance agreement
5 with the member states that establishes a tax performance standard for
6 the seller. As used in this subsection (~~((+2+))~~) (3)(h), a seller
7 includes an affiliated group of sellers using the same proprietary
8 system.

9 (i) "Source" means the location in which the sale or use of
10 tangible personal property, a digital product, an extended warranty, or
11 a service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B
12 RCW, is deemed to occur.

13 **Sec. 812.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to
14 read as follows:

15 For purposes of (~~(compliance with the requirements of the agreement~~
16 ~~only))~~ construing those provisions of the streamlined sales and use tax
17 agreement that have been incorporated into this title, and unless the
18 context requires otherwise, the terms "product" and "products" refer to
19 tangible personal property, digital products, services, extended
20 warranties, and anything else that can be sold or used.

21 **PART IX**
22 **AMNESTY**

23 NEW SECTION. **Sec. 901.** (1) Except as provided in subsection (2)
24 of this section, no person may be held liable for the failure to
25 collect or pay state and local sales and use taxes accrued before the
26 effective date of this act on the sale or use of digital goods.

27 (2) Subsection (1) of this section does not relieve any person from
28 liability for:

29 (a) State and local sales and use taxes assessed by the department
30 of revenue, if the assessment was originally issued before January 1,
31 2009; and

32 (b) State and local sales taxes that the person collected from
33 buyers but did not remit to the department of revenue.

34 (3) Nothing in this section may be construed as authorizing the

1 refund of state and local sales and use taxes properly paid on the sale
2 or use of digital goods before the effective date of this act.

3 (4) For purposes of this section, "digital goods" has the same
4 meaning as in section 201 of this act.

5 **PART X**
6 **MISCELLANEOUS**

7 NEW SECTION. **Sec. 1001.** This act does not have any impact
8 whatsoever on the characterization of digital products, as defined in
9 section 201 of this act, as tangible or intangible personal property
10 for purposes of property taxation and may not be used in any way in
11 construing any provision of Title 84 RCW.

12 NEW SECTION. **Sec. 1002.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 1003.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 July 1, 2009.

20 NEW SECTION. **Sec. 1004.** Part headings used in this act are not
21 any part of the law."

22 Correct the title.

EFFECT: Eliminates the imposition of sales and use tax on digital
automated services. (Only standard information such as movies, books,
and music are subject to tax.) Eliminates sales and use tax on
streamed digital products. (Only downloaded digital products would be
subject to tax.) Eliminates apportionment and nexus provisions.

--- END ---