



1        NEW SECTION.    **Sec. 101.**    (1) In 2007, the legislature directed the  
2 department of revenue (department) to conduct a study of the taxation  
3 of electronically delivered products (digital products). In conducting  
4 the study, the department was assisted by a committee comprised of  
5 legislators, academics, and individuals representing different segments  
6 of government and industry (the "study committee").

7        (2) At the conclusion of the study, the department issued its final  
8 report December 5, 2008. The final report noted that any  
9 recommendations to the legislature should promote the following goals:  
10 (a) Simplicity and fairness; (b) conformity with the streamlined sales  
11 and use tax agreement; (c) neutrality regardless of industry, content,  
12 and delivery method while taking the purchaser's underlying property  
13 rights into account; (d) consideration given to the revenue impact of  
14 potential changes to the tax base; (e) consideration given to the  
15 impact caused by the pyramiding of business inputs; (f) maintaining or  
16 enhancing the competitiveness of businesses located in Washington; and  
17 (g) maintaining certainty, consistency, durability, and equity despite  
18 changes in technology and business models.

19        (3) While the department's final report did not contain  
20 recommendations for the legislature, the report's conclusion notes that  
21 the study committee found that legislation implementing digital  
22 products tax policy is necessary in 2009 to: (a) Protect the sales and  
23 use tax base; (b) establish certainty in our tax code; (c) maintain  
24 conformity with the streamlined sales and use tax agreement; and (d)  
25 encourage economic development.

26        (4) This act is the outgrowth of the work of the department and the  
27 study committee. The purpose of this act is to implement those  
28 findings of the study committee noted in subsection (3) of this  
29 section. This act also takes into account the goals noted in  
30 subsection (2) of this section. Moreover, this act contains specific  
31 provisions to: (a) Provide protections for taxpayers who failed to pay  
32 or collect tax on digital products for periods before the effective  
33 date of this act; and (b) promote the location of server farms and data  
34 centers in this state by preventing the department from considering a  
35 person's ownership of, or rights in, digital goods or digital codes  
36 residing on servers located in this state in determining whether the  
37 person has nexus with this state for purposes of the taxes imposed in  
38 Title 82 RCW.



1 (v) Parimutuel wagering and handicapping contests as authorized by  
2 chapter 67.16 RCW;

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

5 (vii) The internet and internet access as those terms are defined  
6 in RCW 82.04.297;

7 (viii) The service described in RCW 82.04.050(6)(b);

8 (ix) Online educational programs provided by a:

9 (A) Public or private elementary or secondary school; or

10 (B) An institution of higher education as defined in sections 1001  
11 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C.  
12 Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of  
13 this subsection (5)(b)(ix)(B), an online educational program must be  
14 encompassed within the institution's accreditation;

15 (x) Travel agent services, including online travel services, and  
16 automated systems used by travel agents to book reservations;

17 (xi) A service that allows the person receiving the service to make  
18 online sales of products or services, digital or otherwise, using the  
19 service provider's web site. The service described in this subsection  
20 (5)(b)(xi) does not include the underlying sale of the products or  
21 services, digital or otherwise, by the person receiving the service;  
22 and

23 (xii) Online classified advertising services.

24 (6)(a) "Digital goods," except as provided in (b) of this  
25 subsection (6), means sounds, images, data, facts, or information, or  
26 any combination thereof, transferred electronically, including, but not  
27 limited to, specified digital products and other products transferred  
28 electronically not included within the definition of specified digital  
29 products.

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

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

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

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

35 (iv) The representation of a personal service in electronic form,  
36 such as an electronic copy of an engineering report prepared by an  
37 engineer, that primarily involves the application of human effort, and

1 the human effort originated after the customer requested the service;  
2 and

3 (v) Digital automated services and services and activities excluded  
4 from the definition of digital automated services in subsection (5)(b)  
5 of this section.

6 (7) "Digital products" means digital goods and digital automated  
7 services.

8 (8) "Electronically transferred" or "transferred electronically"  
9 means obtained by the purchaser by means other than tangible storage  
10 media. It is not necessary that a copy of the product be physically  
11 transferred to the purchaser. So long as the purchaser may access the  
12 product, it will be considered to have been electronically transferred  
13 to the purchaser.

14 (9) "Specified digital products" means electronically transferred  
15 digital audio-visual works, digital audio works, and digital books.

16 **PART III**

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

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

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

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

31 (b) Installs, repairs, cleans, alters, imprints, improves,  
32 constructs, or decorates real or personal property of or for consumers,  
33 if such tangible personal property becomes an ingredient or component  
34 of such real or personal property without intervening use by such  
35 person; or

1 (c) Purchases for the purpose of consuming the property purchased  
2 in producing for sale a new article of tangible personal property or  
3 substance, of which such property becomes an ingredient or component or  
4 is a chemical used in processing, when the primary purpose of such  
5 chemical is to create a chemical reaction directly through contact with  
6 an ingredient of a new article being produced for sale; or

7 (d) Purchases for the purpose of consuming the property purchased  
8 in producing ferrosilicon which is subsequently used in producing  
9 magnesium for sale, if the primary purpose of such property is to  
10 create a chemical reaction directly through contact with an ingredient  
11 of ferrosilicon; or

12 (e) Purchases for the purpose of providing the property to  
13 consumers as part of competitive telephone service, as defined in RCW  
14 82.04.065. The term shall include every sale of tangible personal  
15 property which is used or consumed or to be used or consumed in the  
16 performance of any activity classified as a "sale at retail" or "retail  
17 sale" even though such property is resold or utilized as provided in  
18 (a), (b), (c), (d), or (e) of this subsection following such use. The  
19 term also means every sale of tangible personal property to persons  
20 engaged in any business which is taxable under RCW 82.04.280 (2) and  
21 (7), 82.04.290, and 82.04.2908; or

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

27 (2) The term "sale at retail" or "retail sale" (~~shall include~~)  
28 includes the sale of or charge made for tangible personal property  
29 consumed and/or for labor and services rendered in respect to the  
30 following:

31 (a) The installing, repairing, cleaning, altering, imprinting, or  
32 improving of tangible personal property of or for consumers, including  
33 charges made for the mere use of facilities in respect thereto, but  
34 excluding charges made for the use of self-service laundry facilities,  
35 and also excluding sales of laundry service to nonprofit health care  
36 facilities, and excluding services rendered in respect to live animals,  
37 birds and insects;

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

9 (c) The constructing, repairing, or improving of any structure  
10 upon, above, or under any real property owned by an owner who conveys  
11 the property by title, possession, or any other means to the person  
12 performing such construction, repair, or improvement for the purpose of  
13 performing such construction, repair, or improvement and the property  
14 is then reconveyed by title, possession, or any other means to the  
15 original owner;

16 (d) The cleaning, fumigating, razing, or moving of existing  
17 buildings or structures, but (~~shall~~) may not include the charge made  
18 for janitorial services; and for purposes of this section the term  
19 "janitorial services" shall mean those cleaning and caretaking services  
20 ordinarily performed by commercial janitor service businesses  
21 including, but not limited to, wall and window washing, floor cleaning  
22 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
23 The term "janitorial services" does not include painting, papering,  
24 repairing, furnace or septic tank cleaning, snow removal or  
25 sandblasting;

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

29 (f) The furnishing of lodging and all other services by a hotel,  
30 rooming house, tourist court, motel, trailer camp, and the granting of  
31 any similar license to use real property, as distinguished from the  
32 renting or leasing of real property, and it (~~shall be~~) is presumed  
33 that the occupancy of real property for a continuous period of one  
34 month or more constitutes a rental or lease of real property and not a  
35 mere license to use or enjoy the same. For the purposes of this  
36 subsection, it shall be presumed that the sale of and charge made for  
37 the furnishing of lodging for a continuous period of one month or more

1 to a person is a rental or lease of real property and not a mere  
2 license to enjoy the same;

3 (g) The installing, repairing, altering, or improving of digital  
4 goods for consumers;

5 (h) Persons taxable under (a), (b), (c), (d), (e), (~~and~~) (f), and  
6 (g) of this subsection when such sales or charges are for property,  
7 labor and services which are used or consumed in whole or in part by  
8 such persons in the performance of any activity defined as a "sale at  
9 retail" or "retail sale" even though such property, labor and services  
10 may be resold after such use or consumption. Nothing contained in this  
11 subsection shall be construed to modify subsection (1) of this section  
12 and nothing contained in subsection (1) of this section (~~shall~~) may  
13 be construed to modify this subsection.

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

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

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

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

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

30 (f) Service charges associated with tickets to professional  
31 sporting events; and

32 (g) The following personal services: Physical fitness services,  
33 tanning salon services, tattoo parlor services, steam bath services,  
34 turkish bath services, escort services, and dating services.

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

36 (i) The renting or leasing of tangible personal property to  
37 consumers; and



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

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

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

13 (6)(a) The term (~~shall~~) also includes the sale of prewritten  
14 computer software other than a sale to a person who presents a resale  
15 certificate under RCW 82.04.470, regardless of the method of delivery  
16 to the end user(~~, but shall~~). For purposes of this subsection  
17 (6)(a), the sale of prewritten computer software includes the sale of  
18 or charge made for a key or an enabling or activation code, where the  
19 key or code is required to activate prewritten computer software and  
20 put the software into use. There is no separate sale of the key or  
21 code from the prewritten computer software, regardless of how the sale  
22 may be characterized by the vendor or by the purchaser.

23 The term "retail sale" does not include the sale of or charge made  
24 for:

25 (i) Custom software; or

26 (ii) The customization of prewritten computer software.

27 (b) The term also includes the charge made to consumers for the  
28 right to access and use prewritten computer software, where possession  
29 of the software is maintained by the seller or a third party,  
30 regardless of whether the charge for the service is on a per use, per  
31 user, per license, subscription, or some other basis.

32 (7) The term (~~shall~~) also includes the sale of or charge made for  
33 an extended warranty to a consumer. For purposes of this subsection,  
34 "extended warranty" means an agreement for a specified duration to  
35 perform the replacement or repair of tangible personal property at no  
36 additional charge or a reduced charge for tangible personal property,  
37 labor, or both, or to provide indemnification for the replacement or  
38 repair of tangible personal property, based on the occurrence of

1 specified events. The term "extended warranty" does not include an  
2 agreement, otherwise meeting the definition of extended warranty in  
3 this subsection, if no separate charge is made for the agreement and  
4 the value of the agreement is included in the sales price of the  
5 tangible personal property covered by the agreement. For purposes of  
6 this subsection, "sales price" has the same meaning as in RCW  
7 82.08.010.

8 (8)(a) The term also includes the following sales to consumers of  
9 digital goods, digital codes, and digital automated services:

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

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

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

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

18 (b) A retail sale of digital goods, digital codes, or digital  
19 automated services under this subsection (8) includes any services  
20 provided by the seller exclusively in connection with the digital  
21 goods, digital codes, or digital automated services, whether or not a  
22 separate charge is made for such services.

23 (c) For purposes of this subsection, "permanent" means perpetual or  
24 for an indefinite or unspecified length of time. A right of permanent  
25 use is presumed to have been granted unless the agreement between the  
26 seller and the purchaser specifies or the circumstances surrounding the  
27 transaction suggest or indicate that the right to use terminates on the  
28 occurrence of a condition subsequent.

29 (9) The term (~~shall~~) does not include the sale of or charge made  
30 for labor and services rendered in respect to the building, repairing,  
31 or improving of any street, place, road, highway, easement, right-of-  
32 way, mass public transportation terminal or parking facility, bridge,  
33 tunnel, or trestle which is owned by a municipal corporation or  
34 political subdivision of the state or by the United States and which is  
35 used or to be used primarily for foot or vehicular traffic including  
36 mass transportation vehicles of any kind.

37 (~~9~~) (10) The term (~~shall~~) also does not include sales of  
38 chemical sprays or washes to persons for the purpose of postharvest

1 treatment of fruit for the prevention of scald, fungus, mold, or decay,  
2 nor (~~shall~~) does it include sales of feed, seed, seedlings,  
3 fertilizer, agents for enhanced pollination including insects such as  
4 bees, and spray materials to: (a) Persons who participate in the  
5 federal conservation reserve program, the environmental quality  
6 incentives program, the wetlands reserve program, and the wildlife  
7 habitat incentives program, or their successors administered by the  
8 United States department of agriculture; (b) farmers for the purpose of  
9 producing for sale any agricultural product; and (c) farmers acting  
10 under cooperative habitat development or access contracts with an  
11 organization exempt from federal income tax under Title 26 U.S.C. Sec.  
12 501(c)(3) or the Washington state department of fish and wildlife to  
13 produce or improve wildlife habitat on land that the farmer owns or  
14 leases.

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

31 (~~(11)~~) (12) The term (~~shall~~) does not include the sale of or  
32 charge made for labor, services, or tangible personal property pursuant  
33 to agreements providing maintenance services for bus, rail, or rail  
34 fixed guideway equipment when a regional transit authority is the  
35 recipient of the labor, services, or tangible personal property, and a  
36 transit agency, as defined in RCW 81.104.015, performs the labor or  
37 services.

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

3       "Consumer" means the following:

4       (1) Any person who purchases, acquires, owns, holds, or uses any  
5 article of tangible personal property irrespective of the nature of the  
6 person's business and including, among others, without limiting the  
7 scope hereof, persons who install, repair, clean, alter, improve,  
8 construct, or decorate real or personal property of or for consumers  
9 other than for the purpose (a) of resale as tangible personal property  
10 in the regular course of business or (b) of incorporating such property  
11 as an ingredient or component of real or personal property when  
12 installing, repairing, cleaning, altering, imprinting, improving,  
13 constructing, or decorating such real or personal property of or for  
14 consumers or (c) of consuming such property in producing for sale a new  
15 article of tangible personal property or a new substance, of which such  
16 property becomes an ingredient or component or as a chemical used in  
17 processing, when the primary purpose of such chemical is to create a  
18 chemical reaction directly through contact with an ingredient of a new  
19 article being produced for sale or (d) of consuming the property  
20 purchased in producing ferrosilicon which is subsequently used in  
21 producing magnesium for sale, if the primary purpose of such property  
22 is to create a chemical reaction directly through contact with an  
23 ingredient of ferrosilicon or (e) of satisfying the person's  
24 obligations under an extended warranty as defined in RCW 82.04.050(7),  
25 if such tangible personal property replaces or becomes an ingredient or  
26 component of property covered by the extended warranty without  
27 intervening use by such person;

28       (2)(a) Any person engaged in any business activity taxable under  
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
30 uses any competitive telephone service, ancillary services, or  
31 telecommunications service as those terms are defined in RCW 82.04.065,  
32 other than for resale in the regular course of business; (c) any person  
33 who purchases, acquires, or uses any service defined in RCW  
34 82.04.050(2) (a) or (g), other than for resale in the regular course of  
35 business or for the purpose of satisfying the person's obligations  
36 under an extended warranty as defined in RCW 82.04.050(7); (d) any  
37 person who purchases, acquires, or uses any amusement and recreation  
38 service defined in RCW 82.04.050(3)(a), other than for resale in the

1 regular course of business; (e) (~~any person who is an end user of~~  
2 ~~software; and (f))~~) any person who purchases or acquires an extended  
3 warranty as defined in RCW 82.04.050(7) other than for resale in the  
4 regular course of business; and (f) any person who is an end user of  
5 software. For purposes of this subsection (2)(f) and RCW 82.04.050(6),  
6 a person who purchases or otherwise acquires prewritten computer  
7 software, who provides services described in RCW 82.04.050(6)(b) and  
8 who will charge consumers for the right to access and use the  
9 prewritten computer software, is not an end user of the prewritten  
10 computer software;

11 (3) Any person engaged in the business of contracting for the  
12 building, repairing or improving of any street, place, road, highway,  
13 easement, right-of-way, mass public transportation terminal or parking  
14 facility, bridge, tunnel, or trestle which is owned by a municipal  
15 corporation or political subdivision of the state of Washington or by  
16 the United States and which is used or to be used primarily for foot or  
17 vehicular traffic including mass transportation vehicles of any kind as  
18 defined in RCW 82.04.280, in respect to tangible personal property when  
19 such person incorporates such property as an ingredient or component of  
20 such publicly owned street, place, road, highway, easement,  
21 right-of-way, mass public transportation terminal or parking facility,  
22 bridge, tunnel, or trestle by installing, placing or spreading the  
23 property in or upon the right-of-way of such street, place, road,  
24 highway, easement, bridge, tunnel, or trestle or in or upon the site of  
25 such mass public transportation terminal or parking facility;

26 (4) Any person who is an owner, lessee or has the right of  
27 possession to or an easement in real property which is being  
28 constructed, repaired, decorated, improved, or otherwise altered by a  
29 person engaged in business, excluding only (a) municipal corporations  
30 or political subdivisions of the state in respect to labor and services  
31 rendered to their real property which is used or held for public road  
32 purposes, and (b) the United States, instrumentalities thereof, and  
33 county and city housing authorities created pursuant to chapter 35.82  
34 RCW in respect to labor and services rendered to their real property.  
35 Nothing contained in this or any other subsection of this definition  
36 shall be construed to modify any other definition of "consumer";

37 (5) Any person who is an owner, lessee, or has the right of

1 possession to personal property which is being constructed, repaired,  
2 improved, cleaned, imprinted, or otherwise altered by a person engaged  
3 in business;

4 (6) Any person engaged in the business of constructing, repairing,  
5 decorating, or improving new or existing buildings or other structures  
6 under, upon, or above real property of or for the United States, any  
7 instrumentality thereof, or a county or city housing authority created  
8 pursuant to chapter 35.82 RCW, including the installing or attaching of  
9 any article of tangible personal property therein or thereto, whether  
10 or not such personal property becomes a part of the realty by virtue of  
11 installation; also, any person engaged in the business of clearing land  
12 and moving earth of or for the United States, any instrumentality  
13 thereof, or a county or city housing authority created pursuant to  
14 chapter 35.82 RCW. Any such person shall be a consumer within the  
15 meaning of this subsection in respect to tangible personal property  
16 incorporated into, installed in, or attached to such building or other  
17 structure by such person, except that consumer does not include any  
18 person engaged in the business of constructing, repairing, decorating,  
19 or improving new or existing buildings or other structures under, upon,  
20 or above real property of or for the United States, or any  
21 instrumentality thereof, if the investment project would qualify for  
22 sales and use tax deferral under chapter 82.63 RCW if undertaken by a  
23 private entity;

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

32 (8) Any person engaged in the business of cleaning up for the  
33 United States, or its instrumentalities, radioactive waste and other  
34 byproducts of weapons production and nuclear research and development;  
35 ((and))

36 (9) Any person who is an owner, lessee, or has the right of  
37 possession of tangible personal property that, under the terms of an  
38 extended warranty as defined in RCW 82.04.050(7), has been repaired or

1 is replacement property, but only with respect to the sale of or charge  
2 made for the repairing of the tangible personal property or the  
3 replacement property;

4 (10) Any person who purchases, acquires, or uses services described  
5 in RCW 82.04.050(6)(b) other than for resale in the regular course of  
6 business; and

7 (11)(a) Any end user of a digital product or digital code.

8 (b)(i) For purposes of this subsection, "end user" means any  
9 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives  
10 by contract a digital product for further commercial broadcast,  
11 rebroadcast, transmission, retransmission, licensing, relicensing,  
12 distribution, redistribution or exhibition of the product, in whole or  
13 in part, to others. A person that purchases digital products or  
14 digital codes for the purpose of giving away such products or codes  
15 will not be considered to have engaged in the distribution or  
16 redistribution of such products or codes and will be treated as an end  
17 user;

18 (ii) If a purchaser of a digital code does not receive the  
19 contractual right to further redistribute, after the digital code is  
20 redeemed, the underlying digital product to which the digital code  
21 relates, then the purchaser of the digital code is an end user. If the  
22 purchaser of the digital code receives the contractual right to further  
23 redistribute, after the digital code is redeemed, the underlying  
24 digital product to which the digital code relates, then the purchaser  
25 of the digital code is not an end user. A purchaser of a digital code  
26 who has the contractual right to further redistribute the digital code  
27 is an end user if that purchaser does not have the right to further  
28 redistribute, after the digital code is redeemed, the underlying  
29 digital product to which the digital code relates.

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

32 For the purposes of this chapter:

33 (1)(a) "Selling price" includes "sales price." "Sales price" means  
34 the total amount of consideration, except separately stated trade-in  
35 property of like kind, including cash, credit, property, and services,  
36 for which tangible personal property, extended warranties, digital  
37 goods, digital codes, digital automated services, or other services

1 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or  
2 rented, valued in money, whether received in money or otherwise. No  
3 deduction from the total amount of consideration is allowed for the  
4 following: (i) The seller's cost of the property sold; (ii) the cost  
5 of materials used, labor or service cost, interest, losses, all costs  
6 of transportation to the seller, all taxes imposed on the seller, and  
7 any other expense of the seller; (iii) charges by the seller for any  
8 services necessary to complete the sale, other than delivery and  
9 installation charges; (iv) delivery charges; and (v) installation  
10 charges.

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

17 (b) "Selling price" or "sales price" does not include: Discounts,  
18 including cash, term, or coupons that are not reimbursed by a third  
19 party that are allowed by a seller and taken by a purchaser on a sale;  
20 interest, financing, and carrying charges from credit extended on the  
21 sale of tangible personal property, extended warranties, digital goods,  
22 digital codes, digital automated services, or other services, if the  
23 amount is separately stated on the invoice, bill of sale, or similar  
24 document given to the purchaser; and any taxes legally imposed directly  
25 on the consumer that are separately stated on the invoice, bill of  
26 sale, or similar document given to the purchaser;

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

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

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

34 (iii) The amount of the consideration attributable to the sale is  
35 fixed and determinable by the seller at the time of the sale of the  
36 item to the purchaser; and

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



1 (A) The purchaser presents a coupon, certificate, or other  
2 documentation to the seller to claim a price reduction or discount  
3 where the coupon, certificate, or documentation is authorized,  
4 distributed, or granted by a third party with the understanding that  
5 the third party will reimburse any seller to whom the coupon,  
6 certificate, or documentation is presented;

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

11 (C) The price reduction or discount is identified as a third party  
12 price reduction or discount on the invoice received by the purchaser or  
13 on a coupon, certificate, or other documentation presented by the  
14 purchaser;

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

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

21 (ii) A professional employer organization when a covered employee  
22 coemployed with the client under the terms of a professional employer  
23 agreement engages in activities that constitute a sale at retail that  
24 is subject to the tax imposed by this chapter. In such cases, the  
25 client, and not the professional employer organization, is deemed to be  
26 the seller and is responsible for collecting and remitting the tax  
27 imposed by this chapter.

28 (b) For the purposes of (a) of this subsection, the terms "client,"  
29 "covered employee," "professional employer agreement," and  
30 "professional employer organization" have the same meanings as in RCW  
31 82.04.540;

32 (3) "Buyer," "purchaser," and "consumer" include, without limiting  
33 the scope hereof, every individual, receiver, assignee, trustee in  
34 bankruptcy, trust, estate, firm, copartnership, joint venture, club,  
35 company, joint stock company, business trust, corporation, association,  
36 society, or any group of individuals acting as a unit, whether mutual,  
37 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,  
38 quasi municipal corporation, and also the state, its departments and

1 institutions and all political subdivisions thereof, irrespective of  
2 the nature of the activities engaged in or functions performed, and  
3 also the United States or any instrumentality thereof;

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

9 (5) "Direct mail" means printed material delivered or distributed  
10 by United States mail or other delivery service to a mass audience or  
11 to addressees on a mailing list provided by the purchaser or at the  
12 direction of the purchaser when the cost of the items are not billed  
13 directly to the recipients. "Direct mail" includes tangible personal  
14 property supplied directly or indirectly by the purchaser to the direct  
15 mail seller for inclusion in the package containing the printed  
16 material. "Direct mail" does not include multiple items of printed  
17 material delivered to a single address;

18 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax  
19 year," "taxable year," "person," "company," "sale," "sale at retail,"  
20 "retail sale," "sale at wholesale," "wholesale," "business," "engaging  
21 in business," "cash discount," "successor," "consumer," "in this state"  
22 and "within this state" shall apply equally to the provisions of this  
23 chapter;

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

30 (8) "Extended warranty" has the same meaning as in RCW  
31 82.04.050(7);

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

34 (10) For the purposes of the taxes imposed under this chapter and  
35 chapter 82.12 RCW, whenever the terms "property" or "personal property"  
36 are used, those terms must be construed to include digital goods and  
37 digital codes unless:

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

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

6       (c) To construe the term "property" or "personal property" as  
7 including digital goods and digital codes would yield unlikely, absurd,  
8 or strained consequences.

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

11       For the purposes of this chapter:

12       (1) "Purchase price" means the same as sales price as defined in  
13 RCW 82.08.010(~~(-)~~);

14       (2)(a) "Value of the article used" shall be the purchase price for  
15 the article of tangible personal property, the use of which is taxable  
16 under this chapter. The term also includes, in addition to the  
17 purchase price, the amount of any tariff or duty paid with respect to  
18 the importation of the article used. In case the article used is  
19 acquired by lease or by gift or is extracted, produced, or manufactured  
20 by the person using the same or is sold under conditions wherein the  
21 purchase price does not represent the true value thereof, the value of  
22 the article used shall be determined as nearly as possible according to  
23 the retail selling price at place of use of similar products of like  
24 quality and character under such rules as the department may prescribe.

25       (b) In case the articles used are acquired by bailment, the value  
26 of the use of the articles so used shall be in an amount representing  
27 a reasonable rental for the use of the articles so bailed, determined  
28 as nearly as possible according to the value of such use at the places  
29 of use of similar products of like quality and character under such  
30 rules as the department of revenue may prescribe. In case any such  
31 articles of tangible personal property are used in respect to the  
32 construction, repairing, decorating, or improving of, and which become  
33 or are to become an ingredient or component of, new or existing  
34 buildings or other structures under, upon, or above real property of or  
35 for the United States, any instrumentality thereof, or a county or city  
36 housing authority created pursuant to chapter 35.82 RCW, including the  
37 installing or attaching of any such articles therein or thereto,

1 whether or not such personal property becomes a part of the realty by  
2 virtue of installation, then the value of the use of such articles so  
3 used shall be determined according to the retail selling price of such  
4 articles, or in the absence of such a selling price, as nearly as  
5 possible according to the retail selling price at place of use of  
6 similar products of like quality and character or, in the absence of  
7 either of these selling price measures, such value may be determined  
8 upon a cost basis, in any event under such rules as the department of  
9 revenue may prescribe.

10 (c) In the case of articles owned by a user engaged in business  
11 outside the state which are brought into the state for no more than one  
12 hundred eighty days in any period of three hundred sixty-five  
13 consecutive days and which are temporarily used for business purposes  
14 by the person in this state, the value of the article used shall be an  
15 amount representing a reasonable rental for the use of the articles,  
16 unless the person has paid tax under this chapter or chapter 82.08 RCW  
17 upon the full value of the article used, as defined in (a) of this  
18 subsection.

19 (d) In the case of articles manufactured or produced by the user  
20 and used in the manufacture or production of products sold or to be  
21 sold to the department of defense of the United States, the value of  
22 the articles used shall be determined according to the value of the  
23 ingredients of such articles.

24 (e) In the case of an article manufactured or produced for purposes  
25 of serving as a prototype for the development of a new or improved  
26 product, the value of the article used shall be determined by: (i) The  
27 retail selling price of such new or improved product when first offered  
28 for sale; or (ii) the value of materials incorporated into the  
29 prototype in cases in which the new or improved product is not offered  
30 for sale.

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

35 (3) "Value of the service used" means the purchase price for the  
36 digital automated service or other service, the use of which is taxable  
37 under this chapter. If the service is received by gift or under  
38 conditions wherein the purchase price does not represent the true value

1    thereof, the value of the service used shall be determined as nearly as  
2    possible according to the retail selling price at place of use of  
3    similar services of like quality and character under rules the  
4    department may prescribe;

5       (4) "Value of the extended warranty used" means the purchase price  
6    for the extended warranty, the use of which is taxable under this  
7    chapter. If the extended warranty is received by gift or under  
8    conditions wherein the purchase price does not represent the true value  
9    of the extended warranty, the value of the extended warranty used shall  
10   be determined as nearly as possible according to the retail selling  
11   price at place of use of similar extended warranties of like quality  
12   and character under rules the department may prescribe;

13       (5) "Value of the digital good or digital code used" means the  
14   purchase price for the digital good or digital code, the use of which  
15   is taxable under this chapter. If the digital good or digital code is  
16   acquired other than by purchase, the value of the digital good or  
17   digital code must be determined as nearly as possible according to the  
18   retail selling price at place of use of similar digital goods or  
19   digital codes of like quality and character under rules the department  
20   may prescribe;

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

23       (a) With respect to tangible personal property, the first act  
24   within this state by which the taxpayer takes or assumes dominion or  
25   control over the article of tangible personal property (as a consumer),  
26   and include installation, storage, withdrawal from storage,  
27   distribution, or any other act preparatory to subsequent actual use or  
28   consumption within this state;

29       (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
30   first act within this state after the service has been performed by  
31   which the taxpayer takes or assumes dominion or control over the  
32   article of tangible personal property upon which the service was  
33   performed (as a consumer), and includes installation, storage,  
34   withdrawal from storage, distribution, or any other act preparatory to  
35   subsequent actual use or consumption of the article within this state;  
36   (~~and~~)

37       (c) With respect to an extended warranty, the first act within this  
38   state after the extended warranty has been acquired by which the

1 taxpayer takes or assumes dominion or control over the article of  
2 tangible personal property to which the extended warranty applies, and  
3 includes installation, storage, withdrawal from storage, distribution,  
4 or any other act preparatory to subsequent actual use or consumption of  
5 the article within this state;

6 (d) With respect to a digital good or digital code, the first act  
7 within this state by which the taxpayer, as a consumer, views,  
8 accesses, downloads, possesses, stores, opens, manipulates, or  
9 otherwise uses or enjoys the digital good or digital code;

10 (e) With respect to a digital automated service, the first act  
11 within this state by which the taxpayer, as a consumer, uses, enjoys,  
12 or otherwise receives the benefit of the service;

13 (f) With respect to a service defined as a retail sale in RCW  
14 82.04.050(6)(b), the first act within this state by which the taxpayer,  
15 as a consumer, accesses the prewritten computer software; and

16 (g) With respect to a service defined as a retail sale in RCW  
17 82.04.050(2)(g), the first act within this state after the service has  
18 been performed by which the taxpayer, as a consumer, views, accesses,  
19 downloads, possesses, stores, opens, manipulates, or otherwise uses or  
20 enjoys the digital good upon which the service was performed;

21 ~~((+6))~~ (7) "Taxpayer" and "purchaser" include all persons included  
22 within the meaning of the word "buyer" and the word "consumer" as  
23 defined in chapters 82.04 and 82.08 RCW;

24 ~~((+7))~~ (8)(a)(i) Except as provided in (a)(ii) of this subsection  
25 ~~((+7))~~ (8), "retailer" means every seller as defined in RCW 82.08.010  
26 and every person engaged in the business of selling tangible personal  
27 property at retail and every person required to collect from purchasers  
28 the tax imposed under this chapter.

29 (ii) "Retailer" does not include a professional employer  
30 organization when a covered employee coemployed with the client under  
31 the terms of a professional employer agreement engages in activities  
32 that constitute a sale of tangible personal property, extended  
33 warranty, digital good, digital code, or a sale of any digital  
34 automated service or service defined as a retail sale in RCW 82.04.050  
35 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by  
36 this chapter. In such cases, the client, and not the professional  
37 employer organization, is deemed to be the retailer and is responsible  
38 for collecting and remitting the tax imposed by this chapter.

1 (b) For the purposes of (a) of this subsection, the terms "client,"  
2 "covered employee," "professional employer agreement," and  
3 "professional employer organization" have the same meanings as in RCW  
4 82.04.540;

5 ~~((8))~~ (9) "Extended warranty" has the same meaning as in RCW  
6 82.04.050(7);

7 ~~((9))~~ (10) The meaning ascribed to words and phrases in chapters  
8 82.04 and 82.08 RCW, insofar as applicable, shall have full force and  
9 effect with respect to taxes imposed under the provisions of this  
10 chapter. "Consumer," in addition to the meaning ascribed to it in  
11 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any  
12 person who distributes or displays, or causes to be distributed or  
13 displayed, any article of tangible personal property, except  
14 newspapers, the primary purpose of which is to promote the sale of  
15 products or services. With respect to property distributed to persons  
16 within this state by a consumer as defined in this subsection ~~((9))~~  
17 (10), the use of the property shall be deemed to be by such consumer.

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

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

23 (a) ~~((Any))~~ Article of tangible personal property purchased at  
24 retail, or acquired by lease, gift, repossession, or bailment, or  
25 extracted or produced or manufactured by the person so using the same,  
26 or otherwise furnished to a person engaged in any business taxable  
27 under RCW 82.04.280 (2) or (7), including tangible personal property  
28 acquired at a casual or isolated sale, and including byproducts used by  
29 the manufacturer thereof, except as otherwise provided in this chapter,  
30 irrespective of whether the article or similar articles are  
31 manufactured or are available for purchase within this state;

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

36 (c) ~~((any))~~ Services defined as a retail sale in RCW 82.04.050(2)

1 (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail  
2 sale in RCW 82.04.050(6)(b) that are provided free of charge;

3 (d) Extended warranty; or

4 (e)(i) Digital good, digital code, or digital automated service,  
5 including the use of any services provided by a seller exclusively in  
6 connection with digital goods, digital codes, or digital automated  
7 services, whether or not a separate charge is made for such services.

8 (ii) With respect to the use of digital goods, digital automated  
9 services, and digital codes acquired by purchase, the tax imposed in  
10 this subsection (1)(e) applies in respect to:

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

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

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

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

19 (iii) With respect to digital goods, digital automated services,  
20 and digital codes acquired other than by purchase, the tax imposed in  
21 this subsection (1)(e) applies regardless of whether or not the  
22 consumer has a right of permanent use or is obligated to make continued  
23 payment as a condition of use..

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

31 ~~(3))~~ The provisions of this chapter do not apply in respect to the  
32 use of any article of tangible personal property, extended warranty,  
33 digital good, digital code, digital automated service, or service  
34 taxable under RCW 82.04.050(2) (a) or (g), (3)(a), ~~((purchased at~~  
35 ~~retail or acquired by lease, gift, or bailment))~~ or (6)(b), if the sale  
36 to, or the use by, the present user or ~~((his))~~ the present user's  
37 bailor or donor has already been subjected to the tax under chapter



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

3 ~~((+4))~~ (3)(a) Except as provided in this section, payment of the  
4 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or  
5 user of tangible personal property, extended warranty, digital good,  
6 digital code, digital automated service, or other service ~~((of the tax~~  
7 ~~imposed by chapter 82.08 or 82.12 RCW shall))~~ does not have the effect  
8 of exempting any other purchaser or user of the same property, extended  
9 warranty, digital good, digital code, digital automated service, or  
10 other service from 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 or digital automated services,  
28 which were obtained through the use of a digital code, if the sale of  
29 the digital code to, or the use of the digital code by, the present  
30 user or the present user's bailor or donor has already been subjected  
31 to the tax under chapter 82.08 RCW or this chapter and the tax has been  
32 paid by the present user or by the 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 good or digital  
36 code used, value of the extended warranty used, or value of the service  
37 used by the taxpayer, multiplied by the applicable rates in effect for  
38 the retail sales tax under RCW 82.08.020 ~~((, except)).~~

1       **(b)** In the case of a seller required to collect use tax from the  
2 purchaser, the tax (~~(shall)~~) must be collected in an amount equal to  
3 the purchase price multiplied by the applicable rate in effect for the  
4 retail sales tax under RCW 82.08.020.

5   **PART IV**  
6   **BUSINESS AND OCCUPATION TAX CHANGES**

7       NEW SECTION.   **Sec. 401.** A new section is added to chapter 82.04  
8 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as  
9 follows:

10       (1) Upon every person engaging within this state in the business of  
11 making sales at retail or wholesale of digital goods, digital codes,  
12 digital automated services, or services described in RCW 82.04.050  
13 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to  
14 such business is equal to the gross proceeds of sales of the business,  
15 multiplied by the rate of 0.471 percent in the case of retail sales and  
16 by the rate of 0.484 percent in the case of wholesale sales.

17       (2) For purposes of this section, a person is considered to be  
18 engaging within this state in the business of making sales of digital  
19 goods, digital codes, digital automated services, or services described  
20 in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital  
21 goods, digital codes, digital automated services, or services described  
22 in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this  
23 state under RCW 82.32.730 for sales tax purposes or would have been  
24 sourced to this state under RCW 82.32.730 if the sale had been taxable  
25 under chapter 82.08 RCW.

26       (3) A person subject to tax under this section must report the tax  
27 imposed in this chapter in an electronic format provided by the  
28 department.

29       NEW SECTION.   **Sec. 402.** A new section is added to chapter 82.04  
30 RCW to read as follows:

31       (1)(a) Any person subject to tax under section 401 of this act  
32 engaging both within and outside this state in the business of making  
33 sales at retail or wholesale of digital goods, digital codes, digital  
34 automated services, or services described in RCW 82.04.050 (2)(g) or

1 (6)(b), must apportion to this state that portion of apportionable  
2 income derived from activity performed within this state as provided in  
3 subsection (2) of this section.

4 (b) For purposes of this subsection, a person is considered to be  
5 engaging outside this state in the business of making sales of digital  
6 goods, digital codes, digital automated services, or services described  
7 in RCW 82.04.050 (2)(g) or (6)(b) if the person makes any sales of  
8 digital goods, digital codes, digital automated services, or services  
9 described in RCW 82.04.050 (2)(g) or (6)(b) that are sourced to a  
10 jurisdiction other than Washington under RCW 82.32.730 for sales tax  
11 purposes or would have been sourced to a jurisdiction other than  
12 Washington under RCW 82.32.730 if the sale had been a retail sale.

13 (2) Apportionable income must be apportioned to Washington by  
14 multiplying the apportionable income by the sales factor.

15 (3)(a) The sales factor is a fraction, the numerator of which is  
16 the total receipts of the taxpayer from making sales of digital goods,  
17 digital codes, digital automated services, and services described in  
18 RCW 82.04.050 (2)(g) or (6)(b) in this state during the tax period, and  
19 the denominator of which is the total receipts of the taxpayer derived  
20 from such activity everywhere during the tax period.

21 (b) For purposes of computing the sales factor, sales are  
22 considered in this state if the sale was sourced to this state under  
23 RCW 82.32.730 for sales tax purposes or would have been sourced to this  
24 state under RCW 82.32.730 if the sale had been taxable under chapter  
25 82.08 RCW.

26 (4) For purposes of this section, "apportionable income" means the  
27 gross income of the business taxable under section 401 of this act,  
28 including income received from activities outside this state if the  
29 income would be taxable under section 401 of this act if received from  
30 activities in this state.

31 **Sec. 403.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to  
32 read as follows:

33 "Sale at wholesale" or "wholesale sale" means:

34 (1) Any sale, which is not a sale at retail, of:

35 (a) Tangible personal property~~((, any sale of))~~;

36 (b) Services defined as a retail sale in RCW 82.04.050(2) (a)~~((, any sale of))~~ or (g);

1       (c) Amusement or recreation services as defined in RCW  
2 82.04.050(3)(a)(~~, any sale of canned software, any sale of an~~);  
3       (d) Prewritten computer software;  
4       (e) Services described in RCW 82.04.050(6)(b);  
5       (f) Extended ((warranty)) warranties as defined in RCW  
6 82.04.050(7)(~~, or any sale of~~);  
7       (g) Competitive telephone service, ancillary services, or  
8 telecommunications service as those terms are defined in RCW  
9 82.04.065(~~, which is not a sale at retail~~);  
10       (h) Digital goods, digital codes, or digital automated services;  
11 and

12       (2) Any charge made for labor and services rendered for persons who  
13 are not consumers, in respect to real or personal property, if such  
14 charge is expressly defined as a retail sale by RCW 82.04.050 when  
15 rendered to or for consumers(~~:- PROVIDED, That the term~~). For the  
16 purposes of this subsection (2), "real or personal property" (~~as used~~  
17 in this subsection shall)) does not include any natural products named  
18 in RCW 82.04.100.

19       **Sec. 404.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended  
20 to read as follows:

21       "Gross proceeds of sales" means the value proceeding or accruing  
22 from the sale of tangible personal property, digital goods, digital  
23 codes, digital automated services, and/or for other services rendered,  
24 without any deduction on account of the cost of property sold, the cost  
25 of materials used, labor costs, interest, discount paid, delivery  
26 costs, taxes, or any other expense whatsoever paid or accrued and  
27 without any deduction on account of losses.

28       **Sec. 405.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to  
29 read as follows:

30       (1) Except as otherwise provided in this section, "manufacturer"  
31 means every person who, either directly or by contracting with others  
32 for the necessary labor or mechanical services, manufactures for sale  
33 or for commercial or industrial use from his or her own materials or  
34 ingredients any articles, substances, or commodities.

35       (2)(a) When the owner of equipment or facilities furnishes, or  
36 sells to the customer prior to manufacture, all or a portion of the

1 materials that become a part or whole of the manufactured article, the  
2 department shall prescribe equitable rules for determining tax  
3 liability(~~(: PROVIDED, That)~~).

4 (b) A person who produces aluminum master alloys is a processor for  
5 hire rather than a manufacturer, regardless of the portion of the  
6 aluminum provided by that person's customer(~~(: PROVIDED FURTHER,~~  
7 That)). For the purposes of this subsection (2)(b), "aluminum master  
8 alloy" means an alloy registered with the aluminum association as a  
9 grain refiner or a hardener alloy using the American national standards  
10 institute designating system H35.3.

11 (3) A nonresident of this state who is the owner of materials  
12 processed for it in this state by a processor for hire shall not be  
13 deemed to be engaged in business in this state as a manufacturer  
14 because of the performance of such processing work for it in this  
15 state(~~(: PROVIDED FURTHER, That)~~).

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

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

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

26 **Sec. 406.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to  
27 read as follows:

28 "To manufacture" embraces all activities of a commercial or  
29 industrial nature wherein labor or skill is applied, by hand or  
30 machinery, to materials so that as a result thereof a new, different or  
31 useful substance or article of tangible personal property is produced  
32 for sale or commercial or industrial use, and shall include: (1) The  
33 production or fabrication of special made or custom made articles; (2)  
34 the production or fabrication of dental appliances, devices,  
35 restorations, substitutes, or other dental laboratory products by a  
36 dental laboratory or dental technician; (3) cutting, delimiting, and

1 measuring of felled, cut, or taken trees; and (4) crushing and/or  
2 blending of rock, sand, stone, gravel, or ore.

3 "To manufacture" shall not include: Conditioning of seed for use  
4 in planting; cubing hay or alfalfa; activities which consist of  
5 cutting, grading, or ice glazing seafood which has been cooked, frozen,  
6 or canned outside this state; the growing, harvesting, or producing of  
7 agricultural products; packing of agricultural products, including  
8 sorting, washing, rinsing, grading, waxing, treating with fungicide,  
9 packaging, chilling, or placing in controlled atmospheric storage; the  
10 production of digital goods; or the production of computer software if  
11 the computer software is delivered from the seller to the purchaser by  
12 means other than tangible storage media, including the delivery by use  
13 of a tangible storage media where the tangible storage media is not  
14 physically transferred to the purchaser.

15 **Sec. 407.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to  
16 read as follows:

17 (1) Upon every person engaging within this state in the business of  
18 receiving income from royalties or charges in the nature of royalties  
19 for the granting of intangible rights, such as copyrights, licenses,  
20 patents, or franchise fees, the amount of tax with respect to such  
21 business shall be equal to the gross income from royalties or charges  
22 in the nature of royalties from the business multiplied by the rate of  
23 0.484 percent.

24 (2) For the purposes of this section, "royalties" means  
25 compensation for the use of intangible property, such as copyrights,  
26 patents, licenses, franchises, trademarks, trade names, and similar  
27 items. It does not include compensation for any natural resource  
28 ((or)), the licensing of ((earned)) prewritten computer software to the  
29 end user, or the licensing or use of digital goods, digital codes, or  
30 digital automated services.

31 **Sec. 408.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to  
32 read as follows:

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

35 (2) "Internet" ~~((means the international computer network of both~~  
36 ~~federal and nonfederal interoperable packet-switched data networks,~~

1 ~~including the graphical subnetwork called the world wide web)) and~~  
2 "internet access" have the same meaning as those terms are defined in  
3 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as  
4 existing on July 1, 2009.

5 (3) (~~"Internet service" means a service that includes computer~~  
6 ~~processing applications, provides the user with additional or~~  
7 ~~restructured information, or permits the user to interact with stored~~  
8 ~~information through the internet or a proprietary subscriber network.~~  
9 ~~"Internet service" includes provision of internet electronic mail,~~  
10 ~~access to the internet for information retrieval, and hosting of~~  
11 ~~information for retrieval over the internet or the graphical subnetwork~~  
12 ~~called the world wide web)) Unless the context clearly requires  
13 otherwise, the definitions in this section apply throughout this  
14 chapter.~~

15 **Sec. 409.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to  
16 read as follows:

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

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

23 (2) Food and meals;

24 (3) Books, tapes, and other products, including books and other  
25 products that are transferred electronically, that are available  
26 exclusively to the participants at the camp, conference, or meeting and  
27 are not available to the public at large.

28 **Sec. 410.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to  
29 read as follows:

30 In computing tax there may be deducted from the measure of tax  
31 amounts derived from bona fide (1) initiation fees, (2) dues, (3)  
32 contributions, (4) donations, (5) tuition fees, (6) charges made by a  
33 nonprofit trade or professional organization for attending or occupying  
34 space at a trade show, convention, or educational seminar sponsored by  
35 the nonprofit trade or professional organization, which trade show,  
36 convention, or educational seminar is not open to the general public,

1 (7) charges made for operation of privately operated kindergartens, and  
2 (8) endowment funds. This section (~~shall~~) may not be construed to  
3 exempt any person, association, or society from tax liability upon  
4 selling tangible personal property, digital goods, digital codes, or  
5 digital automated services, or upon providing facilities or other  
6 services for which a special charge is made to members or others. If  
7 dues are in exchange for any significant amount of goods or services  
8 rendered by the recipient thereof to members without any additional  
9 charge to the member, or if the dues are graduated upon the amount of  
10 goods or services rendered, the value of such goods or services shall  
11 not be considered as a deduction under this section.

12 **Sec. 411.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to  
13 read as follows:

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

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

25 (3) The department may provide by rule for suggested forms for  
26 resale certificates or equivalent documents containing the information  
27 that will be accepted as resale certificates. The department shall  
28 provide by rule the categories of items or services that must be  
29 specified on resale certificates and the business classifications that  
30 may use a blanket resale certificate.

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

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

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



- 1 (c) The type of business engaged in;
- 2 (d) The categories of items or services to be purchased for resale  
3 or that are exempt, unless the buyer presents a blanket resale  
4 certificate;
- 5 (e) The date on which the certificate was provided;
- 6 (f) A statement that the items or services purchased either: (i)  
7 Are purchased for resale in the regular course of business; or (ii) are  
8 exempt from tax pursuant to statute;
- 9 (g) A statement that the buyer acknowledges that the buyer is  
10 solely responsible for purchasing within the categories specified on  
11 the certificate and that misuse of the resale or exemption privilege  
12 claimed on the certificate subjects the buyer to a penalty of fifty  
13 percent of the tax due, in addition to the tax, interest, and any other  
14 penalties imposed by law;
- 15 (h) The name of the individual authorized to sign the certificate,  
16 printed in a legible fashion;
- 17 (i) The signature of the authorized individual; and
- 18 (j) The name of the seller.
- 19 (5) Subsection (4)(h), (i), and (j) of this section does not apply  
20 if the certificate is provided in a format other than paper. If the  
21 certificate is provided in a format other than paper, the name of the  
22 individual providing the certificate must be included in the  
23 certificate.

24 **Sec. 412.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each  
25 amended to read as follows:

26 (1) Every consignee, bailee, factor, or auctioneer having either  
27 actual or constructive possession of (~~tangible~~) personal property, or  
28 having possession of the documents of title thereto, with power to sell  
29 such (~~tangible~~) personal property in (~~his or its~~) that person's own  
30 name and actually so selling, (~~shall be~~) is deemed the seller of such  
31 (~~tangible~~) personal property within the meaning of this chapter( ~~and further,~~). Furthermore, the consignor, bailor, principal, or  
32 owner (~~shall be~~) is deemed a seller of such property to the  
33 consignee, bailee, factor, or auctioneer.

34  
35 (2) The burden (~~shall be upon~~) is on the taxpayer in every case  
36 to establish the fact that (~~he~~) the taxpayer is not engaged in the  
37 business of (~~selling tangible personal property~~) making retail sales

1 or wholesale sales but is acting merely as broker or agent in promoting  
2 sales for a principal. Such claim will be allowed only when the  
3 taxpayer's accounting records are kept in such manner as required by  
4 rule by the department (~~of revenue shall by general regulation~~  
5 ~~provide~~)).

6 (3) For purposes of this section, "personal property" means  
7 tangible personal property, digital goods, digital codes, and extended  
8 warranties.

9 **Sec. 413.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to  
10 read as follows:

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

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

21 (3) "Conference-bridging service" means an ancillary service that  
22 links two or more participants of an audio or video conference call and  
23 may include the provision of a telephone number. "Conference-bridging  
24 service" does not include the telecommunications services used to reach  
25 the conference bridge.

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

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

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

36 (7) "Voice mail service" means an ancillary service that enables

1 the customer to store, send, or receive recorded messages. "Voice mail  
2 service" does not include any vertical services that the customer may  
3 be required to have in order to use the voice mail service.

4 (8) "Telecommunications service" means the electronic transmission,  
5 conveyance, or routing of voice, data, audio, video, or any other  
6 information or signals to a point, or between or among points.  
7 "Telecommunications service" includes such transmission, conveyance, or  
8 routing in which computer processing applications are used to act on  
9 the form, code, or protocol of the content for purposes of  
10 transmission, conveyance, or routing without regard to whether such  
11 service is referred to as voice over internet protocol services or is  
12 classified by the federal communications commission as enhanced or  
13 value added. "Telecommunications service" does not include:

14 (a) Data processing and information services that allow data to be  
15 generated, acquired, stored, processed, or retrieved and delivered by  
16 an electronic transmission to a purchaser where such purchaser's  
17 primary purpose for the underlying transaction is the processed data or  
18 information;

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

21 (c) Tangible personal property;

22 (d) Advertising, including but not limited to directory  
23 advertising;

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

25 (f) Internet access service;

26 (g) Radio and television audio and video programming services,  
27 regardless of the medium, including the furnishing of transmission,  
28 conveyance, and routing of such services by the programming service  
29 provider. Radio and television audio and video programming services  
30 include but are not limited to cable service as defined in 47 U.S.C.  
31 Sec. 522(6) and audio and video programming services delivered by  
32 commercial mobile radio service providers, as defined in section 20.3,  
33 Title 47 C.F.R.;

34 (h) Ancillary services; (~~or~~)

35 (i) Digital products delivered electronically, including but not  
36 limited to (~~software,~~) music, video, reading materials, or ring  
37 tones; or

38 (j) Software delivered electronically.

1 (9) "800 service" means a telecommunications service that allows a  
2 caller to dial a toll-free number without incurring a charge for the  
3 call. The service is typically marketed under the name "800," "855,"  
4 "866," "877," and "888" toll-free calling, and any subsequent numbers  
5 designated by the federal communications commission.

6 (10) "900 service" means an inbound toll "telecommunications  
7 service" purchased by a subscriber that allows the subscriber's  
8 customers to call in to the subscriber's prerecorded announcement or  
9 live service. "900 service" does not include the charge for:  
10 Collection services provided by the seller of the telecommunications  
11 services to the subscriber, or services or products sold by the  
12 subscriber to the subscriber's customer. The service is typically  
13 marketed under the name "900" service, and any subsequent numbers  
14 designated by the federal communications commission.

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

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

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

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

33 (15) "Prepaid wireless calling service" means a telecommunications  
34 service that provides the right to use mobile wireless service as well  
35 as other nontelecommunications services including the download of  
36 digital products delivered electronically, content, and ancillary  
37 services, which must be paid for in advance and that is sold in

1 predetermined units or dollars of which the number declines with use in  
2 a known amount.

3 (16) "Private communications service" means a telecommunications  
4 service that entitles the customer to exclusive or priority use of a  
5 communications channel or group of channels between or among  
6 termination points, regardless of the manner in which the channel or  
7 channels are connected, and includes switching capacity, extension  
8 lines, stations, and any other associated services that are provided in  
9 connection with the use of the channel or channels.

10 (17) "Value-added nonvoice data service" means a service that  
11 otherwise meets the definition of telecommunications services in which  
12 computer processing applications are used to act on the form, content,  
13 code, or protocol of the information or data primarily for a purpose  
14 other than transmission, conveyance, or routing.

15 (18) "Charges for mobile telecommunications services" means any  
16 charge for, or associated with, the provision of commercial mobile  
17 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect  
18 on June 1, 1999, or any charge for, or associated with, a service  
19 provided as an adjunct to a commercial mobile radio service, regardless  
20 of whether individual transmissions originate or terminate within the  
21 licensed service area of the mobile telecommunications service  
22 provider.

23 (19) "Customer" means: (a) The person or entity that contracts  
24 with the home service provider for mobile telecommunications services;  
25 or (b) the end user of the mobile telecommunications service, if the  
26 end user of mobile telecommunications services is not the contracting  
27 party, but this subsection (19)(b) applies only for the purpose of  
28 determining the place of primary use. The term does not include a  
29 reseller of mobile telecommunications service, or a serving carrier  
30 under an arrangement to serve the customer outside the home service  
31 provider's licensed service area.

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

34 (a) Responsible for providing an electronic database prescribed in  
35 4 U.S.C. Sec. 119(a) if the state has not provided an electronic  
36 database; and

37 (b) Approved by municipal and county associations or leagues of the

1 state whose responsibility it would otherwise be to provide a database  
2 prescribed by 4 U.S.C. Secs. 116 through 126.

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

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

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

11 (24) "Mobile telecommunications service" means commercial mobile  
12 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect  
13 on June 1, 1999.

14 (25) "Mobile telecommunications service provider" means a home  
15 service provider or a serving carrier.

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

19 (a) The residential street address or the primary business street  
20 address of the customer; and

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

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

29 (28) "Reseller" means a provider who purchases telecommunications  
30 services from another telecommunications service provider and then  
31 resells, uses as a component part of, or integrates the purchased  
32 services into a mobile telecommunications service. "Reseller" does not  
33 include a serving carrier with whom a home service provider arranges  
34 for the services to its customers outside the home service provider's  
35 licensed service area.

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

1 (30) "Taxing jurisdiction" means any of the several states, the  
2 District of Columbia, or any territory or possession of the United  
3 States, any municipality, city, county, township, parish,  
4 transportation district, or assessment jurisdiction, or other political  
5 subdivision within the territorial limits of the United States with the  
6 authority to impose a tax, charge, or fee.

7 **PART V**

8 **SALES TAX EXEMPTIONS**

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

11 The tax imposed by RCW 82.08.020 does not apply to the sale of a  
12 digital code for one or more digital products if the sale of the  
13 digital products to which the digital code relates is exempt from the  
14 tax levied by RCW 82.08.020.

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

17 (1) Except as provided in subsection (2) of this section, the tax  
18 imposed by RCW 82.08.020 does not apply to sales of audio or video  
19 programming by a radio or television broadcaster.

20 (2)(a) Except as provided in (b) of this subsection, the exemption  
21 provided in subsection (1) of this section does not apply in respect to  
22 programming that is sold on a pay-per-program basis or that allows the  
23 buyer to access a library of programs at any time for a specific charge  
24 for that service.

25 (b) Notwithstanding (a) of this subsection, the exemption provided  
26 in this section applies to the sale of programming described in (a) of  
27 this subsection if the seller is subject to a franchise fee in this  
28 state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross  
29 revenue derived from the sale.

30 (3) For purposes of this section, "radio or television broadcaster"  
31 includes satellite radio providers, satellite television providers,  
32 cable television providers, and providers of subscription internet  
33 television.

1        NEW SECTION.    **Sec. 503.**    A new section is added to chapter 82.08

2    RCW to read as follows:

3        (1) The tax imposed by RCW 82.08.020 does not apply to sales of  
4    digital goods, digital codes, digital automated services, or services  
5    defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

6        (a) Consuming the digital good, digital code, digital automated  
7    service, or service defined as a retail sale in RCW 82.04.050(6)(b) in  
8    producing for sale a new product, where the digital good, digital code,  
9    digital automated service, or service defined as a retail sale in RCW  
10   82.04.050(6)(b) becomes an ingredient or component of the new product.

11    A digital code becomes an ingredient or component of a new product if  
12    the digital good or digital automated service acquired through the use  
13    of the digital code becomes an ingredient or component of a new  
14    product; or

15        (b) Making the digital good or digital automated service, including  
16    a digital good or digital automated service acquired through the use of  
17    a digital code, or service defined as a retail sale in RCW  
18    82.04.050(6)(b) available free of charge for the use or enjoyment of  
19    others.

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

24        NEW SECTION.    **Sec. 504.**    A new section is added to chapter 82.08

25    RCW to read as follows:

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

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

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

35        (a) "Business purposes" means any purpose relevant to the business  
36    needs of the taxpayer claiming an exemption under this section.



1 Business purposes do not include any personal, family, or household  
2 purpose. The term also does not include any activity conducted by a  
3 government entity as that term is defined in RCW 7.25.005; and

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

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

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

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

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

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

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

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

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

29 (2) For purposes of this section, "printed newspaper" means a  
30 publication issued regularly at stated intervals at least twice a month  
31 and printed on newsprint in tabloid or broadsheet format folded loosely  
32 together without stapling, glue, or any other binding of any kind,  
33 including any supplement of a printed newspaper.

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

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

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

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

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

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

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

26       (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
27 sales to a manufacturer or processor for hire of machinery and  
28 equipment used directly in a manufacturing operation or research and  
29 development operation, to sales to a person engaged in testing for a  
30 manufacturer or processor for hire of machinery and equipment used  
31 directly in a testing operation, or to sales of or charges made for  
32 labor and services rendered in respect to installing, repairing,  
33 cleaning, altering, or improving the machinery and equipment, but only  
34 when the purchaser provides the seller with an exemption certificate in

1 a form and manner prescribed by the department by rule. The seller  
2 (~~shall~~) must retain a copy of the certificate for the seller's files.

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

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

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

14 (i) Hand-powered tools;

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

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

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

23 (c) Machinery and equipment is "used directly" in a manufacturing  
24 operation, testing operation, or research and development operation if  
25 the machinery and equipment:

26 (i) Acts upon or interacts with an item of tangible personal  
27 property;

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

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

32 (iv) Provides physical support for or access to tangible personal  
33 property;

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

35 (vi) Produces another item of tangible personal property for use in  
36 the manufacturing operation, testing operation, or research and  
37 development operation;

1 (vii) Places tangible personal property in the container, package,  
2 or wrapping in which the tangible personal property is normally sold or  
3 transported; or

4 (viii) Is integral to research and development as defined in RCW  
5 82.63.010.

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

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

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

22 (g) "Testing" means activities performed to establish or determine  
23 the properties, qualities, and limitations of tangible personal  
24 property.

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

35 **Sec. 511.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to  
36 read as follows:

37 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to auction

1 sales made by or through auctioneers of (~~tangible~~) personal property  
2 (including household goods) (~~which have~~) that has been used in  
3 conducting a farm activity, when the seller thereof is a farmer and the  
4 sale is held or conducted upon a farm and not otherwise.

5 **Sec. 512.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to  
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
8 sales to nonresidents of this state of tangible personal property,  
9 digital goods, and digital codes, when such property is for use outside  
10 this state (~~when~~), and the purchaser (a) is a bona fide resident of  
11 a state or possession or Province of Canada other than the state of  
12 Washington and such state, possession, or Province of Canada does not  
13 impose a retail sales tax or use tax of three percent or more or, if  
14 imposing such a tax, permits Washington residents exemption from  
15 otherwise taxable sales by reason of their residence, and (b) agrees,  
16 when requested, to grant the department of revenue access to such  
17 records and other forms of verification at his or her place of  
18 residence to assure that such purchases are not first used  
19 substantially in the state of Washington.

20 (2) Notwithstanding anything to the contrary in this chapter, if  
21 parts or other tangible personal property are installed by the seller  
22 during the course of repairing, cleaning, altering, or improving motor  
23 vehicles, trailers, or campers and the seller makes a separate charge  
24 for the tangible personal property, the tax levied by RCW 82.08.020  
25 does not apply to the separately stated charge to a nonresident  
26 purchaser for the tangible personal property but only if the separately  
27 stated charge does not exceed either the seller's current publicly  
28 stated retail price for the tangible personal property or, if no  
29 (~~separately~~) publicly stated retail price is available, the seller's  
30 cost for the tangible personal property. However, the exemption  
31 provided by this section does not apply if tangible personal property  
32 is installed by the seller during the course of repairing, cleaning,  
33 altering, or improving motor vehicles, trailers, or campers and the  
34 seller makes a single nonitemized charge for providing the tangible  
35 personal property and service. All of the requirements in subsections  
36 (1) and (3) through (6) of this section apply to this subsection.

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

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

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

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

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

33 (6)(a) Any vendor who makes sales without collecting the tax to a  
34 person who does not hold valid identification establishing out-of-state  
35 residency, and any vendor who fails to maintain records of sales to  
36 nonresidents as provided in this section, (~~shall be~~) is personally  
37 liable for the amount of tax due.

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

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

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

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

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

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

30 (1) The tax imposed by RCW 82.08.020 does not apply to sales of  
31 (~~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 The provisions of this chapter do not apply to the use of digital  
2 goods, digital codes, digital automated services, or services defined  
3 as a retail sale in RCW 82.04.050(6)(b) for purposes of:

4 (1) Consuming the digital good, digital code, digital automated  
5 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in  
6 producing for sale a new product, where the digital good, digital code,  
7 digital automated service, or service defined as a retail sale in RCW  
8 82.04.050(6)(b) becomes an ingredient or component of the new product.  
9 A digital code becomes an ingredient or component of a new product if  
10 the digital good or digital automated service acquired through the use  
11 of the digital code becomes an ingredient or component of a new  
12 product; or

13 (2) Making the digital good or digital automated service, including  
14 a digital good or digital automated service acquired through the use of  
15 a digital code, or service defined as a retail sale in RCW  
16 82.04.050(6)(b) available free of charge for the use or enjoyment of  
17 others.

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

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

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

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

29 (a) Of a noncommercial nature, such as personal e-mail  
30 communications;

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

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

35 (2) This section does not apply to the use of any digital goods

1 purchased by the user, the user's donor, or anybody on the user's  
2 behalf.

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

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

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

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

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

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

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

20 (1) Of any article of tangible personal property or any digital  
21 good or digital code, and any services that were rendered in respect to  
22 such property, brought into the state of Washington by a nonresident  
23 thereof for his or her use or enjoyment while temporarily within the  
24 state of Washington unless such property is used in conducting a  
25 nontransitory business activity within the state of Washington;

26 (2) By a nonresident of Washington of a motor vehicle or trailer  
27 which is registered or licensed under the laws of the state of his or  
28 her residence, and which is not required to be registered or licensed  
29 under the laws of Washington, including motor vehicles or trailers  
30 exempt pursuant to a declaration issued by the department of licensing  
31 under RCW 46.85.060, and services rendered outside the state of  
32 Washington in respect to such property;

33 (3) Of household goods, including digital goods, and digital codes,  
34 personal effects, (~~and~~) private motor vehicles, and services rendered  
35 in respect to such property, by a bona fide resident of Washington, or

1 nonresident members of the armed forces who are stationed in Washington  
2 pursuant to military orders, if such articles and services were  
3 acquired and used by such person in another state while a bona fide  
4 resident thereof and such acquisition and use occurred more than ninety  
5 days prior to the time he or she entered Washington. For purposes of  
6 this subsection, private motor vehicles do not include motor homes;

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

10 For purposes of this section, "state" means a state of the United  
11 States, any political subdivision thereof, the District of Columbia,  
12 and any foreign country or political subdivision thereof, and  
13 "services" means services defined as retail sales in RCW 82.04.050(2)  
14 (a) or (g).

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

17 The provisions of this chapter (~~shall~~) do not apply with respect  
18 to the use of public records sold by state and local agencies, as the  
19 terms are defined in RCW 42.17.020, including public records  
20 transferred electronically that are obtained under a request for the  
21 record for which no fee is charged other than a statutorily set fee or  
22 a fee to reimburse the agency for its actual costs directly incident to  
23 the copying. A request for a record includes a request for a document  
24 not available to the public but available to those persons who by law  
25 are allowed access to the document, such as requests for fire reports,  
26 law enforcement reports, taxpayer information, and academic  
27 transcripts.

28 **Sec. 610.** RCW 82.12.0255 and 2005 c 514 s 107 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 any article of tangible personal property, extended  
32 warranty, digital good, digital code, digital automated service, or  
33 other service which the state is prohibited from taxing under the  
34 Constitution of the state or under the Constitution or laws of the  
35 United States.

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

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

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

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

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

21       The provisions of this chapter (~~((shall))~~) do not apply in respect to  
22 the use of (~~((tangible))~~) personal property or the use of digital  
23 automated services or services defined in RCW 82.04.050 (2)(a) or  
24 (6)(b) by corporations (~~((which))~~) that have been incorporated under any  
25 act of the congress of the United States and whose principal purposes  
26 are to furnish volunteer aid to members of the armed forces of the  
27 United States and also to carry on a system of national and  
28 international relief and to apply the same in mitigating the sufferings  
29 caused by pestilence, famine, fire, flood, and other national  
30 calamities and to devise and carry on measures for preventing the same.

31       **Sec. 614.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to  
32 read as follows:

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

1 (a) Production equipment rented to a motion picture or video  
2 production business;

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

7 (c) Production services that are within the scope of RCW  
8 82.04.050(2) (a) or (g) and are sold to a motion picture or video  
9 production business.

10 (2) As used in this section, "production equipment," "production  
11 services," and "motion picture or video production business" have the  
12 meanings given in RCW 82.08.0315.

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

19 **Sec. 615.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to  
20 read as follows:

21 (1) This chapter does not apply to the use by a nonprofit  
22 charitable organization or state or local governmental entity of (~~any~~  
23 ~~item of tangible~~) personal property that has been donated to the  
24 nonprofit charitable organization or state or local governmental  
25 entity, or to the subsequent use of the property by a person to whom  
26 the property is donated or bailed in furtherance of the purpose for  
27 which the property was originally donated.

28 (2) This chapter does not apply to the donation of (~~tangible~~)  
29 personal property without intervening use to a nonprofit charitable  
30 organization, or to the incorporation of tangible personal property  
31 without intervening use into real or personal property of or for a  
32 nonprofit charitable organization in the course of installing,  
33 repairing, cleaning, altering, imprinting, improving, constructing, or  
34 decorating the real or personal property for no charge.

35 (3) This chapter does not apply to the use by a nonprofit  
36 charitable organization of labor and services rendered in respect to

1 installing, repairing, cleaning, altering, imprinting, or improving  
2 personal property provided to the charitable organization at no charge,  
3 or to the donation of such services.

4 (4) This chapter does not apply to the donation of amusement and  
5 recreation services without intervening use to a nonprofit organization  
6 or state or local governmental entity, to the use by a nonprofit  
7 organization or state or local governmental entity of amusement and  
8 recreation services, or to the subsequent use of the services by a  
9 person to whom the services are donated or bailed in furtherance of the  
10 purpose for which the services were originally donated. As used in  
11 this subsection, "amusement and recreation services" has the meaning in  
12 RCW 82.04.050(3)(a).

13 **Sec. 616.** RCW 82.12.0272 and 1980 c 37 s 70 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 (~~((tangible))~~) personal property held for sale and displayed  
17 in single trade shows for a period not in excess of thirty days, the  
18 primary purpose of which is to promote the sale of products or  
19 services.

20 **Sec. 617.** RCW 82.12.0284 and 2007 c 54 s 15 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 computers, computer components, computer accessories, (~~((or))~~)  
24 computer software, digital goods, or digital codes, irrevocably donated  
25 to any public or private nonprofit school or college, as defined under  
26 chapter 84.36 RCW, in this state. For purposes of this section,  
27 "computer" and "computer software" have the same meaning as in RCW  
28 82.04.215.

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

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

- 33 (1) Printed newspapers as defined in RCW 82.08.0253; and
- 34 (2) Newspapers transferred electronically, provided that the  
35 electronic version of a printed newspaper:

- 1        (a) Shares content with the printed newspaper; and  
2        (b) Is prominently identified by the same name as the printed  
3 newspaper or otherwise conspicuously indicates that it is a complement  
4 to the printed newspaper.

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

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

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

12        (1) A person who is subject to tax under RCW 82.12.020 for  
13 (~~tangible~~) personal property used at an aluminum smelter, or for  
14 tangible personal property that will be incorporated as an ingredient  
15 or component of buildings or other structures at an aluminum smelter,  
16 or for labor and services rendered with respect to such buildings,  
17 structures, or (~~tangible~~) personal property, is eligible for an  
18 exemption from the state share of the tax in the form of a credit, as  
19 provided in this section. The amount of the credit shall be equal to  
20 the state share of use tax computed to be due under RCW 82.12.020. The  
21 person shall submit information, in a form and manner prescribed by the  
22 department, specifying the amount of qualifying purchases or  
23 acquisitions for which the exemption is claimed and the amount of  
24 exempted tax.

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

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

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

31        (1) This chapter does not apply to state credit unions with respect  
32 to the use of any article of tangible personal property, digital good,  
33 digital code, digital automated service, service defined as a retail  
34 sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or extended

1 warranty, acquired from a federal credit union, foreign credit union,  
2 or out-of-state credit union as a result of a merger or conversion.

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

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

6 (b) "Foreign credit union" means a credit union organized and  
7 operating under the laws of another country or other foreign  
8 jurisdiction.

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

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

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

16 (1) The provisions of this chapter do not apply with respect to the  
17 use of (~~tangible~~) personal property and services provided by a public  
18 corporation, commission, or authority created under RCW 35.21.660 or  
19 35.21.730 to an eligible entity.

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

23 NEW SECTION. **Sec. 623.** RCW 82.12.705 (Exemptions--Financial  
24 information delivered electronically) and 2007 c 182 s 2 are each  
25 repealed.

26 **PART VII**

27 **SOURCING AND SALES/USE TAX APPORTIONMENT**

28 NEW SECTION. **Sec. 701.** 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 of  
31 digital goods, digital codes, digital automated services, prewritten  
32 computer software, or services defined as a retail sale in RCW  
33 82.04.050(6)(b) to a buyer that provides the seller with an exemption



1 certificate claiming multiple points of use. An exemption certificate  
2 claiming multiple points of use must be in a form and contain such  
3 information as required by the department.

4 (2) A buyer is entitled to use an exemption certificate claiming  
5 multiple points of use only if the buyer is a business or other  
6 organization and the digital goods or digital automated services  
7 purchased, or the digital goods or digital automated services to be  
8 obtained by the digital code purchased, or the prewritten computer  
9 software or services defined as a retail sale in RCW 82.04.050(6)(b)  
10 purchased will be concurrently available for use within and outside  
11 this state. A buyer is not entitled to use an exemption certificate  
12 claiming multiple points of use for digital goods, digital codes,  
13 digital automated services, prewritten computer software, or services  
14 defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal  
15 use.

16 (3) A buyer claiming an exemption under this section must report  
17 and pay the tax imposed in RCW 82.12.020 and any local use taxes  
18 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170  
19 directly to the department in accordance with sections 702 and 703 of  
20 this act.

21 (4) For purposes of this section, "concurrently available for use  
22 within and outside this state" means that employees or other agents of  
23 the buyer may use the digital goods, digital automated services,  
24 prewritten computer software, or services defined as a retail sale in  
25 RCW 82.04.050(6)(b) simultaneously from one or more locations within  
26 this state and one or more locations outside this state. A digital  
27 code is concurrently available for use within and outside this state if  
28 employees or other agents of the buyer may use the digital goods or  
29 digital automated services to be obtained by the code simultaneously at  
30 one or more locations within this state and one or more locations  
31 outside this state.

32 NEW SECTION. **Sec. 702.** A new section is added to chapter 82.12  
33 RCW to read as follows:

34 (1) A business or other organization subject to the tax imposed in  
35 RCW 82.12.020 on the use of digital goods, digital codes, digital  
36 automated services, prewritten computer software, or services defined  
37 as a retail sale in RCW 82.04.050(6)(b) that are concurrently available

1 for use within and outside this state is entitled to apportion the  
2 amount of tax due this state based on users in this state compared to  
3 users everywhere. The department may authorize or require an  
4 alternative method of apportionment supported by the taxpayer's records  
5 that fairly reflects the proportion of in-state to out-of-state use by  
6 the taxpayer of the digital goods, digital automated services,  
7 prewritten computer software, or services defined as a retail sale in  
8 RCW 82.04.050(6)(b).

9 (2) No apportionment under this section is allowed unless the  
10 apportionment method is supported by the taxpayer's records kept in the  
11 ordinary course of business.

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

13 (a) "Concurrently available for use within and outside this state"  
14 means that employees or other agents of the taxpayer may use the  
15 digital goods, digital automated services, prewritten computer  
16 software, or services defined as a retail sale in RCW 82.04.050(6)(b)  
17 simultaneously at one or more locations within this state and one or  
18 more locations outside this state. A digital code is concurrently  
19 available for use within and outside this state if employees or other  
20 agents of the taxpayer may use the digital goods or digital automated  
21 services to be obtained by the code simultaneously at one or more  
22 locations within this state and one or more locations outside this  
23 state.

24 (b) "User" means an employee or agent of the taxpayer who is  
25 authorized by the taxpayer to use the digital goods, digital automated  
26 services, prewritten computer software, or services defined as a retail  
27 sale in RCW 82.04.050(6)(b) in the performance of his or her duties as  
28 an employee or other agent of the taxpayer.

29 NEW SECTION. **Sec. 703.** A new section is added to chapter 82.14  
30 RCW to read as follows:

31 (1) A business or other organization that is entitled under section  
32 702 of this act to apportion the amount of state use tax on the use of  
33 digital goods, digital codes, digital automated services, prewritten  
34 computer software, or services defined as a retail sale in RCW  
35 82.04.050(6)(b) is also entitled to apportion the amount of local use  
36 taxes imposed under the authority of this chapter and RCW 81.104.170 on  
37 the use of such products or services.

1 (2) To ensure that the tax base for state and local use taxes is  
2 identical, the measure of local use taxes apportioned under this  
3 section must be the same as the measure of state use tax apportioned  
4 under section 702 of this act.

5 (3) This section does not affect the sourcing of local use taxes.

6 **Sec. 704.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to  
7 read as follows:

8 (1) Except as provided in subsections (5) through (7) of this  
9 section, for purposes of collecting or paying sales or use taxes to the  
10 appropriate jurisdictions, all sales at retail shall be sourced in  
11 accordance with this subsection and subsections (2) through (4) of this  
12 section.

13 (a) When tangible personal property, an extended warranty, a  
14 digital good, digital code, digital automated service, or ((a)) other  
15 service defined as a retail sale under RCW 82.04.050 is received by the  
16 purchaser at a business location of the seller, the sale is sourced to  
17 that business location.

18 (b) When the tangible personal property, extended warranty, digital  
19 good, digital code, digital automated service, or ((a)) other service  
20 defined as a retail sale under RCW 82.04.050 is not received by the  
21 purchaser at a business location of the seller, the sale is sourced to  
22 the location where receipt by the purchaser or the purchaser's donee,  
23 designated as such by the purchaser, occurs, including the location  
24 indicated by instructions for delivery to the purchaser or donee, known  
25 to the seller.

26 (c) When (a) and (b) of this subsection do not apply, the sale is  
27 sourced to the location indicated by an address for the purchaser that  
28 is available from the business records of the seller that are  
29 maintained in the ordinary course of the seller's business when use of  
30 this address does not constitute bad faith.

31 (d) When (a), (b), and (c) of this subsection do not apply, the  
32 sale is sourced to the location indicated by an address for the  
33 purchaser obtained during the consummation of the sale, including the  
34 address of a purchaser's payment instrument, if no other address is  
35 available, when use of this address does not constitute bad faith.

36 (e) When (a), (b), (c), or (d) of this subsection do not apply,  
37 including the circumstance where the seller is without sufficient

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

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

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

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

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

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

33 (a) For a lease or rental that requires recurring periodic  
34 payments, each periodic payment is sourced to the primary property  
35 location. The primary property location is as indicated by an address  
36 for the property provided by the lessee that is available to the lessor  
37 from its records maintained in the ordinary course of business, when

1 use of this address does not constitute bad faith. This location is  
2 not altered by intermittent use at different locations.

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

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

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

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

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

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

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

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

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

3 (a) A retail sale of watercraft;

4 (b) A retail sale of a modular home, manufactured home, or mobile  
5 home;

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

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

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

18 (8) The definitions in this subsection apply throughout this  
19 section.

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

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

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

37 (d) "Receive" and "receipt" mean taking possession of tangible  
38 personal property, making first use of digital automated services or

1 other services, or taking possession or making first use of digital  
2 goods or digital codes, whichever comes first. "Receive" and "receipt"  
3 do not include possession by a shipping company on behalf of the  
4 purchaser.

5 (e) "Transportation equipment" means:

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

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

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

12 (B) Operated under authority of a carrier authorized and  
13 certificated by the United States department of transportation or  
14 another federal authority to engage in the carriage of persons or  
15 property in interstate commerce;

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

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

23 (9) In those instances where there is no obligation on the part of  
24 a seller to collect or remit this state's sales or use tax, the use of  
25 tangible personal property, digital good, digital code, or of a digital  
26 automated service or other service, subject to use tax, is sourced to  
27 the place of first use in this state. The definition of use in RCW  
28 82.12.010 applies to this subsection.

29 **PART VIII**

30 **BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED THROUGH THE**  
31 **USE OF A CODE THAT DOES NOT MEET THE DEFINITION OF DIGITAL CODE**

32 **Sec. 801.** RCW 82.08.195 and 2007 c 6 s 1402 are each amended to  
33 read as follows:

34 (1) A bundled transaction is subject to the tax imposed by RCW  
35 82.08.020 if the retail sale of any of its component products would be  
36 subject to the tax imposed by RCW 82.08.020.

1 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are  
2 subject to the tax imposed by RCW 82.08.020 if the service that is the  
3 true object of the transaction is subject to the tax imposed by RCW  
4 82.08.020. If the service that is the true object of the transaction  
5 is not subject to the tax imposed by RCW 82.08.020, the transaction is  
6 not subject to the tax imposed by RCW 82.08.020.

7 (3) The transaction described in RCW 82.08.190(4)(c) is not subject  
8 to the tax imposed by RCW 82.08.020.

9 (4) The transaction described in RCW 82.08.190(4)(d) is not subject  
10 to the tax imposed by RCW 82.08.020.

11 (5) In the case of a bundled transaction that includes any of the  
12 following: Telecommunications service, ancillary service, internet  
13 access, or audio or video programming service:

14 (a) If the price is attributable to products that are taxable and  
15 products that are not taxable, the portion of the price attributable to  
16 the nontaxable products are subject to the tax imposed by RCW 82.08.020  
17 unless the seller can identify by reasonable and verifiable standards  
18 the portion from its books and records that are kept in the regular  
19 course of business for other purposes including, but not limited to,  
20 nontax purposes;

21 (b) If the price is attributable to products that are subject to  
22 tax at different tax rates, the total price is attributable to the  
23 products subject to the tax at the highest tax rate unless the seller  
24 can identify by reasonable and verifiable standards the portion of the  
25 price attributable to the products subject to the tax imposed by RCW  
26 82.08.020 at the lower rate from its books and records that are kept in  
27 the regular course of business for other purposes including, but not  
28 limited to, nontax purposes.

29 (6) In the case of the sale of a code that provides a purchaser  
30 with the right to obtain more than one digital product, and which may  
31 also include the right to obtain other products or services, and all of  
32 the products and services, digital or otherwise, to be obtained through  
33 the use of the code do not have the same sales and use tax treatment,  
34 for purposes of the tax imposed by RCW 82.08.020:

35 (a) The transaction is deemed to be the sale of the products and  
36 services to be obtained through the use of the code; and

37 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire



1 selling price of the code, except as provided in (b)(ii) of this  
2 subsection (6).

3 (ii) If the seller can identify by reasonable and verifiable  
4 standards the portion of the selling price attributable to the products  
5 and services that are not subject to the tax imposed by RCW 82.08.020  
6 from its books and records that are kept in the regular course of  
7 business for other purposes including, but not limited to, nontax  
8 purposes, the tax imposed by RCW 82.08.020 does not apply to that  
9 portion of the selling price of the code attributable to the products  
10 and services that are not subject to the tax imposed by RCW 82.08.020.

11 **PART IX**  
12 **NEXUS**

13 NEW SECTION. Sec. 901. A new section is added to chapter 82.32  
14 RCW to read as follows:

15 For purposes of the taxes imposed in this title, the department of  
16 revenue may not consider a person's ownership of, or rights in, digital  
17 goods or digital codes residing on servers located in this state in  
18 determining whether the person has substantial nexus with this state.  
19 For purposes of this section, "substantial nexus" means the requisite  
20 connection that a person has with a state to allow the state to subject  
21 the person to the state's taxing authority, consistent with the  
22 commerce clause of the United States Constitution.

23 **PART X**  
24 **AMNESTY**

25 NEW SECTION. Sec. 1001. (1) Except as provided in subsection (2)  
26 of this section, no person may be held liable for the failure to  
27 collect or pay state and local sales and use taxes accrued before the  
28 effective date of this act on the sale or use of digital goods.

29 (2) Subsection (1) of this section does not relieve any person from  
30 liability for state and local sales taxes that the person collected  
31 from buyers but did not remit to the department of revenue.

32 (3) Nothing in this section may be construed as authorizing the  
33 refund of state and local sales and use taxes properly paid on the sale  
34 or use of digital goods before the effective date of this act.

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

3 **PART XI**

4 **MISCELLANEOUS AMENDMENTS**

5 **Sec. 1101.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to  
6 read as follows:

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

13 **Sec. 1102.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to  
14 read as follows:

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

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

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

20 (b) Excise taxes on the sale, purchase, use, or possession of (i)  
21 real property; (ii) tangible personal property; (iii) extended  
22 warranties; ~~((and))~~ (iv) services, including digital automated services  
23 as defined in section 201 of this act; and (v) digital goods and  
24 digital codes as those terms are defined in section 201 of this act;  
25 and

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

28 (3) For the purposes of this section, the term "taxes" includes  
29 taxes imposed by the state or any county, city, town, municipal  
30 corporation, quasi-municipal corporation, or other political  
31 subdivision.

32 **Sec. 1103.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to  
33 read as follows:

34 Except only as expressly provided in chapters 67.28, 81.104, and

1 82.14 RCW, the state preempts the field of imposing retail sales and  
2 use taxes and taxes upon (~~retail sales of tangible personal property,~~  
3 ~~the use of tangible personal property,~~) parimutuel wagering authorized  
4 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,  
5 town, or other municipal subdivision shall have the right to impose  
6 taxes of that nature. Except as provided in RCW 64.34.440 and  
7 82.02.050 through 82.02.090, no county, city, town, or other municipal  
8 corporation shall impose any tax, fee, or charge, either direct or  
9 indirect, on the construction or reconstruction of residential  
10 buildings, commercial buildings, industrial buildings, or on any other  
11 building or building space or appurtenance thereto, or on the  
12 development, subdivision, classification, or reclassification of land.  
13 However, this section does not preclude dedications of land or  
14 easements within the proposed development or plat which the county,  
15 city, town, or other municipal corporation can demonstrate are  
16 reasonably necessary as a direct result of the proposed development or  
17 plat to which the dedication of land or easement is to apply.

18 This section does not prohibit voluntary agreements with counties,  
19 cities, towns, or other municipal corporations that allow a payment in  
20 lieu of a dedication of land or to mitigate a direct impact that has  
21 been identified as a consequence of a proposed development,  
22 subdivision, or plat. A local government shall not use such voluntary  
23 agreements for local off-site transportation improvements within the  
24 geographic boundaries of the area or areas covered by an adopted  
25 transportation program authorized by chapter 39.92 RCW. Any such  
26 voluntary agreement is subject to the following provisions:

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

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

32 (3) Any payment not so expended shall be refunded with interest to  
33 be calculated from the original date the deposit was received by the  
34 county and at the same rate applied to tax refunds pursuant to RCW  
35 84.69.100; however, if the payment is not expended within five years  
36 due to delay attributable to the developer, the payment shall be  
37 refunded without interest.

1 No county, city, town, or other municipal corporation shall require  
2 any payment as part of such a voluntary agreement which the county,  
3 city, town, or other municipal corporation cannot establish is  
4 reasonably necessary as a direct result of the proposed development or  
5 plat.

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

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

16 Nothing in this section prohibits counties, cities, or towns from  
17 imposing or permits counties, cities, or towns to impose water, sewer,  
18 natural gas, drainage utility, and drainage system charges(~~(+  
19 PROVIDED, — That~~)). However, no such charge shall exceed the  
20 proportionate share of such utility or system's capital costs which the  
21 county, city, or town can demonstrate are attributable to the property  
22 being charged(~~(+ — PROVIDED — FURTHER, — That~~)). Furthermore, these  
23 provisions (~~(shall)~~) may not be interpreted to expand or contract any  
24 existing authority of counties, cities, or towns to impose such  
25 charges.

26 Nothing in this section prohibits a transportation benefit district  
27 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
28 the legislative authority of a county, city, or town from approving the  
29 imposition of such fees within a transportation benefit district.

30 Nothing in this section prohibits counties, cities, or towns from  
31 imposing transportation impact fees authorized pursuant to chapter  
32 39.92 RCW.

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

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

1 This section does not apply to special purpose districts formed and  
2 acting pursuant to Title((§)) 54, 57, or 87 RCW, nor is the authority  
3 conferred by these titles affected.

4 **Sec. 1104.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to  
5 read as follows:

6 (1) Subject to the limits in this section, an eligible person is  
7 allowed a credit against the tax due under this chapter. The credit is  
8 based on qualified employment positions in eligible areas. The credit  
9 is available to persons who are engaged in international services as  
10 defined in this section. In order to receive the credit, the  
11 international service activities must take place at a business within  
12 the eligible area.

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

18 (b) Credit may not be taken for hiring of persons into positions  
19 that exist on July 1, 1998. Credit is authorized for new employees  
20 hired for new positions created after July 1, 1998. New positions  
21 filled by existing employees are eligible for the credit under this  
22 section only if the position vacated by the existing employee is filled  
23 by a new hire.

24 (c) When a position is newly created, if it is filled before July  
25 1st, this position is eligible for the full yearly credit. If it is  
26 filled after June 30th, this position is eligible for half of the  
27 credit.

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

30 (3) For the purposes of this section:

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

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

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

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

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

7 (ii) "International services" excludes any service taxable under  
8 RCW 82.04.290(1).

9 (iii) Eligible services are: Computer; data processing;  
10 information; legal; accounting and tax preparation; engineering;  
11 architectural; business consulting; business management; public  
12 relations and advertising; surveying; geological consulting; real  
13 estate appraisal; or financial services. For the purposes of this  
14 section these services mean the following:

15 (A) "Computer services" are services such as computer programming,  
16 custom software modification, customization of canned software, custom  
17 software installation, custom software maintenance, custom software  
18 repair, training in the use of software, computer systems design, and  
19 custom software update services;

20 (B) "Data processing services" are services such as word  
21 processing, data entry, data retrieval, data search, information  
22 compilation, payroll processing, business accounts processing, data  
23 production, and other computerized data and information storage or  
24 manipulation. "Data processing services" also includes the use of a  
25 computer or computer time for data processing whether the processing is  
26 performed by the provider of the computer or by the purchaser or other  
27 beneficiary of the service;

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

32 (D) "Legal services" are services such as representation by an  
33 attorney, or other person when permitted, in an administrative or legal  
34 proceeding, legal drafting, paralegal services, legal research  
35 services, and court reporting services, arbitration, and mediation  
36 services;

37 (E) "Accounting and tax preparation services" are services such as

1 accounting, auditing, actuarial, bookkeeping, or tax preparation  
2 services;

3 (F) "Engineering services" are services such as civil, electrical,  
4 mechanical, petroleum, marine, nuclear, and design engineering, machine  
5 designing, machine tool designing, and sewage disposal system designing  
6 services;

7 (G) "Architectural services" are services such as structural or  
8 landscape design or architecture, interior design, building design,  
9 building program management, and space planning services;

10 (H) "Business consulting services" are services such as primarily  
11 providing operating counsel, advice, or assistance to the management or  
12 owner of any business, private, nonprofit, or public organization,  
13 including but not limited to those in the following areas:  
14 Administrative management consulting; general management consulting;  
15 human resource consulting or training; management engineering  
16 consulting; management information systems consulting; manufacturing  
17 management consulting; marketing consulting; operations research  
18 consulting; personnel management consulting; physical distribution  
19 consulting; site location consulting; economic consulting; motel,  
20 hotel, and resort consulting; restaurant consulting; government affairs  
21 consulting; and lobbying;

22 (I) "Business management services" are services such as  
23 administrative management, business management, and office management.  
24 "Business management services" does not include property management or  
25 property leasing, motel, hotel, and resort management, or automobile  
26 parking management;

27 (J) "Public relations and advertising services" are services such  
28 as layout, art direction, graphic design, copy writing, mechanical  
29 preparation, opinion research, marketing research, marketing, or  
30 production supervision;

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

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

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

37 (N) "Financial services" are services such as banking, loan,  
38 security, investment management, investment advisory, mortgage

1 servicing, contract collection, and finance leasing services, engaged  
2 in by financial businesses, or businesses similar to or in competition  
3 with financial businesses; and

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

9 (4) By ordinance, the legislative authority of a city, or  
10 legislative authorities of contiguous cities by ordinance of each  
11 city's legislative authority, with population greater than eighty  
12 thousand, located in a county containing no community empowerment zones  
13 as designated under RCW 43.31C.020, may designate a contiguous group of  
14 census tracts within the city or cities as an eligible area under this  
15 section. Each of the census tracts must meet the unemployment and  
16 poverty criteria of RCW 43.31C.030. Upon making the designation, the  
17 city or cities shall transmit to the department of revenue a  
18 certification letter and a map, each explicitly describing the  
19 boundaries of the census tract. This designation must be made by  
20 December 31, 1998.

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

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

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

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

29 (6) If at any time the department finds that a person is not  
30 eligible for tax credit under this section, the amount of taxes for  
31 which a credit has been used shall be immediately due. The department  
32 shall assess interest, but not penalties, on the credited taxes for  
33 which the person is not eligible. The interest shall be assessed at  
34 the rate provided for delinquent excise taxes under chapter 82.32 RCW,  
35 shall be assessed retroactively to the date the tax credit was taken,  
36 and shall accrue until the taxes for which a credit has been used are  
37 repaid.



1 (7) The employment security department shall provide to the  
2 department of revenue such information needed by the department of  
3 revenue to verify eligibility under this section.

4 **Sec. 1105.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each  
5 amended to read as follows:

6 (1) Every consignee, bailee, factor, or auctioneer (~~authorized,~~  
7 ~~engaged, or employed to sell or call~~) selling or calling for bids on  
8 (~~tangible~~) personal property belonging to another, (~~and so selling~~  
9 ~~or calling, shall be~~) is deemed the seller of such (~~tangible~~)  
10 personal property within the meaning of this chapter (~~and~~). All  
11 sales made by such persons are subject to (~~its~~) the provisions of  
12 this chapter even though the sale would have been exempt from the tax  
13 (~~hereunder~~) imposed in this chapter had it been made directly by the  
14 owner of the property sold.

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

19 (b) If the owner of the property sold is engaged in the business of  
20 (~~selling tangible personal property~~) making sales at retail in this  
21 state, the tax imposed under this chapter may be remitted by such owner  
22 under such rules (~~and regulations~~) as the department (~~of revenue~~  
23 ~~shall prescribe~~) may adopt.

24 **Sec. 1106.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each  
25 amended to read as follows:

26 (1) If a buyer normally is engaged in both consuming and reselling  
27 certain types of (~~articles of tangible~~) personal property, the retail  
28 sale of which is taxable under this chapter, and the buyer is not able  
29 to determine at the time of purchase whether the particular property  
30 acquired will be consumed or resold, the buyer may use a resale  
31 certificate for the entire purchase if the buyer principally resells  
32 the articles according to the general nature of the buyer's business.  
33 The buyer shall account for the value of any articles purchased with a  
34 resale certificate that are used by the buyer and remit the sales tax  
35 on the articles to the department.

1       (2) A buyer who pays a tax on all purchases and subsequently  
2 resells an article at retail, without intervening use by the buyer,  
3 shall collect the tax from the purchaser as otherwise provided by law  
4 and is entitled to a deduction on the buyer's tax return equal to the  
5 cost to the buyer of the property resold upon which retail sales tax  
6 has been paid. The deduction is allowed only if the taxpayer keeps and  
7 preserves records that show the names of the persons from whom the  
8 articles were purchased, the date of the purchase, the type of  
9 articles, the amount of the purchase, and the tax that was paid. The  
10 department shall provide by rule for the refund or credit of retail  
11 sales tax paid by a buyer for purchases that are later sold at  
12 wholesale without intervening use by the buyer.

13       **Sec. 1107.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to  
14 read as follows:

15       A credit (~~shall be~~) is allowed against the taxes imposed by this  
16 chapter upon the use in this state of tangible personal property,  
17 extended warranty, digital good, digital code, digital automated  
18 service, or services (~~(taxable under)~~) defined as a retail sale in RCW  
19 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the (~~(state of~~  
20 ~~Washington in the)~~) amount that the present user thereof or his or her  
21 bailor or donor has paid a legally imposed retail sales or use tax with  
22 respect to such property, extended warranty, digital good, digital  
23 code, digital automated service, or service defined as a retail sale in  
24 RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state,  
25 possession, territory, or commonwealth of the United States, any  
26 political subdivision thereof, the District of Columbia, and any  
27 foreign country or political subdivision thereof (~~(, prior to the use of~~  
28 ~~such property, extended warranty, or service in Washington)~~).

29       **Sec. 1108.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to  
30 read as follows:

31       (1) Every person who maintains in this state a place of business or  
32 a stock of goods, or engages in business activities within this state,  
33 shall obtain from the department a certificate of registration, and  
34 shall, at the time of making sales of tangible personal property,  
35 digital goods, digital codes, digital automated services, extended  
36 warranties, or sales of any service defined as a retail sale in RCW

1 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of  
2 either possession or title, or both, of tangible personal property for  
3 use in this state, collect from the purchasers or transferees the tax  
4 imposed under this chapter. The tax to be collected under this section  
5 (~~shall~~) must be in an amount equal to the purchase price multiplied  
6 by the rate in effect for the retail sales tax under RCW 82.08.020.  
7 For the purposes of this chapter, the phrase "maintains in this state  
8 a place of business" shall include the solicitation of sales and/or  
9 taking of orders by sales agents or traveling representatives. For the  
10 purposes of this chapter, "engages in business activity within this  
11 state" includes every activity which is sufficient under the  
12 Constitution of the United States for this state to require collection  
13 of tax under this chapter. The department (~~shall~~) must in rules  
14 specify activities which constitute engaging in business activity  
15 within this state, and (~~shall~~) must keep the rules current with  
16 future court interpretations of the Constitution of the United States.

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

28 (3) The tax required to be collected by this chapter (~~shall be~~)  
29 is deemed to be held in trust by the retailer until paid to the  
30 department, and any retailer who appropriates or converts the tax  
31 collected to the retailer's own use or to any use other than the  
32 payment of the tax provided herein to the extent that the money  
33 required to be collected is not available for payment on the due date  
34 as prescribed (~~shall be~~) is guilty of a misdemeanor. In case any  
35 seller fails to collect the tax herein imposed or having collected the  
36 tax, fails to pay the same to the department in the manner prescribed,  
37 whether such failure is the result of the seller's own acts or the  
38 result of acts or conditions beyond the seller's control, the seller

1 (~~shall~~) is nevertheless(~~, be~~) personally liable to the state for  
2 the amount of such tax, unless the seller has taken from the buyer in  
3 good faith a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

14 (ii) The taking of orders; or

15 (iii) The processing of payments; and

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

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

27 **Sec. 1109.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to  
28 read as follows:

29 (1) A city, town, or county that creates a benefit zone and  
30 finances public improvements pursuant to chapter 39.100 RCW may impose  
31 a sales and use tax in accordance with the terms of this chapter and  
32 subject to the criteria set forth in this section. Except as provided  
33 in this section, the tax is in addition to other taxes authorized by  
34 law and shall be collected from those persons who are taxable by the  
35 state under chapters 82.08 and 82.12 RCW upon the occurrence of any  
36 taxable event within the taxing jurisdiction of the city, town, or  
37 county. The rate of tax shall not exceed the rate provided in RCW

1 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~  
2 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of  
3 any other taxes imposed on the same events that are credited against  
4 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax  
5 rate shall be no higher than what is reasonably necessary for the local  
6 government to receive its entire annual state contribution in a ten-  
7 month period of time.

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

13 (3) No tax may be imposed under this section before July 1, 2007.  
14 Before imposing a tax under this section, the city, town, or county  
15 shall first have received tax allocation revenues during the preceding  
16 calendar year. The tax imposed under this section shall expire on the  
17 earlier of the date: (a) The tax allocation revenues are no longer  
18 used for public improvements and public improvement costs; (b) the  
19 bonds issued under the authority of chapter 39.100 RCW are retired, if  
20 the bonds are issued; or (c) that is thirty years after the tax is  
21 first imposed.

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

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

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

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

30 (i) The amount of tax distributions totals the amount of the state  
31 contribution;

32 (ii) The amount of tax distributions totals the amount of local  
33 public sources, dedicated in the previous calendar year to finance  
34 public improvements authorized under chapter 39.100 RCW, expended in  
35 the previous year for public improvement costs or used to pay for other  
36 bonds issued to pay for public improvements; or

37 (iii) The amount of revenue from taxes imposed under this section

1 by all cities, towns, and counties totals the annual state credit limit  
2 as provided in RCW 82.32.700(3);

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

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

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

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

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

21 (6) The department shall determine the amount of tax distributions  
22 attributable to each city, town, and county imposing a sales and use  
23 tax under this section and shall advise a city, town, or county when  
24 the tax will cease to be distributed for the remainder of the fiscal  
25 year as provided in subsection (4)(c) of this section. Determinations  
26 by the department of the amount of taxes attributable to a city, town,  
27 or county are final and shall not be used to challenge the validity of  
28 any tax imposed under this section. The department shall remit any tax  
29 revenues in excess of the amounts specified in subsection (4)(b) and  
30 (c) of this section to the state treasurer who shall deposit the moneys  
31 in the general fund.

32 (7) The definitions in this subsection apply throughout this  
33 section and RCW 82.14.470 unless the context clearly requires  
34 otherwise.

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

37 (b) "Benefit zone" has the same meaning as provided in RCW  
38 39.100.010.

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

3 (d) "Excess state excise taxes" means the amount of excise taxes  
4 received by the state during the measurement year from taxable activity  
5 within the benefit zone over and above the amount of excise taxes  
6 received by the state during the base year from taxable activity within  
7 the benefit zone. However, if a local government creates the benefit  
8 zone and reasonably determines that no activity subject to tax under  
9 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately  
10 preceding the creation of the benefit zone within the boundaries of the  
11 area that became the benefit zone, "excess state excise taxes" means  
12 the entire amount of state excise taxes the state receives during a  
13 calendar year period beginning with the calendar year immediately  
14 following the creation of the benefit zone and continuing with each  
15 measurement year thereafter.

16 (e) "State excise taxes" means revenues derived from state retail  
17 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount  
18 of tax distributions from all local retail sales and use taxes imposed  
19 on the same taxable events that are credited against the state retail  
20 sales and use taxes under chapters 82.08 and 82.12 RCW except for the  
21 local tax authorized in this section.

22 (f) "Fiscal year" has the same meaning as provided in RCW  
23 39.100.030.

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

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

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

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

35 (k) "Local public sources" includes, but is not limited to, private  
36 monetary contributions, assessments, dedicated local government funds,  
37 and tax allocation revenues. "Local public sources" does not include

1 local government funds derived from any state loan or state grant, any  
2 local tax that is credited against the state sales and use taxes, or  
3 any other state funds.

4 **Sec. 1110.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to  
5 read as follows:

6 For the purposes of this chapter, unless otherwise required by the  
7 context:

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

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

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

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

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

28 (6) "Telegraph business" means the business of affording  
29 telegraphic communication for hire.

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

33 (8) "Motor transportation business" means the business (except  
34 urban transportation business) of operating any motor propelled vehicle  
35 by which persons or property of others are conveyed for hire, and  
36 includes, but is not limited to, the operation of any motor propelled  
37 vehicle as an auto transportation company (except urban transportation



1 business), common carrier, or contract carrier as defined by RCW  
2 81.68.010 and 81.80.010(~~(:—PROVIDED, — That)~~). However, "motor  
3 transportation business" (~~(shall)~~) does not mean or include the  
4 transportation of logs or other forest products exclusively upon  
5 private roads or private highways.

6 (9) "Urban transportation business" means the business of operating  
7 any vehicle for public use in the conveyance of persons or property for  
8 hire, insofar as (a) operating entirely within the corporate limits of  
9 any city or town, or within five miles of the corporate limits thereof,  
10 or (b) operating entirely within and between cities and towns whose  
11 corporate limits are not more than five miles apart or within five  
12 miles of the corporate limits of either thereof. Included herein, but  
13 without limiting the scope hereof, is the business of operating  
14 passenger vehicles of every type and also the business of operating  
15 cartage, pickup, or delivery services, including in such services the  
16 collection and distribution of property arriving from or destined to a  
17 point within or without the state, whether or not such collection or  
18 distribution be made by the person performing a local or interstate  
19 line-haul of such property.

20 (10)(a) "Public service business" means any of the businesses  
21 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)  
22 of this section or any business subject to control by the state, or  
23 having the powers of eminent domain and the duties incident thereto, or  
24 any business hereafter declared by the legislature to be of a public  
25 service nature, except telephone business and low-level radioactive  
26 waste site operating companies as redefined in RCW 81.04.010. It  
27 includes, among others, without limiting the scope hereof: Airplane  
28 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging  
29 road, water transportation and wharf businesses.

30 (b) The definitions in this subsection (10)(b) apply throughout  
31 this subsection (10).

32 (i) "Competitive telephone service" has the same meaning as in RCW  
33 82.04.065.

34 (ii) "Network telephone service" means the providing by any person  
35 of access to a telephone network, telephone network switching service,  
36 toll service, or coin telephone services, or the providing of  
37 telephonic, video, data, or similar communication or transmission for  
38 hire, via a telephone network, toll line or channel, cable, microwave,

1 or similar communication or transmission system. "Network telephone  
2 service" includes the provision of transmission to and from the site of  
3 an internet provider via a telephone network, toll line or channel,  
4 cable, microwave, or similar communication or transmission system.  
5 "Network telephone service" does not include the providing of  
6 competitive telephone service, the providing of cable television  
7 service, the providing of broadcast services by radio or television  
8 stations, nor the provision of internet ((~~service~~)) access as defined  
9 in RCW 82.04.297, including the reception of dial-in connection,  
10 provided at the site of the internet service provider.

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

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

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

20 (12) "Gross income" means the value proceeding or accruing from the  
21 performance of the particular public service or transportation business  
22 involved, including operations incidental thereto, but without any  
23 deduction on account of the cost of the commodity furnished or sold,  
24 the cost of materials used, labor costs, interest, discount, delivery  
25 costs, taxes, or any other expense whatsoever paid or accrued and  
26 without any deduction on account of losses.

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

31 **Sec. 1111.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to  
32 read as follows:

33 For the purposes of this chapter:

34 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to  
35 the words and phrases "tax year," "taxable year," "person," "company,"  
36 "gross proceeds of sales," "gross income of the business," "business,"  
37 "engaging in business," "successor," "gross operating revenue," "gross

1 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"  
2 "extended warranty," and "value of products" shall apply equally to the  
3 provisions of this chapter.

4 (2) Whenever "property" or "personal property" is used, those terms  
5 must be construed to include digital goods and digital codes unless:  
6 (a) It is clear from the context that the term "personal property" is  
7 intended only to refer to tangible personal property; (b) it is clear  
8 from the context that the term "property" is intended only to refer to  
9 tangible personal property, real property, or both; or (c) to construe  
10 the term "property" or "personal property" as including digital goods  
11 and digital codes would yield unlikely, absurd, or strained  
12 consequences.

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

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

16 (b) "Associate member" means a petitioning state that is found to  
17 be in compliance with the agreement and changes to its laws, rules, or  
18 other authorities necessary to bring it into compliance are not in  
19 effect, but are scheduled to take effect on or before January 1, 2008.  
20 The petitioning states, by majority vote, may also grant associate  
21 member status to a petitioning state that does not receive an  
22 affirmative vote of three-fourths of the petitioning states upon a  
23 finding that the state has achieved substantial compliance with the  
24 terms of the agreement as a whole, but not necessarily each required  
25 provision, measured qualitatively, and there is a reasonable  
26 expectation that the state will achieve compliance by January 1, 2008.

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

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

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

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

37 (B) Before the effective date of the agreement, has been found to

1 be in compliance with the requirements of the agreement by an  
2 affirmative vote of three-fourths of the other petitioning states; or  
3 (C) After the effective date of the agreement, has been found to be  
4 in compliance with the agreement by a three-fourths vote of the entire  
5 governing board of the agreement.  
6 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection  
7 is effective on the first day of a calendar quarter at least sixty days  
8 after at least ten states comprising at least twenty percent of the  
9 total population, as determined by the 2000 federal census, of all  
10 states imposing a state sales tax have petitioned for membership and  
11 have either been found in compliance with the agreement or have been  
12 found to be an associate member under section 704 of the agreement.  
13 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection  
14 is effective on the state's proposed date of entry or the first day of  
15 the calendar quarter after its petition is approved by the governing  
16 board, whichever is later, and is at least sixty days after its  
17 petition is approved.  
18 (f) "Model 1 seller" means a seller that has selected a certified  
19 service provider as its agent to perform all the seller's sales and use  
20 tax functions, other than the seller's obligation to remit tax on its  
21 own purchases.  
22 (g) "Model 2 seller" means a seller that has selected a certified  
23 automated system to perform part of its sales and use tax functions,  
24 but retains responsibility for remitting the tax.  
25 (h) "Model 3 seller" means a seller that has sales in at least five  
26 member states, has total annual sales revenue of at least five hundred  
27 million dollars, has a proprietary system that calculates the amount of  
28 tax due each jurisdiction, and has entered into a performance agreement  
29 with the member states that establishes a tax performance standard for  
30 the seller. As used in this subsection (~~((+2))~~) (3)(h), a seller  
31 includes an affiliated group of sellers using the same proprietary  
32 system.  
33 (i) "Source" means the location in which the sale or use of  
34 tangible personal property, a digital good or digital code, an extended  
35 warranty, or a digital automated service or other service, subject to  
36 tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to  
37 occur.

1           **Sec. 1112.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to  
2 read as follows:

3           For purposes of (~~compliance with the requirements of the agreement~~  
4 ~~only~~) construing those provisions of the streamlined sales and use tax  
5 agreement that have been incorporated into this title, and unless the  
6 context requires otherwise, the terms "product" and "products" refer to  
7 tangible personal property, digital goods, digital codes, digital  
8 automated services, other services, extended warranties, and anything  
9 else that can be sold or used.

10

11

**PART XII**  
**MISCELLANEOUS**

12           NEW SECTION. **Sec. 1201.** This act does not have any impact  
13 whatsoever on the characterization of digital goods and digital codes  
14 as tangible or intangible personal property for purposes of property  
15 taxation and may not be used in any way in construing any provision of  
16 Title 84 RCW.

17           NEW SECTION. **Sec. 1202.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21           NEW SECTION. **Sec. 1203.** The repeals in sections 515 and 623 of  
22 this act do not affect any existing right acquired or liability or  
23 obligation incurred under the statutes repealed or under any rule or  
24 order adopted under those statutes nor do they affect any proceedings  
25 instituted under them.

26           NEW SECTION. **Sec. 1204.** Part headings used in this act are not  
27 any part of the law.

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