

HOUSE BILL 1658

State of Washington

56th Legislature

1999 Regular Session

By Representative Thomas

Read first time 02/02/1999. Referred to Committee on Finance.

1 AN ACT Relating to electrical service taxes; amending RCW
2 82.04.060, 82.04.120, 82.04.425, 82.04.460, 82.08.020, 82.08.02565,
3 82.12.010, 82.12.020, 82.12.035, 82.14.020, 82.14.030, 82.14.045,
4 82.14.0485, 82.14.0494, 82.14.370, 81.104.170, 82.16.010, 82.16.020,
5 82.16.050, 82.16.090, 35.21.710, 35.21.711, 35.21.860, 35.21.865,
6 35.21.870, and 35A.82.050; reenacting and amending RCW 82.04.050 and
7 82.04.190; adding a new section to chapter 82.04 RCW; adding a new
8 section to chapter 82.08 RCW; adding a new section to chapter 82.14
9 RCW; creating a new section; repealing RCW 82.16.053 and 82.16.055; and
10 providing an effective date.

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

PART I

GENERAL DEFINITIONS AND BUSINESS AND OCCUPATION TAX

14 NEW SECTION. **Sec. 101.** A new section is added to chapter 82.04
15 RCW, to be codified before RCW 82.04.220, to read as follows:

16 "Electrical service" means the provision of electricity, including
17 but not limited to generation, production, transmission, aggregation,
18 distribution, and delivery.

1 **Sec. 102.** RCW 82.04.050 and 1998 c 332 s 2, 1998 c 315 s 1, 1998
2 c 308 s 1, and 1998 c 275 s 1 are each reenacted and amended to read as
3 follows:

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

11 (a) Purchases for the purpose of resale as tangible personal
12 property in the regular course of business without intervening use by
13 such person; or

14 (b) Installs, repairs, cleans, alters, imprints, improves,
15 constructs, or decorates real or personal property of or for consumers,
16 if such tangible personal property becomes an ingredient or component
17 of such real or personal property without intervening use by such
18 person; or

19 (c) Purchases for the purpose of consuming the property purchased
20 in producing for sale a new article of tangible personal property or
21 substance, of which such property becomes an ingredient or component or
22 is a chemical used in processing, when the primary purpose of such
23 chemical is to create a chemical reaction directly through contact with
24 an ingredient of a new article being produced for sale; or

25 (d) Purchases for the purpose of consuming the property purchased
26 in producing ferrosilicon which is subsequently used in producing
27 magnesium for sale, if the primary purpose of such property is to
28 create a chemical reaction directly through contact with an ingredient
29 of ferrosilicon; or

30 (e) Purchases for the purpose of providing the property to
31 consumers as part of competitive telephone service, as defined in RCW
32 82.04.065.

33 The term shall include every sale of tangible personal property
34 which is used or consumed or to be used or consumed in the performance
35 of any activity classified as a "sale at retail" or "retail sale" even
36 though such property is resold or utilized as provided in (a), (b),
37 (c), (d), or (e) of this subsection following such use. The term also
38 means every sale of tangible personal property to persons engaged in

1 any business which is taxable under RCW 82.04.280 (2) and (7) and
2 82.04.290.

3 (2) The term "sale at retail" or "retail sale" shall include the
4 sale of or charge made for tangible personal property consumed and/or
5 for labor and services rendered in respect to the following:

6 (a) The installing, repairing, cleaning, altering, imprinting, or
7 improving of tangible personal property of or for consumers, including
8 charges made for the mere use of facilities in respect thereto, but
9 excluding charges made for the use of coin-operated laundry facilities
10 when such facilities are situated in an apartment house, rooming house,
11 or mobile home park for the exclusive use of the tenants thereof, and
12 also excluding sales of laundry service to nonprofit health care
13 facilities, and excluding services rendered in respect to live animals,
14 birds and insects;

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

23 (c) The charge for labor and services rendered in respect to
24 constructing, repairing, or improving any structure upon, above, or
25 under any real property owned by an owner who conveys the property by
26 title, possession, or any other means to the person performing such
27 construction, repair, or improvement for the purpose of performing such
28 construction, repair, or improvement and the property is then
29 reconveyed by title, possession, or any other means to the original
30 owner;

31 (d) The sale of or charge made for labor and services rendered in
32 respect to the cleaning, fumigating, razing or moving of existing
33 buildings or structures, but shall not include the charge made for
34 janitorial services; and for purposes of this section the term
35 "janitorial services" shall mean those cleaning and caretaking services
36 ordinarily performed by commercial janitor service businesses
37 including, but not limited to, wall and window washing, floor cleaning
38 and waxing, and the cleaning in place of rugs, drapes and upholstery.
39 The term "janitorial services" does not include painting, papering,

1 repairing, furnace or septic tank cleaning, snow removal or
2 sandblasting;

3 (e) The sale of or charge made for labor and services rendered in
4 respect to automobile towing and similar automotive transportation
5 services, but not in respect to those required to report and pay taxes
6 under chapter 82.16 RCW;

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

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

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

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

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

33 (c) Credit bureau services;

34 (d) Automobile parking and storage garage services;

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

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

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

6 (4) The term shall also include the renting or leasing of tangible
7 personal property to consumers and the rental of equipment with an
8 operator.

9 (5) The term shall also include the providing of telephone service,
10 as defined in RCW 82.04.065, or electrical service to consumers.

11 (6) The term shall also include the sale of canned software other
12 than a sale to a person who presents a resale certificate under RCW
13 82.04.470, regardless of the method of delivery to the end user, but
14 shall not include custom software or the customization of canned
15 software.

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

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

29 (a) Persons who participate in the federal conservation reserve
30 program, the environmental quality incentives program, the wetlands
31 reserve program, and the wildlife habitat incentives program, or their
32 successors administered by the United States department of agriculture;

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

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

17 (10) Until July 1, 2003, the term shall not include the sale of or
18 charge made for labor and services rendered for environmental remedial
19 action as defined in RCW 82.04.2635(2).

20 **Sec. 103.** RCW 82.04.060 and 1998 c 332 s 5 are each amended to
21 read as follows:

22 "Sale at wholesale" or "wholesale sale" means any of the following
23 when not a sale at retail: (1) Any sale of tangible personal property;
24 (2) any sale of amusement or recreation services as defined in RCW
25 82.04.050(3)(a); (3) any sale of canned software; ~~((or))~~ (4) any sale
26 of telephone service as defined in RCW 82.04.065(~~(, which is not a sale~~
27 ~~at retail and))~~); or (5) any sale of electrical service. "Sale at
28 wholesale" or "wholesale sale" also means any charge made for labor and
29 services rendered for persons who are not consumers, in respect to real
30 or personal property, if such charge is expressly defined as a retail
31 sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED,
32 That the term "real or personal property" as used in this section shall
33 not include any natural products named in RCW 82.04.100.

34 **Sec. 104.** RCW 82.04.120 and 1998 c 168 s 1 are each amended to
35 read as follows:

36 "To manufacture" embraces all activities of a commercial or
37 industrial nature wherein labor or skill is applied, by hand or

1 machinery, to materials so that as a result thereof a new, different or
2 useful substance or article of tangible personal property is produced
3 for sale or commercial or industrial use, and shall include: (1) The
4 production or fabrication of special made or custom made articles;
5 ~~((and))~~ (2) the production or fabrication of dental appliances,
6 devices, restorations, substitutes, or other dental laboratory products
7 by a dental laboratory or dental technician; and (3) the generation or
8 production of electrical energy.

9 "To manufacture" shall not include: Conditioning of seed for use
10 in planting; cubing hay or alfalfa; or activities which consist of
11 cutting, grading, or ice glazing seafood which has been cooked, frozen,
12 or canned outside this state.

13 **Sec. 105.** RCW 82.04.190 and 1998 c 332 s 6 and 1998 c 308 s 2 are
14 each reenacted and amended to read as follows:

15 "Consumer" means the following:

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

36 (2)(a) Any person engaged in any business activity taxable under
37 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
38 telephone service ~~((as defined in RCW 82.04.065))~~ or electrical

1 service, other than for resale in the regular course of business; (c)
2 any person who purchases, acquires, or uses any amusement and
3 recreation service defined in RCW 82.04.050(3)(a), other than for
4 resale in the regular course of business; and (d) any person who is an
5 end user of software;

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

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

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

36 (6) Any person engaged in the business of constructing, repairing,
37 decorating, or improving new or existing buildings or other structures
38 under, upon, or above real property of or for the United States, any
39 instrumentality thereof, or a county or city housing authority created

1 pursuant to chapter 35.82 RCW, 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; also, any person engaged in the business of clearing land
5 and moving earth of or for the United States, any instrumentality
6 thereof, or a county or city housing authority created pursuant to
7 chapter 35.82 RCW. Any such person shall be a consumer within the
8 meaning of this subsection in respect to tangible personal property
9 incorporated into, installed in, or attached to such building or other
10 structure by such person;

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

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

23 (9) Until July 1, 2003, any person engaged in the business of
24 conducting environmental remedial action as defined in RCW
25 82.04.2635(2).

26 **Sec. 106.** RCW 82.04.425 and 1980 c 37 s 78 are each amended to
27 read as follows:

28 This chapter (~~shall~~) does not apply to the following activities:

29 (1) Sales for resale by persons regularly engaged in the business
30 of making sales of the type of property so sold to other persons
31 similarly engaged in the business of selling such property where
32 (~~+1~~): (a) The amount paid by the buyer does not exceed the amount
33 paid by the seller to his vendor in the acquisition of the article; and
34 (~~+2~~) (b) the sale is made as an accommodation to the buyer to enable
35 him to fill a bona fide existing order of a customer or is made within
36 fourteen days to reimburse in kind a previous accommodation sale by the
37 buyer to the seller; (~~nor to~~)

1 (2) Sales by a wholly owned subsidiary of a person making sales at
2 retail which are exempt under RCW 82.08.0262 when the parent
3 corporation shall have paid the tax imposed under this chapter; and

4 (3) Exchanges, deliveries, or transfers of electricity or the
5 rights thereto by one party to another in which the second party
6 agrees, subject to the terms and conditions of the agreement, to
7 deliver electricity at the same or another time, including, but not
8 limited to:

9 (a) The exchange of electricity for electricity between businesses
10 providing electrical service;

11 (b) The transmission or transfer of electricity by one business
12 providing electrical service to another business providing electrical
13 service under an agreement for coordination of operations among power
14 systems of the Pacific Northwest;

15 (c) The Bonneville power administration's acquisition of electric
16 power for resale to businesses providing electrical service;

17 (d) The residential exchange of electric power entered into between
18 a business providing electrical service and the administrator of the
19 Bonneville power administration.

20 **Sec. 107.** RCW 82.04.460 and 1985 c 7 s 154 are each amended to
21 read as follows:

22 (1) Any person rendering services taxable under RCW 82.04.290 and
23 maintaining places of business both within and without this state which
24 contribute to the rendition of such services shall, for the purpose of
25 computing tax liability under RCW 82.04.290, apportion to this state
26 that portion of his gross income which is derived from services
27 rendered within this state. Where such apportionment cannot be
28 accurately made by separate accounting methods, the taxpayer shall
29 apportion to this state that proportion of his total income which the
30 cost of doing business within the state bears to the total cost of
31 doing business both within and without the state.

32 (2) Notwithstanding the provision of subsection (1) of this
33 section, persons doing business both within and without the state who
34 receive gross income from service charges, as defined in RCW 63.14.010
35 (relating to amounts charged for granting the right or privilege to
36 make deferred or installment payments) or who receive gross income from
37 engaging in business as financial institutions within the scope of
38 chapter 82.14A RCW (relating to city taxes on financial institutions)

1 shall apportion or allocate gross income taxable under RCW 82.04.290 to
2 this state pursuant to rules promulgated by the department consistent
3 with uniform rules for apportionment or allocation developed by the
4 states.

5 (3) The department shall by rule provide a method or methods of
6 apportioning or allocating gross income derived from sales of telephone
7 or electrical services taxed under this chapter, if the gross proceeds
8 of sales subject to tax under this chapter do not fairly represent the
9 extent of the taxpayer's income attributable to this state. The rules
10 shall be, so far as feasible, consistent with the methods of
11 apportionment contained in this section and shall require the
12 consideration of those facts, circumstances, and apportionment factors
13 as will result in an equitable and constitutionally permissible
14 division of the services.

15 **PART II**

16 **STATE SALES AND USE TAXES**

17 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.08
18 RCW to read as follows:

19 For purposes of this chapter, "telecommunication service" is
20 defined as provided in chapter 82.04 RCW.

21 **Sec. 202.** RCW 82.08.020 and 1998 c 321 s 36 (Referendum Bill No.
22 49) are each amended to read as follows:

23 (1) There is levied and there shall be collected a tax on each
24 retail sale in this state. The tax is equal to three percent of the
25 selling price for sales of electrical service. The tax is equal to six
26 and five-tenths percent of the selling price for other sales.

27 (2) There is levied and there shall be collected an additional tax
28 on each retail car rental, regardless of whether the vehicle is
29 licensed in this state, equal to five and nine-tenths percent of the
30 selling price. The revenue collected under this subsection shall be
31 deposited and distributed in the same manner as motor vehicle excise
32 tax revenue collected under RCW 82.44.020(1).

33 (3) The taxes imposed under this chapter shall apply to successive
34 retail sales of the same property.

35 (4) The rates provided in this section apply to taxes imposed under
36 chapter 82.12 RCW as provided in RCW 82.12.020.

1 **Sec. 203.** RCW 82.08.02565 and 1998 c 330 s 1 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 shall not apply to sales to a
4 manufacturer or processor for hire of machinery and equipment used
5 directly in a manufacturing operation or research and development
6 operation, or to sales of or charges made for labor and services
7 rendered in respect to installing, repairing, cleaning, altering, or
8 improving the machinery and equipment, but only when the purchaser
9 provides the seller with an exemption certificate in a form and manner
10 prescribed by the department by rule. The seller shall retain a copy
11 of the certificate for the seller's files.

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

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

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

22 (i) Hand tools;

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

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

26 (iv) Building fixtures that are not integral to the manufacturing
27 operation or research and development operation that are permanently
28 affixed to and become a physical part of a building, such as utility
29 systems for heating, ventilation, air conditioning, communications,
30 plumbing, or electrical.

31 (c) Machinery and equipment is "used directly" in a manufacturing
32 operation or research and development operation if the machinery and
33 equipment:

34 (i) Acts upon or interacts with an item of tangible personal
35 property;

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

38 (iii) Controls, guides, measures, verifies, aligns, regulates, or
39 tests tangible personal property;

1 (iv) Provides physical support for or access to tangible personal
2 property;

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

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

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

9 (viii) Is integral to research and development as defined in RCW
10 82.63.010.

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

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

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

28 **Sec. 204.** RCW 82.12.010 and 1994 c 93 s 1 are each amended to read
29 as follows:

30 For the purposes of this chapter:

31 (1)(a) "Value of the article used" shall mean the consideration,
32 whether money, credit, rights, or other property except trade-in
33 property of like kind, expressed in terms of money, paid or given or
34 contracted to be paid or given by the purchaser to the seller for the
35 article of tangible personal property or service, the use of which is
36 taxable under this chapter. The term includes, in addition to the
37 consideration paid or given or contracted to be paid or given, the
38 amount of any tariff or duty paid with respect to the importation of

1 the article used. In case the article used is acquired by lease or by
2 gift or is extracted, produced, or manufactured by the person using the
3 same or is sold under conditions wherein the purchase price does not
4 represent the true value thereof, the value of the article used shall
5 be determined as nearly as possible according to the retail selling
6 price at place of use of similar products of like quality and character
7 under such rules as the department of revenue may prescribe.

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

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

1 (d) In the case of articles manufactured or produced by the user
2 and used in the manufacture or production of products sold or to be
3 sold to the department of defense of the United States, the value of
4 the articles used shall be determined according to the value of the
5 ingredients of such articles.

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

13 (2) "Use," "used," "using," or "put to use" shall have their
14 ordinary meaning, and shall mean:

15 (a) With respect to tangible personal property, the first act
16 within this state by which the taxpayer takes or assumes dominion or
17 control over the article of tangible personal property (as a consumer),
18 and include installation, storage, withdrawal from storage, or any
19 other act preparatory to subsequent actual use or consumption within
20 this state; and

21 (b) With respect to a service, the receipt by the taxpayer of any
22 part of the benefit afforded by the service;

23 (3) "Taxpayer" and "purchaser" include all persons included within
24 the meaning of the word "buyer" and the word "consumer" as defined in
25 chapters 82.04 and 82.08 RCW;

26 (4) "Retailer" means every seller as defined in RCW 82.08.010 and
27 every person engaged in the business of selling tangible personal
28 property at retail and every person required to collect from purchasers
29 the tax imposed under this chapter;

30 (5) The meaning ascribed to words and phrases in chapters 82.04 and
31 82.08 RCW, insofar as applicable, shall have full force and effect with
32 respect to taxes imposed under the provisions of this chapter.
33 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
34 and 82.08 RCW insofar as applicable, shall also mean any person who
35 distributes or displays, or causes to be distributed or displayed, any
36 article of tangible personal property, except newspapers, the primary
37 purpose of which is to promote the sale of products or services.

1 **Sec. 205.** RCW 82.12.020 and 1998 c 332 s 7 are each amended to
2 read as follows:

3 (1) There is hereby levied and there shall be collected from every
4 person in this state a tax or excise for the privilege of using within
5 this state as a consumer: (a) Any article of tangible personal
6 property purchased at retail, or acquired by lease, gift, repossession,
7 or bailment, or extracted or produced or manufactured by the person so
8 using the same, or otherwise furnished to a person engaged in any
9 business taxable under RCW 82.04.280 (2) or (7); (b) any canned
10 software, regardless of the method of delivery, but excluding canned
11 software that is either provided free of charge or is provided for
12 temporary use in viewing information, or both; or (c) any (~~amusement~~
13 ~~or recreation~~) service defined as a retail sale in RCW 82.04.050
14 (3)(a) or (5).

15 (2) This tax shall apply to the use of every service defined as a
16 retail sale in RCW 82.04.050 (3)(a) or (5) and the use of every article
17 of tangible personal property, including property acquired at a casual
18 or isolated sale, and including byproducts used by the manufacturer
19 thereof, except as hereinafter provided, irrespective of whether the
20 article or similar articles are manufactured or are available for
21 purchase within this state.

22 (3) Except as provided in RCW 82.12.0252, payment by one purchaser
23 or user of tangible personal property or service of the tax imposed by
24 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
25 other purchaser or user of the same property or service from the taxes
26 imposed by such chapters.

27 (4) The tax shall be levied and collected in an amount equal to the
28 value of the article used by the taxpayer multiplied by the rate in
29 effect for the retail sales tax under RCW 82.08.020.

30 **Sec. 206.** RCW 82.12.035 and 1996 c 148 s 6 are each amended to
31 read as follows:

32 A credit shall be allowed against the taxes imposed by this chapter
33 upon the use of tangible personal property, or services taxable under
34 RCW 82.04.050 (3)(a) or (5), in the state of Washington in the amount
35 that the present user thereof or his or her bailor or donor has paid a
36 retail sales or use tax with respect to such property to any other
37 state of the United States, any political subdivision thereof, the

1 District of Columbia, and any foreign country or political subdivision
2 thereof, prior to the use of such property in Washington.

3 **PART III**

4 **LOCAL SALES AND USE TAXES**

5 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.14
6 RCW to read as follows:

7 (1) The legislative authority of any city or county may impose a
8 sales and use tax upon the sale or use of electrical services. In
9 cities and counties with legislative authorities of four or fewer
10 members, two-thirds of the members must approve an ordinance or
11 resolution under this section. In cities and counties with legislative
12 authorities of more than four members, a majority plus one vote must
13 approve an ordinance or resolution under this section.

14 (2) A tax imposed under this section shall be collected from those
15 persons who are taxable by the state pursuant to chapters 82.08 and
16 82.12 RCW, upon the occurrence of any taxable event within the city or
17 county as the case may be. The rate of tax shall not exceed five and
18 eight-tenths percent of the selling price (in the case of a sales tax)
19 or value of the service used (in the case of a use tax).

20 (3) Any county ordinance adopted under this section shall contain,
21 in addition to all other provisions required to conform to this
22 chapter, a provision allowing a credit against the county tax imposed
23 under this section for the full amount of any city sales or use tax
24 imposed under this section upon the same taxable event.

25 **Sec. 302.** RCW 82.14.020 and 1997 c 201 s 1 are each amended to
26 read as follows:

27 For purposes of this chapter:

28 (1) A retail sale consisting solely of the sale of tangible
29 personal property shall be deemed to have occurred at the retail outlet
30 at or from which delivery is made to the consumer;

31 (2) A retail sale consisting essentially of the performance of
32 personal business or professional services shall be deemed to have
33 occurred at the place at which such services were primarily performed,
34 except that for the performance of a tow truck service, as defined in
35 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
36 place of business of the operator of the tow truck service;

1 (3) A retail sale consisting of the rental of tangible personal
2 property shall be deemed to have occurred (a) in the case of a rental
3 involving periodic rental payments, at the primary place of use by the
4 lessee during the period covered by each payment, or (b) in all other
5 cases, at the place of first use by the lessee;

6 (4) A retail sale within the scope of the second paragraph of RCW
7 82.04.050, and a retail sale of taxable personal property to be
8 installed by the seller shall be deemed to have occurred at the place
9 where the labor and services involved were primarily performed;

10 (5) A retail sale consisting of the providing to a consumer of
11 telephone service, as defined in RCW 82.04.065, other than a sale of
12 tangible personal property under subsection (1) of this section or a
13 rental of tangible personal property under subsection (3) of this
14 section, shall be deemed to have occurred at the situs of the telephone
15 or other instrument through which the telephone service is rendered;

16 (6) A retail sale of electrical service shall be deemed to have
17 occurred at the situs of the meter measuring the electricity delivered
18 to the consumer;

19 (7) "City" means a city or town;

20 ~~((+7))~~ (8) The meaning ascribed to words and phrases in chapters
21 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
22 applicable, shall have full force and effect with respect to taxes
23 imposed under authority of this chapter;

24 ~~((+8))~~ (9) "Taxable event" shall mean any retail sale, or any use
25 of an article of tangible personal property or service, upon which a
26 state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they
27 now exist or may hereafter be amended: PROVIDED, HOWEVER, That the
28 term shall not include a retail sale taxable pursuant to RCW 82.08.150,
29 as now or hereafter amended;

30 ~~((+9))~~ (10) "Treasurer or other legal depository" shall mean the
31 treasurer or legal depository of a county or city.

32 **Sec. 303.** RCW 82.14.030 and 1989 c 384 s 6 are each amended to
33 read as follows:

34 (1) The governing body of any county or city while not required by
35 legislative mandate to do so, may, by resolution or ordinance for the
36 purposes authorized by this chapter, fix and impose a sales and use tax
37 in accordance with the terms of this chapter. Such tax shall be
38 collected from those persons who are taxable by the state pursuant to

1 chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event
2 within the county or city as the case may be: PROVIDED, That except as
3 provided in RCW 82.14.230, this sales and use tax shall not apply to
4 natural or manufactured gas or electrical services. The rate of such
5 tax imposed by a county shall be five-tenths of one percent of the
6 selling price (in the case of a sales tax) or value of the article used
7 (in the case of a use tax). The rate of such tax imposed by a city
8 shall not exceed five-tenths of one percent of the selling price (in
9 the case of a sales tax) or value of the article used (in the case of
10 a use tax): PROVIDED, HOWEVER, That in the event a county shall impose
11 a sales and use tax under this subsection, the rate of such tax imposed
12 under this subsection by any city therein shall not exceed four hundred
13 and twenty-five one-thousandths of one percent.

14 (2) Subject to the enactment into law of the 1982 amendment to RCW
15 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in
16 addition to the tax authorized in subsection (1) of this section, the
17 governing body of any county or city may by resolution or ordinance
18 impose an additional sales and use tax in accordance with the terms of
19 this chapter. Such additional tax shall be collected upon the same
20 taxable events upon which the tax imposed under subsection (1) of this
21 section is levied. The rate of such additional tax imposed by a county
22 shall be up to five-tenths of one percent of the selling price (in the
23 case of a sales tax) or value of the article used (in the case of a use
24 tax). The rate of such additional tax imposed by a city shall be up to
25 five-tenths of one percent of the selling price (in the case of a sales
26 tax) or value of the article used (in the case of a use tax): PROVIDED
27 HOWEVER, That in the event a county shall impose a sales and use tax
28 under this subsection at a rate equal to or greater than the rate
29 imposed under this subsection by a city within the county, the county
30 shall receive fifteen percent of the city tax: PROVIDED FURTHER, That
31 in the event that the county shall impose a sales and use tax under
32 this subsection at a rate which is less than the rate imposed under
33 this subsection by a city within the county, the county shall receive
34 that amount of revenues from the city tax equal to fifteen percent of
35 the rate of tax imposed by the county under this subsection. The
36 authority to impose a tax under this subsection is intended in part to
37 compensate local government for any losses from the phase-out of the
38 property tax on business inventories.

1 **Sec. 304.** RCW 82.14.045 and 1998 c 321 s 7 (Referendum Bill No.
2 49) are each amended to read as follows:

3 (1) The legislative body of any city pursuant to RCW 35.92.060, of
4 any county which has created an unincorporated transportation benefit
5 area pursuant to RCW 36.57.100 and 36.57.110, of any public
6 transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090,
7 of any county transportation authority established pursuant to chapter
8 36.57 RCW, and of any metropolitan municipal corporation within a
9 county with a population of one million or more pursuant to chapter
10 35.58 RCW, may, by resolution or ordinance for the sole purpose of
11 providing funds for the operation, maintenance, or capital needs of
12 public transportation systems and in lieu of the excise taxes
13 authorized by RCW 35.95.040, submit an authorizing proposition to the
14 voters or include such authorization in a proposition to perform the
15 function of public transportation and if approved by a majority of
16 persons voting thereon, fix and impose a sales and use tax in
17 accordance with the terms of this chapter: PROVIDED, That no such
18 legislative body shall impose such a sales and use tax without
19 submitting such an authorizing proposition to the voters and obtaining
20 the approval of a majority of persons voting thereon: PROVIDED
21 FURTHER, That where such a proposition is submitted by a county on
22 behalf of an unincorporated transportation benefit area, it shall be
23 voted upon by the voters residing within the boundaries of such
24 unincorporated transportation benefit area and, if approved, the sales
25 and use tax shall be imposed only within such area. Notwithstanding
26 any provisions of this section to the contrary, any county in which a
27 county public transportation plan has been adopted pursuant to RCW
28 36.57.070 and the voters of such county have authorized the imposition
29 of a sales and use tax pursuant to the provisions of section 10,
30 chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be
31 authorized to fix and impose a sales and use tax as provided in this
32 section at not to exceed the rate so authorized without additional
33 approval of the voters of such county as otherwise required by this
34 section.

35 The tax authorized pursuant to this section shall be in addition to
36 (~~the tax authorized by RCW 82.14.030~~) any other taxes authorized by
37 law and shall be collected from those persons who are taxable by the
38 state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of
39 any taxable event within such city, public transportation benefit area,

1 county, or metropolitan municipal corporation as the case may be. The
2 rate of such tax shall be one-tenth, two-tenths, three-tenths, four-
3 tenths, five-tenths, or six-tenths of one percent of the selling price
4 (in the case of a sales tax) or value of the article used (in the case
5 of a use tax). The rate of such tax shall not exceed the rate
6 authorized by the voters unless such increase shall be similarly
7 approved.

8 (2)(a) In the event a metropolitan municipal corporation shall
9 impose a sales and use tax pursuant to this chapter no city, county
10 which has created an unincorporated transportation benefit area, public
11 transportation benefit area authority, or county transportation
12 authority wholly within such metropolitan municipal corporation shall
13 be empowered to levy and/or collect taxes pursuant to RCW 35.58.273,
14 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city
15 or county from imposing sales and use taxes pursuant to any other
16 authorization.

17 (b) In the event a county transportation authority shall impose a
18 sales and use tax pursuant to this section, no city, county which has
19 created an unincorporated transportation benefit area, public
20 transportation benefit area, or metropolitan municipal corporation,
21 located within the territory of the authority, shall be empowered to
22 levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or
23 82.14.045.

24 (c) In the event a public transportation benefit area shall impose
25 a sales and use tax pursuant to this section, no city, county which has
26 created an unincorporated transportation benefit area, or metropolitan
27 municipal corporation, located wholly or partly within the territory of
28 the public transportation benefit area, shall be empowered to levy or
29 collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

30 (3) Any local sales and use tax revenue collected pursuant to this
31 section by any city or by any county for transportation purposes
32 pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally
33 generated tax revenues for the purposes of apportionment and
34 distribution, in the manner prescribed by chapter 82.44 RCW, of the
35 proceeds of the motor vehicle excise tax authorized pursuant to RCW
36 35.58.273, except that the local sales and use tax revenue collected
37 under this section by a city with a population greater than sixty
38 thousand that as of January 1, 1998, owns and operates a municipal
39 public transportation system shall be counted as locally generated tax

1 revenues for the purposes of apportionment and distribution, in the
2 manner prescribed by chapter 82.44 RCW, of the proceeds of the motor
3 vehicle excise tax authorized under RCW 35.58.273 as follows:

4 (a) For fiscal year 2000, revenues collected under this section
5 shall be counted as locally generated tax revenues for up to 25 percent
6 of the tax collected under RCW 35.58.273;

7 (b) For fiscal year 2001, revenues collected under this section
8 shall be counted as locally generated tax revenues for up to 50 percent
9 of the tax collected under RCW 35.58.273;

10 (c) For fiscal year 2002, revenues collected under this section
11 shall be counted as locally generated tax revenues for up to 75 percent
12 of the tax collected under RCW 35.58.273; and

13 (d) For fiscal year 2003 and thereafter, revenues collected under
14 this section shall be counted as locally generated tax revenues for up
15 to 100 percent of the tax collected under RCW 35.58.273.

16 **Sec. 305.** RCW 82.14.0485 and 1995 3rd sp.s. c 1 s 101 are each
17 amended to read as follows:

18 (1) The legislative authority of a county with a population of one
19 million or more may impose a sales and use tax in accordance with the
20 terms of this chapter. The tax is in addition to other taxes
21 authorized by law and shall be collected from those persons who are
22 taxable by the state under chapters 82.08 and 82.12 RCW upon the
23 occurrence of any taxable event within the county: PROVIDED, That this
24 sales and use tax does not apply to electrical service. The rate of
25 tax shall not exceed 0.017 percent of the selling price in the case of
26 a sales tax or value of the article used in the case of a use tax.

27 (2) The tax imposed under subsection (1) of this section shall be
28 deducted from the amount of tax otherwise required to be collected or
29 paid over to the department of revenue under chapter 82.08 or 82.12
30 RCW. The department of revenue shall perform the collection of such
31 taxes on behalf of the county at no cost to the county.

32 (3) Moneys collected under this section shall only be used for the
33 purpose of paying the principal and interest payments on bonds issued
34 by a county to construct a baseball stadium.

35 (4) No tax may be collected under this section before January 1,
36 1996, and no tax may be collected under this section unless the taxes
37 under RCW 82.14.360 are being collected. The tax imposed in this
38 section shall expire when the bonds issued for the construction of the

1 baseball stadium are retired, but not more than twenty years after the
2 tax is first collected.

3 (5) As used in this section, "baseball stadium" means a baseball
4 stadium with natural turf and a retractable roof or canopy, together
5 with associated parking facilities, constructed in the largest city in
6 a county with a population of one million or more.

7 **Sec. 306.** RCW 82.14.0494 and 1997 c 220 s 204 (Referendum Bill No.
8 48) are each amended to read as follows:

9 (1) The legislative authority of a county that has created a public
10 stadium authority to develop a stadium and exhibition center under RCW
11 36.102.050 may impose a sales and use tax in accordance with this
12 chapter. The tax is in addition to other taxes authorized by law and
13 shall be collected from those persons who are taxable by the state
14 under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable
15 event within the county: PROVIDED, That this sales and use tax does
16 not apply to electrical service. The rate of tax shall be 0.016
17 percent of the selling price in the case of a sales tax or value of the
18 article used in the case of a use tax.

19 (2) The tax imposed under subsection (1) of this section shall be
20 deducted from the amount of tax otherwise required to be collected or
21 paid over to the department of revenue under chapter 82.08 or 82.12
22 RCW. The department of revenue shall perform the collection of such
23 taxes on behalf of the county at no cost to the county.

24 (3) Before the issuance of bonds in RCW 43.99N.020, all revenues
25 collected on behalf of the county under this section shall be
26 transferred to the public stadium authority. After bonds are issued
27 under RCW 43.99N.020, all revenues collected on behalf of the county
28 under this section shall be deposited in the stadium and exhibition
29 center account under RCW 43.99N.060.

30 (4) The definitions in RCW 36.102.010 apply to this section.

31 (5) This section expires on the earliest of the following dates:

32 (a) December 31, 1999, if the conditions for issuance of bonds
33 under RCW 43.99N.020 have not been met before that date;

34 (b) The date on which all bonds issued under RCW 43.99N.020 have
35 been retired; or

36 (c) Twenty-three years after the date the tax under this section is
37 first imposed.

1 **Sec. 307.** RCW 82.14.370 and 1998 c 55 s 6 are each amended to read
2 as follows:

3 (1) The legislative authority of a distressed county may impose a
4 sales and use tax in accordance with the terms of this chapter. The
5 tax is in addition to other taxes authorized by law and shall be
6 collected from those persons who are taxable by the state under
7 chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event
8 within the county: PROVIDED, That this sales and use tax shall not
9 apply to electrical service. The rate of tax shall not exceed 0.04
10 percent of the selling price in the case of a sales tax or value of the
11 article used in the case of a use tax.

12 (2) The tax imposed under subsection (1) of this section shall be
13 deducted from the amount of tax otherwise required to be collected or
14 paid over to the department of revenue under chapter 82.08 or 82.12
15 RCW. The department of revenue shall perform the collection of such
16 taxes on behalf of the county at no cost to the county.

17 (3) Moneys collected under this section shall only be used for the
18 purpose of financing public facilities in rural counties.

19 (4) No tax may be collected under this section before July 1, 1998.
20 No tax may be collected under this section by a county more than
21 twenty-five years after the date that a tax is first imposed under this
22 section.

23 (5) For purposes of this section, "distressed county" means a
24 county in which the average level of unemployment for the three years
25 before the year in which a tax is first imposed under this section
26 exceeds the average state unemployment for those years by twenty
27 percent.

28 **Sec. 308.** RCW 81.104.170 and 1997 c 450 s 5 are each amended to
29 read as follows:

30 Cities that operate transit systems, county transportation
31 authorities, metropolitan municipal corporations, public transportation
32 benefit areas, and regional transit authorities may submit an
33 authorizing proposition to the voters and if approved by a majority of
34 persons voting, fix and impose a sales and use tax in accordance with
35 the terms of this chapter, solely for the purpose of providing high
36 capacity transportation service.

37 The tax authorized pursuant to this section shall be in addition to
38 (~~the tax authorized by RCW 82.14.030~~) any other taxes authorized by

1 law and shall be collected from those persons who are taxable by the
2 state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of
3 any taxable event within the taxing district. The maximum rate of such
4 tax shall be approved by the voters and shall not exceed one percent of
5 the selling price (in the case of a sales tax) or value of the article
6 used (in the case of a use tax). The maximum rate of such tax that may
7 be imposed shall not exceed nine-tenths of one percent in any county
8 that imposes a tax under RCW 82.14.340, or within a regional transit
9 authority if any county within the authority imposes a tax under RCW
10 82.14.340. The exemptions in RCW 82.08.820 and 82.12.820 are for the
11 state portion of the sales and use tax and do not extend to the tax
12 authorized in this section.

13 **PART IV**

14 **STATE PUBLIC UTILITY TAX**

15 **Sec. 401.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to
16 read as follows:

17 For the purposes of this chapter, unless otherwise required by the
18 context:

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

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

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

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

35 (5) (~~"Light and power business" means the business of operating a~~
36 ~~plant or system for the generation, production or distribution of~~

1 ~~electrical energy for hire or sale and/or for the wheeling of~~
2 ~~electricity for others.~~

3 ~~(6))~~ "Telegraph business" means the business of affording
4 telegraphic communication for hire.

5 ~~((7))~~ (6) "Gas distribution business" means the business of
6 operating a plant or system for the production or distribution for hire
7 or sale of gas, whether manufactured or natural.

8 ~~((8))~~ (7) "Motor transportation business" means the business
9 (except urban transportation business) of operating any motor propelled
10 vehicle by which persons or property of others are conveyed for hire,
11 and includes, but is not limited to, the operation of any motor
12 propelled vehicle as an auto transportation company (except urban
13 transportation business), common carrier or contract carrier as defined
14 by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
15 business" shall not mean or include the transportation of logs or other
16 forest products exclusively upon private roads or private highways.

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

31 ~~((10))~~ (9) "Public service business" means any of the businesses
32 defined in ~~((subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and~~
33 ~~(9))~~ this section or any business subject to control by the state, or
34 having the powers of eminent domain and the duties incident thereto, or
35 any business hereafter declared by the legislature to be of a public
36 service nature, except telephone business as defined in RCW 82.04.065,
37 electrical service, and low-level radioactive waste site operating
38 companies as redefined in RCW 81.04.010. It includes, among others,
39 without limiting the scope hereof: Airplane transportation, boom,

1 dock, ferry, pipe line, toll bridge, toll logging road, water
2 transportation and wharf businesses.

3 ~~((11))~~ (10) "Tugboat business" means the business of operating
4 tugboats, towboats, wharf boats or similar vessels in the towing or
5 pushing of vessels, barges or rafts for hire.

6 ~~((12))~~ (11) "Gross income" means the value proceeding or accruing
7 from the performance of the particular public service or transportation
8 business involved, including operations incidental thereto, but without
9 any deduction on account of the cost of the commodity furnished or
10 sold, the cost of materials used, labor costs, interest, discount,
11 delivery costs, taxes, or any other expense whatsoever paid or accrued
12 and without any deduction on account of losses.

13 ~~((13))~~ (12) The meaning attributed, in chapter 82.04 RCW, to the
14 term "tax year," "person," "value proceeding or accruing," "business,"
15 "engaging in business," "in this state," "within this state," "cash
16 discount," "electrical service," and "successor" shall apply equally in
17 the provisions of this chapter.

18 **Sec. 402.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to
19 read as follows:

20 (1) There is levied and there shall be collected from every person
21 a tax for the act or privilege of engaging within this state in any one
22 or more of the businesses herein mentioned. The tax shall be equal to
23 the gross income of the business, multiplied by the rate set out after
24 the business, as follows:

25 (a) Express, sewerage collection, and telegraph businesses: Three
26 and six-tenths percent;

27 (b) ~~(Light and power business: Three and sixty-two one-hundredths~~
28 ~~percent;~~

29 ~~(c))~~ Gas distribution business: Three and six-tenths percent;

30 ~~((d))~~ (c) Urban transportation business: Six-tenths of one
31 percent;

32 ~~((e))~~ (d) Vessels under sixty-five feet in length, except
33 tugboats, operating upon the waters within the state: Six-tenths of
34 one percent;

35 ~~((f))~~ (e) Motor transportation, railroad, railroad car, and
36 tugboat businesses, and all public service businesses other than ones
37 mentioned above: One and eight-tenths of one percent;

1 (~~(g)~~) (f) Water distribution business: Four and seven-tenths
2 percent.

3 (2) An additional tax is imposed equal to the rate specified in RCW
4 82.02.030 multiplied by the tax payable under subsection (1) of this
5 section.

6 (3) Twenty percent of the moneys collected under subsection (1) of
7 this section on water distribution businesses and sixty percent of the
8 moneys collected under subsection (1) of this section on sewerage
9 collection businesses shall be deposited in the public works assistance
10 account created in RCW 43.155.050.

11 **Sec. 403.** RCW 82.16.050 and 1994 c 124 s 12 are each amended to
12 read as follows:

13 In computing tax there may be deducted from the gross income the
14 following items:

15 (1) Amounts derived by municipally owned or operated public service
16 businesses, directly from taxes levied for the support or maintenance
17 thereof: PROVIDED, That this section shall not be construed to exempt
18 service charges which are spread on the property tax rolls and
19 collected as taxes;

20 (2) Amounts derived from the sale of commodities to persons in the
21 same public service business as the seller, for resale as such within
22 this state. This deduction is allowed only with respect to water
23 distribution, (~~light and power,~~) gas distribution, or other public
24 service businesses which furnish water, (~~electrical energy,~~) gas, or
25 any other commodity in the performance of public service businesses;

26 (3) Amounts actually paid by a taxpayer to another person taxable
27 under this chapter as the latter's portion of the consideration due for
28 services furnished jointly by both, if the total amount has been
29 credited to and appears in the gross income reported for tax by the
30 former;

31 (4) The amount of cash discount actually taken by the purchaser or
32 customer;

33 (5) The amount of credit losses actually sustained by taxpayers
34 whose regular books of accounts are kept upon an accrual basis;

35 (6) Amounts derived from business which the state is prohibited
36 from taxing under the Constitution of this state or the Constitution or
37 laws of the United States;

1 (7) Amounts derived from the distribution of water through an
2 irrigation system, for irrigation purposes;

3 (8) Amounts derived from the transportation of commodities from
4 points of origin in this state to final destination outside this state,
5 or from points of origin outside this state to final destination in
6 this state, with respect to which the carrier grants to the shipper the
7 privilege of stopping the shipment in transit at some point in this
8 state for the purpose of storing, manufacturing, milling, or other
9 processing, and thereafter forwards the same commodity, or its
10 equivalent, in the same or converted form, under a through freight rate
11 from point of origin to final destination; and amounts derived from the
12 transportation of commodities from points of origin in the state to an
13 export elevator, wharf, dock or ship side on tidewater or navigable
14 tributaries thereto from which such commodities are forwarded, without
15 intervening transportation, by vessel, in their original form, to
16 interstate or foreign destinations: PROVIDED, That no deduction will
17 be allowed when the point of origin and the point of delivery to such
18 an export elevator, wharf, dock, or ship side are located within the
19 corporate limits of the same city or town;

20 (~~(9) ((Amounts derived from the production, sale, or transfer of
21 electrical energy for resale or consumption outside the state;~~

22 ~~(10))~~) Amounts derived from the distribution of water by a
23 nonprofit water association and used for capital improvements by that
24 nonprofit water association;

25 ~~((11))~~ (10) Amounts paid by a sewerage collection business
26 taxable under RCW 82.16.020(1)(a) to a person taxable under chapter
27 82.04 RCW for the treatment or disposal of sewage.

28 **Sec. 404.** RCW 82.16.090 and 1988 c 228 s 1 are each amended to
29 read as follows:

30 Any customer billing issued by a (~~(light or power business or)~~) gas
31 distribution business that serves a total of more than twenty thousand
32 customers and operates within the state shall include the following
33 information:

34 (1) The rates and amounts of taxes paid directly by the customer
35 upon products or services rendered by the (~~(light and power business
36 or)~~) gas distribution business; and

37 (2) The rate, origin and approximate amount of each tax levied upon
38 the revenue of the (~~(light and power business or)~~) gas distribution

1 business and added as a component of the amount charged to the
2 customer. Taxes based upon revenue of the (~~light and power business~~
3 ~~or~~) gas distribution business to be listed on the customer billing
4 need not include taxes levied by the federal government or taxes levied
5 under chapters 54.28, 80.24, or 82.04 RCW.

6 **PART V**

7 **CITY LICENSE FEES AND BUSINESS TAXES**

8 **Sec. 501.** RCW 35.21.710 and 1983 2nd ex.s. c 3 s 33 are each
9 amended to read as follows:

10 (1)(a) Any city which imposes a license fee or tax upon business
11 activities consisting of the making of retail sales of tangible
12 personal property or electrical service which are measured by gross
13 receipts or gross income from such sales, shall impose such tax at a
14 single uniform rate upon all such business activities. The taxing
15 authority granted to cities for taxes upon business activities measured
16 by gross receipts or gross income from sales shall not exceed a rate of
17 .0020; except (~~that~~) as provided in this section or RCW 35.21.711.
18 Any city with an adopted ordinance at a higher rate, as of January 1,
19 1982 shall be limited to a maximum increase of ten percent of the
20 January 1982 rate, not to exceed an annual incremental increase of two
21 percent of current rate: PROVIDED, That any adopted ordinance which
22 classifies according to different types of business or services shall
23 be subject to both the ten percent and the two percent annual
24 incremental increase limitation on each tax rate: PROVIDED FURTHER,
25 That all surtaxes on business and occupation classifications in effect
26 as of January 1, 1982, shall expire no later than December 31, 1982, or
27 by expiration date established by local ordinance.

28 (b)(i) Any city that imposed, as of July 1, 1997, a license fee or
29 tax upon business activities consisting of making retail sales of
30 electrical service with a rate exceeding the rate allowed under (a) of
31 this subsection, may continue to impose a license fee or tax upon those
32 businesses at a rate not exceeding the rate imposed on July 1, 1997.

33 (ii) A city imposing a license fee or tax under this subsection
34 (1)(b) shall allow a credit against such license fee or tax for the
35 full amount of any sales or use tax imposed by the city or any other
36 city or county under section 301 of this act upon the same taxable

1 event. A credit under this subsection shall never reduce the license
2 fee or tax to less than zero.

3 (iii) A license fee or tax imposed under this subsection (1)(b)
4 shall expire six years after it is first imposed, unless extended for
5 up to six years by referendum submitted to the voters of the city
6 imposing the tax. A license fee or tax extended by referendum may be
7 extended for additional periods, not exceeding six years each, by
8 additional referenda.

9 (2) Cities which impose a license fee or tax upon business
10 activities consisting of the making of retail sales of tangible
11 personal property or electrical service which are measured by gross
12 receipts or gross income from such sales, shall be required to submit
13 an annual report to the state auditor identifying the rate established
14 and the revenues received from each fee or tax. This section shall not
15 apply to any business activities subject to the tax imposed by chapter
16 82.16 RCW.

17 (3) For purposes of this section, the providing to consumers of
18 competitive telephone service, as defined in RCW 82.04.065, shall be
19 deemed to be the retail sale of tangible personal property.

20 (4) For the purposes of this section, "electrical service" is
21 defined as provided in chapter 82.04 RCW.

22 **Sec. 502.** RCW 35.21.711 and 1982 1st ex.s. c 49 s 8 are each
23 amended to read as follows:

24 The qualified voters of any city or town may by majority vote
25 approve rates in excess of the provisions of RCW 35.21.710(1)(a).

26 **Sec. 503.** RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each
27 amended to read as follows:

28 (1) No city or town may impose a franchise fee or any other fee or
29 charge of whatever nature or description upon the (~~light and power,~~
30 ~~or~~) gas distribution businesses, as defined in RCW 82.16.010, (~~or~~)
31 the telephone business, as defined in RCW 82.04.065, or the business of
32 providing electrical service as defined in section 101 of this act,
33 except that (a) a tax (~~authorized~~) as limited by RCW 35.21.865 and
34 35.21.870 may be imposed (~~and~~) on gas distribution and telephone
35 businesses, (b) a tax as limited by RCW 35.21.710 may be imposed on
36 electrical service business, and (c) a fee may be charged to such
37 businesses that recovers actual administrative expenses incurred by a

1 city or town that are directly related to receiving and approving a
2 permit, license, and franchise, to inspecting plans and construction,
3 or to the preparation of a detailed statement pursuant to chapter
4 43.21C RCW.

5 (2) Subsection (1) of this section does not prohibit franchise fees
6 imposed on (~~(an electrical energy,)~~) a natural gas(~~(,)~~) or telephone
7 business, by contract existing on April 20, 1982, with a city or town,
8 for the duration of the contract, but the franchise fees shall be
9 considered taxes for the purposes of the limitations established in RCW
10 35.21.865 and 35.21.870 to the extent the fees exceed the costs
11 allowable under subsection (1) of this section.

12 (3) Subsection (1) of this section does not prohibit franchise fees
13 imposed on businesses providing electrical services by contract
14 existing on April 20, 1982, with a city or town, for the duration of
15 the contract, but to the extent the fees exceed the costs allowable
16 under subsection (1) of this section, the combined rate of a franchise
17 fee, a tax under section 301 of this act, and a tax under RCW 35.21.710
18 imposed by the city shall not exceed the greater of: (a) The total
19 rate of franchise fee and license fee or tax imposed by the city upon
20 businesses providing electrical services on July 1, 1997; or (b) five
21 and five-tenths percent plus the rate in effect under RCW
22 35.21.710(1)(a) or 35.21.711.

23 **Sec. 504.** RCW 35.21.865 and 1983 c 99 s 4 are each amended to read
24 as follows:

25 No city or town may change the rate of tax it imposes on the
26 privilege of conducting (~~(an electrical energy,)~~) a natural gas(~~(,)~~) or
27 telephone business which change applies to business activities
28 occurring before the effective date of the change, and no rate change
29 may take effect before the expiration of sixty days following the
30 enactment of the ordinance establishing the change except as provided
31 in RCW 35.21.870.

32 **Sec. 505.** RCW 35.21.870 and 1984 c 225 s 6 are each amended to
33 read as follows:

34 (1) No city or town may impose a tax on the privilege of conducting
35 (~~(an electrical energy,)~~) a natural gas, steam energy, or telephone
36 business at a rate which exceeds six percent unless the rate is first

1 approved by a majority of the voters of the city or town voting on such
2 a proposition.

3 (2) If a city or town is imposing a rate of tax under subsection
4 (1) of this section in excess of six percent on April 20, 1982, the
5 city or town shall decrease the rate to a rate of six percent or less
6 by reducing the rate each year on or before November 1st by ordinances
7 to be effective on January 1st of the succeeding year, by an amount
8 equal to one-tenth the difference between the tax rate on April 20,
9 1982, and six percent.

10 Nothing in this subsection prohibits a city or town from reducing
11 its rates by amounts greater than the amounts required in this
12 subsection.

13 Voter approved rate increases under subsection (1) of this section
14 shall not be included in the computations under this subsection.

15 **Sec. 506.** RCW 35A.82.050 and 1983 2nd ex.s. c 3 s 34 are each
16 amended to read as follows:

17 Any code city which imposes a license fee or tax upon business
18 activities consisting of the making of retail sales of tangible
19 personal property or electrical service, which are measured by gross
20 receipts or gross income from such sales, (~~shall impose such tax at a~~
21 ~~single uniform rate upon all such business activities. This section~~
22 ~~shall not apply to any business activities subject to the tax imposed~~
23 ~~by chapter 82.16 RCW. For purposes of this section, the providing to~~
24 ~~consumers of competitive telephone service, as defined in RCW~~
25 ~~82.04.065, shall be deemed to be the retail sale of tangible personal~~
26 ~~property)) is subject to RCW 35.21.710 through 35.21.715.~~

27 **PART VI**

28 **MISCELLANEOUS**

29 NEW SECTION. **Sec. 601.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 82.16.053 (Deductions in computing tax--Light and power
32 businesses) and 1996 c 145 s 1 & 1994 c 236 s 1; and

33 (2) RCW 82.16.055 (Deductions relating to energy conservation or
34 production from renewable resources) and 1980 c 149 s 3.

1 NEW SECTION. **Sec. 602.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 603.** Part headings used in this act are not any
6 part of the law.

7 NEW SECTION. **Sec. 604.** This act takes effect January 1, 2000.

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