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**HOUSE BILL 2620**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By Representatives Hunter and Moeller; by request of Department of Revenue**  
Prefiled 01/08/10. Read first time 01/11/10. Referred to Committee on Finance.

1            AN ACT Relating to excise taxation of certain products and services  
2 provided or furnished electronically; amending RCW 82.04.190,  
3 82.04.192, 82.04.257, 82.04.2907, 82.04.297, 82.32.080, 35.102.130,  
4 82.08.02082, 82.08.02087, 82.12.02082, 82.12.02087, 82.32.532, and  
5 82.32.533; reenacting and amending RCW 82.04.050 and 82.08.195;  
6 creating new sections; and providing an effective date.

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

8    **PART I**  
9    **BACKGROUND AND PURPOSE**

10            NEW SECTION.    **Sec. 101.**    The 2009 legislature enacted Engrossed  
11 Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act  
12 relating to the excise taxation of certain products and services  
13 provided or furnished electronically.    The bill took effect July 26,  
14 2009.

15            Engrossed Substitute House Bill No. 2075, at eighty-five pages, was  
16 a comprehensive piece of legislation that made major changes to state  
17 and local sales and use taxes, as well as the state business and  
18 occupation tax.    Moreover, Engrossed Substitute House Bill No. 2075 was

1 a complex piece of legislation because of the intricate  
2 interrelationship between the sales tax and the business and occupation  
3 tax and also because the bill affects the taxation of products and  
4 services that involve technologies that are changing rapidly.

5 Because of the complexity and length of Engrossed Substitute House  
6 Bill No. 2075, it was the legislature's expectation that, in the course  
7 of implementing the bill, ambiguities and unintended consequences would  
8 be discovered, which, if not corrected, will unsettle expectations.  
9 Thus, the legislature further anticipated that it would need to  
10 consider legislation in the 2010 legislative session to address these  
11 issues.

12 Therefore, the purpose of this act is to clarify ambiguities,  
13 correct unintended consequences, restore expectations, and conform the  
14 law to the original intent of the legislature.

15 **PART II**  
16 **DEFINITIONS**

17 **Sec. 201.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301  
18 are each reenacted and amended to read as follows:

19 (1) "Sale at retail" or "retail sale" means every sale of tangible  
20 personal property (including articles produced, fabricated, or  
21 imprinted) to all persons irrespective of the nature of their business  
22 and including, among others, without limiting the scope hereof, persons  
23 who install, repair, clean, alter, improve, construct, or decorate real  
24 or personal property of or for consumers other than a sale to a person  
25 who presents a seller's permit or uniform exemption certificate in  
26 conformity with 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" includes the sale of  
28 or charge made for tangible personal property consumed and/or for labor  
29 and services rendered in respect to the following:

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

37 (b) The constructing, repairing, decorating, or improving of new or  
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of  
2 any article of tangible personal property therein or thereto, whether  
3 or not such personal property becomes a part of the realty by virtue of  
4 installation, and shall also include the sale of services or charges  
5 made for the clearing of land and the moving of earth excepting the  
6 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

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

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

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

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

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

21 (c) Credit bureau services;

22 (d) Automobile parking and storage garage services;

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

28 (f) Service charges associated with tickets to professional  
29 sporting events; and

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

33 (4)(a) The term also includes:

34 (i) The renting or leasing of tangible personal property to  
35 consumers; and

36 (ii) Providing tangible personal property along with an operator  
37 for a fixed or indeterminate period of time. A consideration of this  
38 is that the operator is necessary for the tangible personal property to

1 perform as designed. For the purpose of this subsection (4)(a)(ii), an  
2 operator must do more than maintain, inspect, or set up the tangible  
3 personal property.

4 (b) The term does not include the renting or leasing of tangible  
5 personal property where the lease or rental is for the purpose of  
6 sublease or subrent.

7 (5) The term also includes the providing of "competitive telephone  
8 service," "telecommunications service," or "ancillary services," as  
9 those terms are defined in RCW 82.04.065, to consumers.

10 (6)(a) The term also includes the sale of prewritten computer  
11 software other than a sale to a person who presents a seller's permit  
12 or uniform exemption certificate in conformity with RCW 82.04.470,  
13 regardless of the method of delivery to the end user. For purposes of  
14 this subsection (6)(a), the sale of prewritten computer software  
15 includes the sale of or charge made for a key or an enabling or  
16 activation code, where the key or code is required to activate  
17 prewritten computer software and put the software into use. There is  
18 no separate sale of the key or code from the prewritten computer  
19 software, regardless of how the sale may be characterized by the vendor  
20 or by the purchaser.

21 The term "retail sale" does not include the sale of or charge made  
22 for:

- 23 (i) Custom software; or
- 24 (ii) The customization of prewritten computer software.

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

30 (ii)(A) The service described in (b)(i) of this subsection (6)  
31 includes the right to access and use prewritten computer software to  
32 perform data processing.

33 (B) For purposes of this subsection (6)(b)(ii), "data processing"  
34 means the systematic performance of operations on data to extract the  
35 required information in an appropriate form or to convert the data to  
36 usable information. Data processing includes check processing, image  
37 processing, form processing, survey processing, payroll processing,  
38 claim processing, and similar activities.

1           (7) The term also includes the sale of or charge made for an  
2 extended warranty to a consumer. For purposes of this subsection,  
3 "extended warranty" means an agreement for a specified duration to  
4 perform the replacement or repair of tangible personal property at no  
5 additional charge or a reduced charge for tangible personal property,  
6 labor, or both, or to provide indemnification for the replacement or  
7 repair of tangible personal property, based on the occurrence of  
8 specified events. The term "extended warranty" does not include an  
9 agreement, otherwise meeting the definition of extended warranty in  
10 this subsection, if no separate charge is made for the agreement and  
11 the value of the agreement is included in the sales price of the  
12 tangible personal property covered by the agreement. For purposes of  
13 this subsection, "sales price" has the same meaning as in RCW  
14 82.08.010.

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

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

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

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

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

25           (b) A retail sale of digital goods, digital codes, or digital  
26 automated services under this subsection (8) includes any services  
27 provided by the seller exclusively in connection with the digital  
28 goods, digital codes, or digital automated services, whether or not a  
29 separate charge is made for such services.

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

36           (9) The term does not include the sale of or charge made for labor  
37 and services rendered in respect to the building, repairing, or  
38 improving of any street, place, road, highway, easement, right-of-way,

1 mass public transportation terminal or parking facility, bridge,  
2 tunnel, or trestle which is owned by a municipal corporation or  
3 political subdivision of the state or by the United States and which is  
4 used or to be used primarily for foot or vehicular traffic including  
5 mass transportation vehicles of any kind.

6 (10) The term also does not include sales of chemical sprays or  
7 washes to persons for the purpose of postharvest treatment of fruit for  
8 the prevention of scald, fungus, mold, or decay, nor does it include  
9 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
10 pollination including insects such as bees, and spray materials to:

11 (a) Persons who participate in the federal conservation reserve  
12 program, the environmental quality incentives program, the wetlands  
13 reserve program, and the wildlife habitat incentives program, or their  
14 successors administered by the United States department of agriculture;

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

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

37 (12) The term does not include the sale of or charge made for  
38 labor, services, or tangible personal property pursuant to agreements



1 providing maintenance services for bus, rail, or rail fixed guideway  
2 equipment when a regional transit authority is the recipient of the  
3 labor, services, or tangible personal property, and a transit agency,  
4 as defined in RCW 81.104.015, performs the labor or services.

5 **Sec. 202.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to  
6 read as follows:

7 "Consumer" means the following:

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

32 (2)(a) Any person engaged in any business activity taxable under  
33 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
34 uses any competitive telephone service, ancillary services, or  
35 telecommunications service as those terms are defined in RCW 82.04.065,  
36 other than for resale in the regular course of business; (c) any person  
37 who purchases, acquires, or uses any service defined in RCW

1 82.04.050(2) (a) or (g), other than for resale in the regular course of  
2 business or for the purpose of satisfying the person's obligations  
3 under an extended warranty as defined in RCW 82.04.050(7); (d) any  
4 person who purchases, acquires, or uses any amusement and recreation  
5 service defined in RCW 82.04.050(3)(a), other than for resale in the  
6 regular course of business; (e) any person who purchases or acquires an  
7 extended warranty as defined in RCW 82.04.050(7) other than for resale  
8 in the regular course of business; and (f) any person who is an end  
9 user of software. For purposes of this subsection (2)(f) and RCW  
10 82.04.050(6), a person who purchases or otherwise acquires prewritten  
11 computer software, who provides services described in RCW  
12 82.04.050(6)(b) and who will charge consumers for the right to access  
13 and use the prewritten computer software, is not an end user of the  
14 prewritten computer software;

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

30 (4) Any person who is an owner, lessee or has the right of  
31 possession to or an easement in real property which is being  
32 constructed, repaired, decorated, improved, or otherwise altered by a  
33 person engaged in business, excluding only (a) municipal corporations  
34 or political subdivisions of the state in respect to labor and services  
35 rendered to their real property which is used or held for public road  
36 purposes, and (b) the United States, instrumentalities thereof, and  
37 county and city housing authorities created pursuant to chapter 35.82

1 RCW in respect to labor and services rendered to their real property.  
2 Nothing contained in this or any other subsection of this definition  
3 shall be construed to modify any other definition of "consumer";

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

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

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

36 (8) Any person engaged in the business of cleaning up for the  
37 United States, or its instrumentalities, radioactive waste and other  
38 by-products of weapons production and nuclear research and development;

1 (9) Any person who is an owner, lessee, or has the right of  
2 possession of tangible personal property that, under the terms of an  
3 extended warranty as defined in RCW 82.04.050(7), has been repaired or  
4 is replacement property, but only with respect to the sale of or charge  
5 made for the repairing of the tangible personal property or the  
6 replacement property;

7 (10) Any person who purchases, acquires, or uses services described  
8 in RCW 82.04.050(6)(b) other than:

9 (a) For resale in the regular course of business; or

10 (b) For purposes of consuming the service described in RCW  
11 82.04.050(6)(b) in producing for sale a new product, but only if such  
12 service becomes a component of the new product. For purposes of this  
13 subsection (10), "product" means a digital product, an article of  
14 tangible personal property, or the service described in RCW  
15 82.04.050(6)(b); and

16 (11)(a) Any end user of a digital product or digital code.  
17 "Consumer" does not include any person who is not an end user of a  
18 digital product or a digital code and purchases, acquires, owns, holds,  
19 or uses any digital product or digital code for purposes of consuming  
20 the digital product or digital code in producing for sale a new  
21 product, but only if the digital product or digital code becomes a  
22 component of the new product. A digital code becomes a component of a  
23 new product if the digital good or digital automated service acquired  
24 through the use of the digital code becomes incorporated into a new  
25 product. For purposes of this subsection, "product" has the same  
26 meaning as in subsection (10) of this section.

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

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

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

11 **Sec. 203.** RCW 82.04.192 and 2009 c 535 s 201 are each amended to  
12 read as follows:

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

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

18 (3)(a) "Digital automated service," except as provided in (b) of  
19 this subsection (3), means any service transferred electronically that  
20 uses one or more software applications.

21 (b) "Digital automated service" does not include:

22 (i) Any service that primarily involves the application of human  
23 effort by the seller, and the human effort originated after the  
24 customer requested the service;

25 (ii) The loaning or transferring of money or the purchase, sale, or  
26 transfer of financial instruments. For purposes of this subsection  
27 (3)(b)(ii), "financial instruments" include cash, accounts receivable  
28 and payable, loans and notes receivable and payable, debt securities,  
29 equity securities, as well as derivative contracts such as forward  
30 contracts, swap contracts, and options;

31 (iii) Dispensing cash or other physical items from a machine;

32 (iv) Payment processing services;

33 (v) Parimutuel wagering and handicapping contests as authorized by  
34 chapter 67.16 RCW;

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

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

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

4 (ix) Online educational programs provided by a:

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

6 (B) An institution of higher education as defined in sections 1001  
7 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C.  
8 Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of  
9 this subsection (3)(b)(ix)(B), an online educational program must be  
10 encompassed within the institution's accreditation;

11 (x) Live presentations, such as lectures, seminars, workshops, or  
12 courses, where participants are connected to other participants via the  
13 internet or telecommunications equipment, which allows audience members  
14 and the presenter or instructor to give, receive, and discuss  
15 information with each other in real time;

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

18 ((+xi)) (xii)(A) A service that allows the person receiving the  
19 service to make online sales of products or services, digital or  
20 otherwise, using either: (I) The service provider's web site; or (II)  
21 the service recipient's web site, but only when the service provider's  
22 technology is used in creating or hosting the service recipient's web  
23 site or is used in processing orders from customers using the service  
24 recipient's web site.

25 (B) The service described in this subsection (3)(b)((+xi)) (xii)  
26 does not include the underlying sale of the products or services,  
27 digital or otherwise, by the person receiving the service; ((and

28 ~~(xii) Online classified)) (xiii) Advertising services. For~~  
29 purposes of this subsection (3)(b)(xiii), "advertising services" means  
30 all services directly related to the creation, preparation, production,  
31 or the dissemination of advertisements. Advertising services include  
32 layout, art direction, graphic design, mechanical preparation,  
33 production supervision, placement, and rendering advice to a client  
34 concerning the best methods of advertising that client's products or  
35 services. Advertising services also include online referrals, search  
36 engine marketing and lead generation optimization, web campaign  
37 planning, the acquisition of advertising space in the internet media,  
38 and the monitoring and evaluation of web site traffic for purposes of

1 determining the effectiveness of an advertising campaign. Advertising  
2 services do not include web hosting services and domain name  
3 registration;

4 (xiv) The mere storage of digital products, digital codes, computer  
5 software, or master copies of software. This exclusion from the  
6 definition of digital automated services includes providing space on a  
7 server for web hosting or the backing up of data or other information;

8 (xv) Data processing services. For purposes of this subsection  
9 (3)(b)(xv), "data processing service" means a primarily automated  
10 service provided to a business or other organization that involves the  
11 systematic performance of operations on data supplied in whole or in  
12 part by the customer to extract the required information in an  
13 appropriate form or to convert the data to usable information. Data  
14 processing services include check processing, image processing, form  
15 processing, survey processing, payroll processing, claim processing,  
16 and similar activities. Data processing does not include the service  
17 described in RCW 82.04.050(6)(b); and

18 (xvi) Digital goods.

19 (4) "Digital books" means works that are generally recognized in  
20 the ordinary and usual sense as books.

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

32 (6)(a) "Digital goods," except as provided in (b) of this  
33 subsection (6), means sounds, images, data, facts, or information, or  
34 any combination thereof, transferred electronically, including, but not  
35 limited to, specified digital products and other products transferred  
36 electronically not included within the definition of specified digital  
37 products.

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

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

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

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

6 (iv)(A) Except as provided in (b)(iv)(B) of this subsection (6),  
7 the representation of a personal or professional service in electronic  
8 form, such as an electronic copy of an engineering report prepared by  
9 an engineer, ((that)) where the service primarily involves the  
10 application of human effort by the service provider, and the human  
11 effort originated after the customer requested the service((+and)).

12 (B) The exclusion in (b)(iv)(A) of this subsection (6) does not  
13 apply to photographers in respect to amounts received for the taking of  
14 photographs that are transferred electronically to the customer, but  
15 only if the customer is an end user, as defined in RCW 82.04.190(11),  
16 of the photographs. Such amounts are considered to be for the sale of  
17 digital goods; and

18 (v) ((Digital automated services and)) Services and activities  
19 excluded from the definition of digital automated services in  
20 subsection (3)(b)(i) through (xv) of this section and not otherwise  
21 described in (b)(i) through (iv) of this subsection (6).

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

24 (8) "Electronically transferred" or "transferred electronically"  
25 means obtained by the purchaser by means other than tangible storage  
26 media. It is not necessary that a copy of the product be physically  
27 transferred to the purchaser. So long as the purchaser may access the  
28 product, it will be considered to have been electronically transferred  
29 to the purchaser.

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

32 (10) "Subscription radio services" means the sale of audio  
33 programming by a radio broadcaster as defined in RCW 82.08.02081,  
34 except as otherwise provided in this subsection. "Subscription radio  
35 services" does not include audio programming that is sold on a pay-per-  
36 program basis or that allows the buyer to access a library of programs  
37 at any time for a specific charge for that service.



1 (11) "Subscription television services" means the sale of video  
2 programming by a television broadcaster as defined in RCW 82.08.02081,  
3 except as otherwise provided in this subsection. "Subscription  
4 television services" does not include video programming that is sold on  
5 a pay-per-program basis or that allows the buyer to access a library of  
6 programs at any time for a specific charge for that service, but only  
7 if the seller is not subject to a franchise fee in this state under the  
8 authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived  
9 from the sale.

10 **PART III**

11 **BUSINESS AND OCCUPATION TAX**

12 **Sec. 301.** RCW 82.04.257 and 2009 c 535 s 401 are each amended to  
13 read as follows:

14 (1) Except as provided in subsection (2) of this section, upon  
15 every person engaging within this state in the business of making sales  
16 at retail or wholesale of digital goods, digital codes, digital  
17 automated services, or services described in RCW 82.04.050 (2)(g) or  
18 (6)(b), as to such persons, the amount of tax with respect to such  
19 business is equal to the gross proceeds of sales of the business,  
20 multiplied by the rate of 0.471 percent in the case of retail sales and  
21 by the rate of 0.484 percent in the case of wholesale sales.

22 (2) Persons providing subscription television services or  
23 subscription radio services are subject to tax under RCW 82.04.290(2)  
24 on the gross income of the business received from providing such  
25 services.

26 (3) For purposes of this section, a person is considered to be  
27 engaging within this state in the business of making sales of digital  
28 goods, digital codes, digital automated services, or services described  
29 in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital  
30 goods, digital codes, digital automated services, or services described  
31 in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this  
32 state under RCW 82.32.730 for sales tax purposes or would have been  
33 sourced to this state under RCW 82.32.730 if the sale had been taxable  
34 under chapter 82.08 RCW.

35 ~~((+3))~~ (4) A person subject to tax under this section ~~((must~~

1 ~~report the tax imposed in this chapter in an electronic format provided~~  
2 ~~by the department)) is subject to the mandatory electronic filing and~~  
3 ~~payment requirements in RCW 82.32.080.~~

4 **Sec. 302.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to  
5 read as follows:

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

13 (2) For the purposes of this section, "royalties" means  
14 compensation for the use of intangible property, such as copyrights,  
15 patents, licenses, franchises, trademarks, trade names, and similar  
16 items. It does not include compensation for any natural resource, the  
17 licensing of prewritten computer software to the end user, or the  
18 licensing (~~or use~~) of digital goods, digital codes, or digital  
19 automated services to the end user as defined in RCW 82.04.190(11).

20 **Sec. 303.** RCW 82.04.297 and 2009 c 535 s 408 are each amended to  
21 read as follows:

22 (1) The provision of internet access is subject to tax under RCW  
23 82.04.290(2).

24 (2)(a) Except as provided in (b) of this subsection, "internet" and  
25 "internet access" have the same meaning as those terms are defined in  
26 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as  
27 existing on July 1, 2009.

28 (b) "Internet access" does not include telecommunications service  
29 purchased, used, or sold by a person that provides a service that  
30 enables users to connect to the internet to access content,  
31 information, or other services offered over the internet, to the extent  
32 such telecommunications service is purchased, used, or sold: (i) To  
33 provide such service; or (ii) to otherwise enable users to access  
34 content, information, or other services offered over the internet.

35 (3) Unless the context clearly requires otherwise, the definitions  
36 in this section apply throughout this chapter.

1       **Sec. 304.** RCW 82.32.080 and 2009 c 176 s 2 are each amended to  
2 read as follows:

3       (1) When authorized by the department, payment of the tax may be  
4 made by uncertified check under such rules as the department  
5 prescribes, but, if a check so received is not paid by the bank on  
6 which it is drawn, the taxpayer, by whom such check is tendered, will  
7 remain liable for payment of the tax and for all legal penalties, the  
8 same as if such check had not been tendered.

9       (2)(a) Except as otherwise provided in this subsection, payment of  
10 the tax must be made by electronic funds transfer, as defined in RCW  
11 82.32.085, if the taxpayer is required to file and remit its taxes on  
12 a monthly basis. As an alternative to electronic funds transfer, the  
13 department may authorize other forms of electronic payment, such as  
14 credit card and e-check. All taxes administered by this chapter are  
15 subject to this requirement except the taxes authorized by chapters  
16 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent  
17 of this subsection to require electronic payment for those taxes  
18 reported on the department's combined excise tax return or any  
19 successor return. The mandatory electronic payment requirement in this  
20 subsection also applies to taxpayers who: (i) Are subject to the tax  
21 imposed in RCW 82.04.257 but for whom the department has authorized a  
22 tax reporting frequency that is less frequent than monthly; or (ii)  
23 meet the threshold for filing and remitting taxes on a monthly basis as  
24 established by rule of the department but for whom the department has  
25 authorized a less frequent reporting frequency, when such authorization  
26 became effective on or after July 26, 2009.

27       (b) The department, for good cause, may waive the electronic  
28 payment requirement in this subsection for any taxpayer. In the  
29 discretion of the department, a waiver under this subsection may be  
30 made temporary or permanent, and may be made on the department's own  
31 motion.

32       (c) The department is authorized to accept payment of taxes by  
33 electronic funds transfer or other acceptable forms of electronic  
34 payment from taxpayers that are not subject to the mandatory electronic  
35 payment requirements in this subsection.

36       (3)(a) Except as otherwise provided in this subsection, returns  
37 must be filed electronically using the department's online tax filing  
38 service, if the taxpayer is required to file and remit its taxes on a

1 monthly basis. The mandatory electronic filing requirement in this  
2 subsection also applies to taxpayers who: (i) Are subject to the tax  
3 imposed in RCW 82.04.257 but for whom the department has authorized a  
4 tax reporting frequency that is less frequent than monthly; or (ii)  
5 meet the threshold for filing and remitting taxes on a monthly basis as  
6 established by rule of the department but for whom the department has  
7 authorized a less frequent reporting frequency, when such authorization  
8 became effective on or after July 26, 2009.

9 (b) The department, for good cause, may waive the electronic filing  
10 requirement in this subsection for any taxpayer. In the discretion of  
11 the department, a waiver under this subsection may be made temporary or  
12 permanent, and may be made on the department's own motion.

13 (c) The department is authorized to (~~accept payment of taxes by~~  
14 ~~electronic funds transfer or other acceptable forms of electronic~~  
15 ~~payment~~) allow electronic filing of returns from taxpayers that are  
16 not subject to the mandatory electronic (~~payment~~) filing requirements  
17 in this subsection.

18 (4)(a)(i) The department, for good cause shown, may extend the time  
19 for making and filing any return, and may grant such reasonable  
20 additional time within which to make and file returns as it may deem  
21 proper, but any permanent extension granting the taxpayer a reporting  
22 date without penalty more than ten days beyond the due date, and any  
23 extension in excess of thirty days must be conditional on deposit with  
24 the department of an amount to be determined by the department which  
25 (~~shall be~~) is approximately equal to the estimated tax liability for  
26 the reporting period or periods for which the extension is granted. In  
27 the case of a permanent extension or a temporary extension of more than  
28 thirty days the deposit must be deposited within the state treasury  
29 with other tax funds and a credit recorded to the taxpayer's account  
30 which may be applied to taxpayer's liability upon cancellation of the  
31 permanent extension or upon reporting of the tax liability where an  
32 extension of more than thirty days has been granted.

33 (ii) The department must review the requirement for deposit at  
34 least annually and may require a change in the amount of the deposit  
35 required when it believes that such amount does not approximate the tax  
36 liability for the reporting period or periods for which the extension  
37 is granted.

1 (b) During a state of emergency declared under RCW 43.06.010(12),  
2 the department, on its own motion or at the request of any taxpayer  
3 affected by the emergency, may extend the time for making or filing any  
4 return as the department deems proper. The department may not require  
5 any deposit as a condition for granting an extension under this  
6 subsection (4)(b).

7 (5) The department must keep full and accurate records of all funds  
8 received and disbursed by it. Subject to the provisions of RCW  
9 82.32.105 and 82.32.350, the department must apply the payment of the  
10 taxpayer first against penalties and interest, and then upon the tax,  
11 without regard to any direction of the taxpayer.

12 (6) The department may refuse to accept any return that is not  
13 accompanied by a remittance of the tax shown to be due thereon or that  
14 is not filed electronically as required in this section. When such  
15 return is not accepted, the taxpayer is deemed to have failed or  
16 refused to file a return and is subject to the procedures provided in  
17 RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The  
18 above authority to refuse to accept a return may not apply when a  
19 return is timely filed electronically and a timely payment has been  
20 made by electronic funds transfer or other form of electronic payment  
21 as authorized by the department.

22 (7) Except for returns and remittances required to be transmitted  
23 to the department electronically under this section and except as  
24 otherwise provided in this chapter, a return or remittance that is  
25 transmitted to the department by United States mail is deemed filed or  
26 received on the date shown by the post office cancellation mark stamped  
27 upon the envelope containing it. A return or remittance that is  
28 transmitted to the department electronically is deemed filed or  
29 received according to procedures set forth by the department.

30 (8)(a) For purposes of subsections (2) and (3) of this section,  
31 "good cause" means the inability of a taxpayer to comply with the  
32 requirements of subsection (2) or (3) of this section because:

33 (i) The taxpayer does not have the equipment or software necessary  
34 to enable the taxpayer to comply with subsection (2) or (3) of this  
35 section;

36 (ii) The equipment or software necessary to enable the taxpayer to  
37 comply with subsection (2) or (3) of this section is not functioning  
38 properly;

1 (iii) The taxpayer does not have access to the internet using the  
2 taxpayer's own equipment;

3 (iv) The taxpayer does not have a bank account or a credit card;

4 (v) The taxpayer's bank is unable to send or receive electronic  
5 funds transfer transactions; or

6 (vi) Some other circumstance or condition exists that, in the  
7 department's judgment, prevents the taxpayer from complying with the  
8 requirements of subsection (2) or (3) of this section.

9 (b) "Good cause" also includes any circumstance that, in the  
10 department's judgment, supports the efficient or effective  
11 administration of the tax laws of this state, including providing  
12 relief from the requirements of subsection (2) or (3) of this section  
13 to any taxpayer that is voluntarily collecting and remitting this  
14 state's sales or use taxes on sales to Washington customers but has no  
15 legal requirement to be registered with the department.

16 **Sec. 305.** RCW 35.102.130 and 2003 c 79 s 13 are each amended to  
17 read as follows:

18 A city that imposes a business and occupation tax (~~(shall)~~) must  
19 provide for the allocation and apportionment of a person's gross  
20 income, other than persons subject to the provisions of chapter 82.14A  
21 RCW, as follows:

22 (1) Gross income derived from all activities other than those taxed  
23 as service or royalties (~~(shall)~~) must be allocated to the location  
24 where the activity takes place.

25 (a) In the case of sales of tangible personal property, the  
26 activity takes place where delivery to the buyer occurs.

27 (b)(i) In the case of sales of digital products, the activity takes  
28 place where delivery to the buyer occurs. The delivery of digital  
29 products will be deemed to occur at:

30 (A) The seller's place of business if the purchaser receives the  
31 digital product at the seller's place of business;

32 (B) If not received at the seller's place of business, the location  
33 where the purchaser or the purchaser's donee, designated as such by the  
34 purchaser, receives the digital product, including the location  
35 indicated by instructions for delivery to the purchaser or donee, known  
36 to the seller;

1 (C) If the location where the purchaser or the purchaser's donee  
2 receives the digital product is not known, the purchaser's address  
3 maintained in the ordinary course of the seller's business when use of  
4 this address does not constitute bad faith;

5 (D) If no address for the purchaser is maintained in the ordinary  
6 course of the seller's business, the purchaser's address obtained  
7 during the consummation of the sale, including the address of a  
8 purchaser's payment instrument, if no other address is available, when  
9 use of this address does not constitute bad faith; and

10 (E) If no address for the purchaser is obtained during the  
11 consummation of the sale, the address where the digital good or digital  
12 code is first made available for transmission by the seller or the  
13 address from which the digital automated service or service described  
14 in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these  
15 purposes any location that merely provided the digital transfer of the  
16 product sold.

17 (ii) If none of the methods in (b)(i) of this subsection (1) for  
18 determining where the delivery of digital products occurs are available  
19 after a good faith effort by the taxpayer to apply the methods provided  
20 in (b)(i)(A) through (E) of this subsection (1), then the city and the  
21 taxpayer may mutually agree to employ any other method to effectuate an  
22 equitable allocation of income from the sale of digital products. The  
23 taxpayer will be responsible for petitioning the city to use an  
24 alternative method under this subsection (1)(b)(ii). The city may  
25 employ an alternative method for allocating the income from the sale of  
26 digital products if the methods provided in (b)(i)(A) through (E) of  
27 this subsection (1) are not available and the taxpayer and the city are  
28 unable to mutually agree on an alternative method to effectuate an  
29 equitable allocation of income from the sale of digital products.

30 (iii) For purposes of this subsection (1)(b), the following  
31 definitions apply:

32 (A) "Digital automated services," "digital codes," and "digital  
33 goods" have the same meaning as in RCW 82.04.192;

34 (B) "Digital products" means digital goods, digital codes, digital  
35 automated services, and the services described in RCW 82.04.050 (2)(g)  
36 and (6)(b); and

37 (C) "Receive" has the same meaning as in RCW 82.32.730.

1       (c) If a business activity allocated under this subsection (1)  
2 takes place in more than one city and all cities impose a gross  
3 receipts tax, a credit (~~shall~~) must be allowed as provided in RCW  
4 35.102.060; if not all of the cities impose a gross receipts tax, the  
5 affected cities (~~shall~~) must allow another credit or allocation  
6 system as they and the taxpayer agree.

7       (2) Gross income derived as royalties from the granting of  
8 intangible rights (~~shall~~) must be allocated to the commercial  
9 domicile of the taxpayer.

10       (3) Gross income derived from activities taxed as services shall be  
11 apportioned to a city by multiplying apportionable income by a  
12 fraction, the numerator of which is the payroll factor plus the  
13 service-income factor and the denominator of which is two.

14       (a) The payroll factor is a fraction, the numerator of which is the  
15 total amount paid in the city during the tax period by the taxpayer for  
16 compensation and the denominator of which is the total compensation  
17 paid everywhere during the tax period. Compensation is paid in the  
18 city if:

19       (i) The individual is primarily assigned within the city;

20       (ii) The individual is not primarily assigned to any place of  
21 business for the tax period and the employee performs fifty percent or  
22 more of his or her service for the tax period in the city; or

23       (iii) The individual is not primarily assigned to any place of  
24 business for the tax period, the individual does not perform fifty  
25 percent or more of his or her service in any city(~~+~~), and the  
26 employee resides in the city.

27       (b) The service income factor is a fraction, the numerator of which  
28 is the total service income of the taxpayer in the city during the tax  
29 period, and the denominator of which is the total service income of the  
30 taxpayer everywhere during the tax period. Service income is in the  
31 city if:

32       (i) The customer location is in the city; or

33       (ii) The income-producing activity is performed in more than one  
34 location and a greater proportion of the service-income-producing  
35 activity is performed in the city than in any other location, based on  
36 costs of performance, and the taxpayer is not taxable at the customer  
37 location; or



1 (iii) The service-income-producing activity is performed within the  
2 city, and the taxpayer is not taxable in the customer location.

3 (c) If the allocation and apportionment provisions of this  
4 subsection do not fairly represent the extent of the taxpayer's  
5 business activity in the city or cities in which the taxpayer does  
6 business, the taxpayer may petition for or the tax administrators may  
7 jointly require, in respect to all or any part of the taxpayer's  
8 business activity, that one of the following methods be used jointly by  
9 the cities to allocate or apportion gross income, if reasonable:

10 (i) Separate accounting;

11 (ii) The use of a single factor;

12 (iii) The inclusion of one or more additional factors that will  
13 fairly represent the taxpayer's business activity in the city; or

14 (iv) The employment of any other method to effectuate an equitable  
15 allocation and apportionment of the taxpayer's income.

16 (4) The definitions in this subsection apply throughout this  
17 section.

18 (a) "Apportionable income" means the gross income of the business  
19 taxable under the service classifications of a city's gross receipts  
20 tax, including income received from activities outside the city if the  
21 income would be taxable under the service classification if received  
22 from activities within the city, less any exemptions or deductions  
23 available.

24 (b) "Compensation" means wages, salaries, commissions, and any  
25 other form of remuneration paid to individuals for personal services  
26 that are or would be included in the individual's gross income under  
27 the federal internal revenue code.

28 (c) "Individual" means any individual who, under the usual common  
29 law rules applicable in determining the employer-employee relationship,  
30 has the status of an employee of that taxpayer.

31 (d) "Customer location" means the city or unincorporated area of a  
32 county where the majority of the contacts between the taxpayer and the  
33 customer take place.

34 (e) "Primarily assigned" means the business location of the  
35 taxpayer where the individual performs his or her duties.

36 (f) "Service-taxable income" or "service income" means gross income  
37 of the business subject to tax under either the service or royalty  
38 classification.

1 (g) "Tax period" means the calendar year during which tax liability  
2 is accrued. If taxes are reported by a taxpayer on a basis more  
3 frequent than once per year, taxpayers shall calculate the factors for  
4 the previous calendar year for reporting in the current calendar year  
5 and correct the reporting for the previous year when the factors are  
6 calculated for that year, but not later than the end of the first  
7 quarter of the following year.

8 (h) "Taxable in the customer location" means either that a taxpayer  
9 is subject to a gross receipts tax in the customer location for the  
10 privilege of doing business, or that the government where the customer  
11 is located has the authority to subject the taxpayer to gross receipts  
12 tax regardless of whether, in fact, the government does so.

13 **PART IV**  
14 **SALES TAX EXEMPTIONS**

15 **Sec. 401.** RCW 82.08.02082 and 2009 c 535 s 503 are each amended to  
16 read as follows:

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

20 ~~(a) Consuming the digital good, digital code, digital automated~~  
21 ~~service, or service defined as a retail sale in RCW 82.04.050(6)(b) in~~  
22 ~~producing for sale a new product, where the digital good, digital code,~~  
23 ~~digital automated service, or service defined as a retail sale in RCW~~  
24 ~~82.04.050(6)(b) becomes an ingredient or component of the new product.~~  
25 ~~A digital code becomes an ingredient or component of a new product if~~  
26 ~~the digital good or digital automated service acquired through the use~~  
27 ~~of the digital code becomes an ingredient or component of a new~~  
28 ~~product; or~~

29 ~~(b))~~ a business or other organization for the purpose of making  
30 the digital good or digital automated service, including a digital good  
31 or digital automated service acquired through the use of a digital  
32 code, or service defined as a retail sale in RCW 82.04.050(6)(b)  
33 available free of charge for the use or enjoyment of ((others)) the  
34 general public. The exemption provided in this section does not apply  
35 unless the purchaser has the legal right to broadcast, rebroadcast,

1 transmit, retransmit, license, relicense, distribute, redistribute, or  
2 exhibit the product, in whole or in part, to the general public.

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

7 (3) For purposes of this section, "general public" means all  
8 persons and not limited or restricted to a particular class of persons,  
9 except that the general public includes:

10 (a) A class of persons that is defined as all persons residing or  
11 owning property within the boundaries of a state, political subdivision  
12 of a state, or a municipal corporation; and

13 (b) With respect to libraries, authorized library patrons.

14 **Sec. 402.** RCW 82.08.02087 and 2009 c 535 s 504 are each amended to  
15 read as follows:

16 (1) The tax imposed by RCW 82.08.020 does not apply to the sale to  
17 a business of ~~((standard))~~ digital ~~((information))~~ goods, and services  
18 rendered in respect to ~~((standard))~~ digital ~~((information))~~ goods,  
19 where the ~~((standard))~~ digital ~~((information))~~ goods and services  
20 rendered in respect to digital goods are purchased solely for business  
21 purposes. The exemption provided by this section also applies to the  
22 sale to a business of a digital code if all of the digital goods to be  
23 obtained through the use of the code will be used solely for business  
24 purposes.

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

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

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

35 (b) ~~(( "Standard digital information" means a digital good~~  
36 ~~consisting primarily of data, facts, or information, or any combination~~

1 ~~thereof, not generated or compiled for a specific client or customer.)~~)  
2 "Services rendered in respect to digital goods" means those services  
3 defined as a retail sale in RCW 82.04.050(2)(g).

4 **PART V**

5 **USE TAX EXEMPTIONS**

6 **Sec. 501.** RCW 82.12.02082 and 2009 c 535 s 603 are each amended to  
7 read as follows:

8 ~~((The provisions of this chapter do not apply to the use of digital~~  
9 ~~goods, digital codes, digital automated services, or services defined~~  
10 ~~as a retail sale in RCW 82.04.050(6)(b) for purposes of: (1) Consuming~~  
11 ~~the digital good, digital code, digital automated service, or service~~  
12 ~~defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale~~  
13 ~~a new product, where the digital good, digital code, digital automated~~  
14 ~~service, or service defined as a retail sale in RCW 82.04.050(6)(b)~~  
15 ~~becomes an ingredient or component of the new product. A digital code~~  
16 ~~becomes an ingredient or component of a new product if the digital good~~  
17 ~~or digital automated service acquired through the use of the digital~~  
18 ~~code becomes an ingredient or component of a new product; or~~

19 (2)) The provisions of this chapter do not apply to the use by a  
20 business or other organization of digital goods, digital codes, digital  
21 automated services, or services defined as a retail sale in RCW  
22 82.04.050(6)(b) for the purpose of making the digital good or digital  
23 automated service, including a digital good or digital automated  
24 service acquired through the use of a digital code, or service defined  
25 as a retail sale in RCW 82.04.050(6)(b) available free of charge for  
26 the use or enjoyment of ((others)) the general public. For purposes of  
27 this section, "general public" has the same meaning as in RCW  
28 82.08.02082. The exemption provided in this section does not apply  
29 unless the user has the legal right to broadcast, rebroadcast,  
30 transmit, retransmit, license, relicense, distribute, redistribute, or  
31 exhibit the product, in whole or in part, to the general public.

32 **Sec. 502.** RCW 82.12.02087 and 2009 c 535 s 607 are each amended to  
33 read as follows:

34 (1) The provisions of this chapter do not apply to the use by a  
35 business of ((standard)) digital ((information)) goods, and services

1 rendered in respect to ((standard)) digital ((information)) goods,  
2 where the ((standard)) digital ((information)) goods and services  
3 rendered in respect to digital goods are used solely for business  
4 purposes. The exemption provided by this section also applies to the  
5 use by a business of a digital code if all of the digital goods to be  
6 obtained through the use of the code will be used solely for business  
7 purposes.

8 (2) For purposes of this section, the definitions in RCW  
9 82.08.02087 apply.

10 **PART VI**

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

13 **Sec. 601.** RCW 82.08.195 and 2009 c 535 s 801 and 2009 c 483 s 3  
14 are each reenacted and amended to read as follows:

15 (1) Except as provided in subsection (6) of this section, a bundled  
16 transaction is subject to the tax imposed by RCW 82.08.020 if the  
17 retail sale of any of its component products would be subject to the  
18 tax imposed by RCW 82.08.020.

19 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are  
20 subject to the tax imposed by RCW 82.08.020 if the service that is the  
21 true object of the transaction is subject to the tax imposed by RCW  
22 82.08.020. If the service that is the true object of the transaction  
23 is not subject to the tax imposed by RCW 82.08.020, the transaction is  
24 not subject to the tax imposed by RCW 82.08.020.

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

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

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

32 (a) If the price is attributable to products that are taxable and  
33 products that are not taxable, the portion of the price attributable to  
34 the nontaxable products are subject to the tax imposed by RCW 82.08.020  
35 unless the seller can identify by reasonable and verifiable standards

1 the portion from its books and records that are kept in the regular  
2 course of business for other purposes including, but not limited to,  
3 nontax purposes;

4 (b) If the price is attributable to products that are subject to  
5 tax at different tax rates, the total price is attributable to the  
6 products subject to the tax at the highest tax rate unless the seller  
7 can identify by reasonable and verifiable standards the portion of the  
8 price attributable to the products subject to the tax imposed by RCW  
9 82.08.020 at the lower rate from its books and records that are kept in  
10 the regular course of business for other purposes including, but not  
11 limited to, nontax purposes.

12 (6) The tax imposed by RCW 82.08.020 does not apply in respect to  
13 a bundled transaction consisting entirely of the sale of services or of  
14 services and prepared food, if the sale is to a resident, sixty-two  
15 years of age or older, of a qualified low-income senior housing  
16 facility by the lessor or operator of the facility. A single bundled  
17 transaction involving both spouses of a marital community or both  
18 domestic partners of a domestic partnership meets the age requirement  
19 in this subsection if at least one of the spouses or domestic partners  
20 is at least sixty-two years of age. For purposes of this subsection,  
21 "qualified low-income senior housing facility" has the same meaning as  
22 in RCW 82.08.0293.

23 (7) In the case of the sale of a code that provides a purchaser  
24 with the right to obtain more than one digital product(~~(7)~~) or one or  
25 more digital products and (~~which may also include the right to~~  
26 ~~obtain~~) other products or services, and all of the products and  
27 services, digital or otherwise, to be obtained through the use of the  
28 code do not have the same sales and use tax treatment, for purposes of  
29 the tax imposed by RCW 82.08.020:

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

32 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire  
33 selling price of the code, except as provided in (b)(ii) of this  
34 subsection (7).

35 (ii) If the seller can identify by reasonable and verifiable  
36 standards the portion of the selling price attributable to the products  
37 and services that are not subject to the tax imposed by RCW 82.08.020  
38 from its books and records that are kept in the regular course of

1 business for other purposes including, but not limited to, nontax  
2 purposes, the tax imposed by RCW 82.08.020 does not apply to that  
3 portion of the selling price of the code attributable to the products  
4 and services that are not subject to the tax imposed by RCW 82.08.020  
5 nor to that portion of the selling price of the code attributable to  
6 any digital goods, the sale of which is exempt under RCW 82.08.02087.

7 **PART VII**  
8 **NEXUS**

9 **Sec. 701.** RCW 82.32.532 and 2009 c 535 s 901 are each amended to  
10 read as follows:

11 (1) For purposes of the taxes imposed in this title, the department  
12 of revenue may not consider a person's ownership of, or rights in,  
13 computer software as defined in RCW 82.04.215, including computer  
14 software used in providing a digital automated service; master copies  
15 of software; digital goods or digital codes residing on servers located  
16 in this state in determining whether the person has substantial nexus  
17 with this state.

18 (2) For purposes of this section, "substantial nexus" means the  
19 requisite connection that a person has with a state to allow the state  
20 to subject the person to the state's taxing authority, consistent with  
21 the commerce clause of the United States Constitution.

22 **PART VIII**  
23 **AMNESTY**

24 **Sec. 801.** RCW 82.32.533 and 2009 c 535 s 1001 are each amended to  
25 read as follows:

26 (1) Except as provided in subsection (2) of this section, no person  
27 may be held liable for the failure to collect or pay state and local  
28 sales and use taxes accrued before July 26, 2009, on the sale or use of  
29 digital goods or of services defined as a retail sale in RCW  
30 82.04.050(2)(a) and rendered in respect to digital goods.

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

1 (3) Nothing in this section may be construed as authorizing the  
2 refund of state and local sales and use taxes properly paid on the sale  
3 or use, before July 26, 2009, of digital goods (~~((before July 26, 2009))~~)  
4 or of services defined as a retail sale in RCW 82.04.050(2)(a) and  
5 rendered in respect to digital goods.

6 (4) A person is not entitled to a credit or refund of any business  
7 and occupation tax paid in excess of that properly due as a result of  
8 the person paying tax on its income earned from the sale of eligible  
9 digital products and services at the tax rate provided in RCW  
10 82.04.290(2)(a) rather than the tax rate provided in RCW 82.04.250(1),  
11 unless the person requesting the credit or refund has paid the proper  
12 amount of state and local sales taxes due on the sales of the eligible  
13 digital products and services that generated the income in respect to  
14 which the business and occupation tax credit or refund is sought. For  
15 purposes of this subsection, "eligible digital products and services"  
16 means: (a) Digital goods; and (b) services defined as a retail sale in  
17 RCW 82.04.050(2)(a) and rendered in respect to digital goods.

18 (5) For purposes of this section, "digital goods" has the same  
19 meaning as in RCW 82.04.192.

20 **PART IX**  
21 **MISCELLANEOUS**

22 NEW SECTION. Sec. 901. If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. Sec. 902. (1) Except as provided in subsection (2)  
27 of this section, this act applies both prospectively and retroactively  
28 to July 26, 2009.

29 (2) Sections 202, 402, and 502 of this act, and those provisions of  
30 sections 401 and 501 of this act that eliminate the sales and use tax  
31 exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively  
32 only.



1        NEW SECTION.   **Sec. 903.**   This act takes effect July 1, 2010.

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