
HOUSE BILL 2876

State of Washington 57th Legislature 2002 Regular Session

By Representatives McIntire, Dickerson, Dunshee and Rockefeller

Read first time 01/31/2002. Referred to Committee on Finance.

1 AN ACT Relating to sales and use taxation of advertising and public
2 relations services; amending RCW 82.04.050, 82.04.460, 82.12.010,
3 82.12.020, 82.12.0252, 82.12.0255, 82.12.035, and 82.12.060; reenacting
4 and amending RCW 82.04.190; adding a new section to chapter 82.08 RCW;
5 adding a new section to chapter 82.12 RCW; and providing an effective
6 date.

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

8 **Sec. 1.** RCW 82.04.050 and 2000 2nd sp.s. c 4 s 23 are each amended
9 to read as follows:

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

17 (a) Purchases for the purpose of resale as tangible personal
18 property in the regular course of business without intervening use by

1 such person, but a purchase for the purpose of resale by a regional
2 transit authority under RCW 81.112.300 is not a sale for resale; or

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

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

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

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

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

32 (a) The installing, repairing, cleaning, altering, imprinting, or
33 improving of tangible personal property of or for consumers, including
34 charges made for the mere use of facilities in respect thereto, but
35 excluding charges made for the use of coin-operated laundry facilities
36 when such facilities are situated in an apartment house, rooming house,
37 or mobile home park for the exclusive use of the tenants thereof, and
38 also excluding sales of laundry service to nonprofit health care

1 facilities, and excluding services rendered in respect to live animals,
2 birds and insects;

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

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

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

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

34 (f) The sale of and charge made for the furnishing of lodging and
35 all other services by a hotel, rooming house, tourist court, motel,
36 trailer camp, and the granting of any similar license to use real
37 property, as distinguished from the renting or leasing of real
38 property, and it shall be presumed that the occupancy of real property

1 for a continuous period of one month or more constitutes a rental or
2 lease of real property and not a mere license to use or enjoy the same;

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

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

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

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

22 (c) Credit bureau services;

23 (d) Automobile parking and storage garage services;

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

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

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

34 (4) The term shall also include the sale of or charge made for
35 public relations or advertising services related to the marketing of
36 prescription drugs as defined in RCW 82.08.0281, including but not
37 limited to layout, art direction, graphic design, copywriting,
38 mechanical preparation, or production supervision, but not including
39 any amounts paid for actual broadcast or print advertising;

1 (5) The term shall also include the renting or leasing of tangible
2 personal property to consumers and the rental of equipment with an
3 operator.

4 ~~((+5+))~~ (6) The term shall also include the providing of telephone
5 service, as defined in RCW 82.04.065, to consumers.

6 ~~((+6+))~~ (7) The term shall also include the sale of canned software
7 other than a sale to a person who presents a resale certificate under
8 RCW 82.04.470, regardless of the method of delivery to the end user,
9 but shall not include custom software or the customization of canned
10 software.

11 ~~((+7+))~~ (8) The term shall not include the sale of or charge made
12 for labor and services rendered in respect to the building, repairing,
13 or improving of any street, place, road, highway, easement, right of
14 way, mass public transportation terminal or parking facility, bridge,
15 tunnel, or trestle which is owned by a municipal corporation or
16 political subdivision of the state or by the United States and which is
17 used or to be used primarily for foot or vehicular traffic including
18 mass transportation vehicles of any kind.

19 ~~((+8+))~~ (9) The term shall also not include sales of chemical
20 sprays or washes to persons for the purpose of postharvest treatment of
21 fruit for the prevention of scald, fungus, mold, or decay, nor shall it
22 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
23 pollination including insects such as bees, and spray materials to:
24 (a) Persons who participate in the federal conservation reserve
25 program, the environmental quality incentives program, the wetlands
26 reserve program, and the wildlife habitat incentives program, or their
27 successors administered by the United States department of agriculture;
28 (b) farmers for the purpose of producing for sale any agricultural
29 product; and (c) farmers acting under cooperative habitat development
30 or access contracts with an organization exempt from federal income tax
31 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
32 fish and wildlife to produce or improve wildlife habitat on land that
33 the farmer owns or leases.

34 ~~((+9+))~~ (10) The term shall not include the sale of or charge made
35 for labor and services rendered in respect to the constructing,
36 repairing, decorating, or improving of new or existing buildings or
37 other structures under, upon, or above real property of or for the
38 United States, any instrumentality thereof, or a county or city housing
39 authority created pursuant to chapter 35.82 RCW, including the

1 installing, or attaching of any article of tangible personal property
2 therein or thereto, whether or not such personal property becomes a
3 part of the realty by virtue of installation. Nor shall the term
4 include the sale of services or charges made for the clearing of land
5 and the moving of earth of or for the United States, any
6 instrumentality thereof, or a county or city housing authority. Nor
7 shall the term include the sale of services or charges made for
8 cleaning up for the United States, or its instrumentalities,
9 radioactive waste and other byproducts of weapons production and
10 nuclear research and development.

11 ~~((10))~~ (11) Until July 1, 2003, the term shall not include the
12 sale of or charge made for labor and services rendered for
13 environmental remedial action as defined in RCW 82.04.2635(2).

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

16 "Consumer" means the following:

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

37 (2)(a) Any person engaged in any business activity taxable under
38 RCW 82.04.290; (b) any person who purchases, acquires, or uses any

1 telephone service as defined in RCW 82.04.065, other than for resale in
2 the regular course of business; (c) any person who purchases, acquires,
3 or uses any amusement and recreation service defined in RCW
4 82.04.050(3)(a), other than for resale in the regular course of
5 business; and (d) any person who is an 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 (10) Any person who purchases, acquires, uses, or receives the
27 benefit of any service specified in RCW 82.04.050(4), unless the person
28 purchases for the purpose of:

29 (a) Selling the service without intervening use by the purchaser in
30 the regular course of business; or

31 (b) Incorporating the service as an integral part of a service
32 specified in RCW 82.04.050(4) that will be sold in the regular course
33 of business.

34 **Sec. 3.** RCW 82.04.460 and 1985 c 7 s 154 are each amended to read
35 as follows:

36 (1) Any person rendering services taxable under RCW 82.04.290 and
37 maintaining places of business both within and without this state which
38 contribute to the rendition of such services shall, for the purpose of

1 computing tax liability under RCW 82.04.290, apportion to this state
2 that portion of his gross income which is derived from services
3 rendered within this state. Where such apportionment cannot be
4 accurately made by separate accounting methods, the taxpayer shall
5 apportion to this state that proportion of his total income which the
6 cost of doing business within the state bears to the total cost of
7 doing business both within and without the state.

8 (2) Notwithstanding the provision of subsection (1) of this
9 section, persons doing business both within and without the state who
10 receive gross income from service charges, as defined in RCW 63.14.010
11 (relating to amounts charged for granting the right or privilege to
12 make deferred or installment payments) or who receive gross income from
13 engaging in business as financial institutions within the scope of
14 chapter 82.14A RCW (relating to city taxes on financial institutions)
15 shall apportion or allocate gross income taxable under RCW 82.04.290 to
16 this state pursuant to rules promulgated by the department consistent
17 with uniform rules for apportionment or allocation developed by the
18 states.

19 (3) The department shall by rule provide a method or methods of
20 apportioning or allocating gross income derived from sales of telephone
21 services taxed under this chapter or services defined as a retail sale
22 under RCW 82.04.050(4), if the gross proceeds of sales subject to tax
23 under this chapter do not fairly represent the extent of the taxpayer's
24 income attributable to this state. The rules shall be, so far as
25 feasible, consistent with the methods of apportionment contained in
26 this section and shall require the consideration of those facts,
27 circumstances, and apportionment factors as will result in an equitable
28 and constitutionally permissible division of the services.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW
30 to read as follows:

31 (1) A seller shall collect the retail sales tax on all sales of
32 services defined as retail sales under RCW 82.04.050(4) unless the
33 buyer provides the seller with a multistate use certificate. A buyer
34 shall not provide a multistate use certificate if the service relates
35 to or affects only a location, market, property, or individual in this
36 state.

37 (2) The department shall adopt rules providing the form and
38 information required to be on multistate use certificates. The

1 department shall establish by rule evidence by which a buyer may
2 demonstrate that the criteria in subsection (1) of this section apply.

3 (3) If a transaction involves both a service for which tax is
4 collectible under this section, and a service for which tax is not
5 collectible under this section, the charges shall be separately
6 identified and stated with respect to the collectible and
7 noncollectible portions of the transaction. Failure to separately
8 state the charges creates a presumption that tax is collectible upon
9 the entire transaction under this section.

10 (4) If the seller does not collect tax under this section, the
11 buyer shall remit any tax due with the buyer's next regularly scheduled
12 return.

13 **Sec. 5.** RCW 82.12.010 and 2001 c 188 s 3 are each amended to read
14 as follows:

15 For the purposes of this chapter:

16 (1)(a) "Value of the article used" shall mean the consideration,
17 whether money, credit, rights, or other property except trade-in
18 property of like kind, expressed in terms of money, paid or given or
19 contracted to be paid or given by the purchaser to the seller for the
20 article of tangible personal property, the use of which is taxable
21 under this chapter. The term includes, in addition to the
22 consideration paid or given or contracted to be paid or given, the
23 amount of any tariff or duty paid with respect to the importation of
24 the article used. In case the article used is acquired by lease or by
25 gift or is extracted, produced, or manufactured by the person using the
26 same or is sold under conditions wherein the purchase price does not
27 represent the true value thereof, the value of the article used shall
28 be determined as nearly as possible according to the retail selling
29 price at place of use of similar products of like quality and character
30 under such rules as the department of revenue may prescribe.

31 (b) In case the articles used are acquired by bailment, the value
32 of the use of the articles so used shall be in an amount representing
33 a reasonable rental for the use of the articles so bailed, determined
34 as nearly as possible according to the value of such use at the places
35 of use of similar products of like quality and character under such
36 rules as the department of revenue may prescribe. In case any such
37 articles of tangible personal property are used in respect to the
38 construction, repairing, decorating, or improving of, and which become

1 or are to become an ingredient or component of, new or existing
2 buildings or other structures under, upon, or above real property of or
3 for the United States, any instrumentality thereof, or a county or city
4 housing authority created pursuant to chapter 35.82 RCW, including the
5 installing or attaching of any such articles therein or thereto,
6 whether or not such personal property becomes a part of the realty by
7 virtue of installation, then the value of the use of such articles so
8 used shall be determined according to the retail selling price of such
9 articles, or in the absence of such a selling price, as nearly as
10 possible according to the retail selling price at place of use of
11 similar products of like quality and character or, in the absence of
12 either of these selling price measures, such value may be determined
13 upon a cost basis, in any event under such rules as the department of
14 revenue may prescribe.

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

24 (d) In the case of articles manufactured or produced by the user
25 and used in the manufacture or production of products sold or to be
26 sold to the department of defense of the United States, the value of
27 the articles used shall be determined according to the value of the
28 ingredients of such articles.

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

36 (f) In the case of an article purchased with a direct pay permit
37 under RCW 82.32.087, the value of the article used shall be determined
38 by the retail selling price, as defined in RCW 82.08.010, of such

1 article if but for the use of the direct pay permit the transaction
2 would have been subject to sales tax;

3 (2) "Value of the service used" means the consideration, whether
4 money, credit, rights, or other property, expressed in terms of money,
5 paid or given or contracted to be paid or given by the purchaser to the
6 seller for the service, the use of which is taxable under this chapter.
7 If the service is received by gift or under conditions wherein the
8 purchase price does not represent the true value of the service, the
9 value of the service used shall be determined as nearly as possible
10 according to the selling price at the place of use of similar services
11 under rules prescribed by the department of revenue;

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

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

20 (b) With respect to a service defined as a retail sale under RCW
21 82.04.050(4), the receipt by the taxpayer of any part of the benefit
22 afforded the service;

23 (~~(+3)~~) (4) "Taxpayer" and "purchaser" include all persons included
24 within the meaning of the word "buyer" and the word "consumer" as
25 defined in chapters 82.04 and 82.08 RCW;

26 (~~(+4)~~) (5) "Retailer" means every seller as defined in RCW
27 82.08.010 and every person engaged in the business of selling tangible
28 personal property or services at retail and every person required to
29 collect from purchasers the tax imposed under this chapter;

30 (~~(+5)~~) (6) The meaning ascribed to words and phrases in chapters
31 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
32 effect with respect to taxes imposed under the provisions of this
33 chapter. "Consumer," in addition to the meaning ascribed to it in
34 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
35 person who distributes or displays, or causes to be distributed or
36 displayed, any article of tangible personal property, except
37 newspapers, the primary purpose of which is to promote the sale of
38 products or services.

1 **Sec. 6.** RCW 82.12.020 and 1999 c 358 s 9 are each amended to read
2 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); or (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.

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

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

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

28 **Sec. 7.** RCW 82.12.0252 and 1980 c 37 s 52 are each amended to read
29 as follows:

30 The provisions of this chapter shall not apply in respect to the
31 use of any article of tangible personal property or service defined as
32 a retail sale purchased at retail or acquired by lease, gift or
33 bailment if the sale thereof to, or the use thereof by, the present
34 user or ((his)) the user's bailor or donor has already been subjected
35 to the tax under chapter 82.08 or 82.12 RCW and such tax has been paid
36 by the present user or by his bailor or donor; or in respect to the use
37 of property acquired by bailment and such tax has once been paid based
38 on reasonable rental as determined by RCW 82.12.060 measured by the

1 value of the article at time of first use multiplied by the tax rate
2 imposed by chapter 82.08 or 82.12 RCW as of the time of first use; or
3 in respect to the use of any article of tangible personal property
4 acquired by bailment, if the property was acquired by a previous bailee
5 from the same bailor for use in the same general activity and such
6 original bailment was prior to June 9, 1961.

7 **Sec. 8.** RCW 82.12.0255 and 1980 c 37 s 55 are each amended to read
8 as follows:

9 The provisions of this chapter shall not apply in respect to the
10 use of any article of tangible personal property or any service defined
11 as a retail sale which the state is prohibited from taxing under the
12 Constitution of the state or under the Constitution or laws of the
13 United States.

14 **Sec. 9.** RCW 82.12.035 and 1996 c 148 s 6 are each amended to read
15 as follows:

16 A credit shall be allowed against the taxes imposed by this chapter
17 upon the use of tangible personal property, or services taxable under
18 RCW 82.04.050(3)((+a)), in the state of Washington in the amount that
19 the present user thereof or his or her bailor or donor has paid a
20 retail sales or use tax with respect to such property to any other
21 state of the United States, any political subdivision thereof, the
22 District of Columbia, and any foreign country or political subdivision
23 thereof, prior to the use of such property in Washington.

24 **Sec. 10.** RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each
25 amended to read as follows:

26 (1) In the case of installment sales and leases of personal
27 property, the department, by ((~~regulation~~)) rule, may provide for the
28 collection of taxes upon the installments of the purchase price, or
29 amount of rental, as of the time the same fall due.

30 (2) In the case of property acquired by bailment, the department,
31 by ((~~regulation~~)) rule, may provide for payment of the tax due in
32 installments based on the reasonable rental for the property as
33 determined under RCW 82.12.010(1).

34 (3) In the case of services defined as a retail sale under RCW
35 82.04.050(4), the seller may collect taxes based upon payments of the
36 purchase price, as of the time the payments are made, regardless of the

1 accounting method used by the seller or whether the sales were made
2 under an installment agreement.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.12 RCW
4 to read as follows:

5 (1) The entire value of a service used in this state is subject to
6 tax under this chapter, unless apportionment is allowed under this
7 section.

8 (2) A taxpayer maintaining places of business both within and
9 without this state may apportion the value of service used by the
10 taxpayer. The taxable portion of the value of the service equals the
11 full value of the service multiplied by an apportionment fraction, the
12 numerator of which is the property factor plus the payroll factor plus
13 the sales factor, and the denominator of which is three. The
14 taxpayer's sales, property, and payroll factors shall be calculated as
15 provided in RCW 82.56.010, except the department may alter the
16 components of the apportionment factors by rule to be consistent with
17 uniform rules for apportionment or allocation developed by the states
18 for particular industries.

19 (3) The department shall provide by rule for the time and manner of
20 recalculating the apportionment formula. The apportionment factor
21 shall not be required to be recalculated more often than annually.

22 (4) If the requirements of this section do not fairly represent the
23 extent of the taxpayer's use of a service in this state, the taxpayer
24 may petition for, or the department may require, in respect to all or
25 any part of the taxpayer's use of services, if reasonable:

26 (a) Separate accounting;

27 (b) The exclusion of any one or more of the factors;

28 (c) The inclusion of one or more additional factors that will
29 fairly represent the taxpayer's use of services in this state; or

30 (d) The employment of any other method to effectuate an equitable
31 allocation and apportionment of the taxpayer's use of services.

32 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2002.

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