CERTIFICATION OF ENROLLMENT

SENATE BILL 6173

Chapter 563, Laws of 2009

61st Legislature
2009 Regular Session

SALES TAX COMPLIANCE

EFFECTIVE DATE: 01/01/10

Passed by the Senate April 25, 2009
YEAS 30  NAYS 19

BRAD OWEN
President of the Senate

Passed by the House April 23, 2009
YEAS 86  NAYS 9

FRANK CHOPP
Speaker of the House of Representatives

Approved May 19, 2009, 11:07 a.m.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SENATE BILL 6173 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

FILED
May 20, 2009

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to improving sales tax compliance; amending RCW 82.04.470, 82.08.050, 82.08.130, 82.14B.042, 82.14B.200, 82.32.087, 82.32.290, 82.32.291, 82.32.330, 82.72.040, and 82.72.070; reenacting and amending RCW 82.04.050; adding new sections to chapter 82.32 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

PART I
FINDING AND INTENT

NEW SECTION. Sec. 101. The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with seller's permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as retailers,
wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a seller's permit.

PART II
REPLACING RESALE CERTIFICATES WITH SELLER'S PERMITS
ISSUED BY THE DEPARTMENT OF REVENUE

NEW SECTION. Sec. 201. A new section is added to chapter 82.32 RCW to read as follows:

(1) Taxpayers seeking a new seller's permit or to renew or reinstate a seller's permit, other than taxpayers subject to the provisions of section 202 of this act, must apply to the department in a form and manner prescribed by the department. The department must rule on applications within sixty days of receiving a complete application. An application must be denied if the department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a seller's permit. The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title. The department's decision whether to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the seller's permit application, and other information available to the department.

(2) Notwithstanding subsection (1) of this section, the department may issue a seller's permit to a taxpayer that has not applied for the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

(3) Seller's permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.

(4)(a) Except as otherwise provided in this section, seller's
permits issued, renewed, or reinstated under this section will be valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(b) A seller's permit issued to taxpayers who register with the department under RCW 82.32.030 after January 1, 2009, is valid for a period of twenty-four months and may be renewed for the period prescribed in (a) of this subsection (4).

(c) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.

(5)(a) The department may revoke a seller's permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the seller's permit for the purchase;

(ii) The department issued the seller's permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the taxpayer of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the
former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(6) The department may provide lists of valid and revoked seller's permit numbers on its web site.

(7) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(8) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates.

NEW SECTION. Sec. 202. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Contractors seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the dollar amount of all purchases of materials and labor during the preceding twelve months for retail construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding twelve months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, speculative building, public road construction, and government contracting during the twelve-month period for which the seller's permit will be valid.

(c) The department must rule on applications within sixty days of receiving a complete application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale;
(B) The application contains any material misstatement;
(C) The application is incomplete; or
(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material and labor purchases as reported on the application is for retail construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.
(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.
(e) Applications to renew a seller's permit may not be made more than ninety days before the expiration of the seller's permit.
(2) Sellers' permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.
(3)(a) Sellers' permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement.
(b) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.
(4)(a) The department may revoke a seller's permit of a contractor for any of the following reasons:
(i) The contractor used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the contractor or other purchaser was not entitled to use the seller's permit for the purchase;
(ii) The department issued the seller's permit to the contractor in error;
(iii) The department determines that the contractor is no longer entitled to make purchases at wholesale; or
(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.
(b) The notice of revocation must be in writing and is effective on
the date specified in the revocation notice. The notice must also advise the contractor of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a contractor whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide lists of valid and revoked sellers' permit numbers on its web site.

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person who engages in any retail construction activity, or who engages in any activity that brings the person within the definition of consumer in RCW 82.04.190 (3) or (6), or who is a speculative builder as defined by rule of the department.

(b) "Government contracting" means the activity described in RCW 82.04.190(6).
(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department.

NEW SECTION.  Sec. 203. A new section is added to chapter 82.32 RCW to read as follows:

The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means the validity of sellers' permits presented to sellers from their customers.

NEW SECTION.  Sec. 204. A new section is added to chapter 82.32 RCW to read as follows:

A person must, upon request of the department, provide the department with a copy of all sellers' permits, or uniform exemption certificates as authorized in RCW 82.04.470, accepted by that person during the period specified by the department.

Sec. 205.  RCW 82.04.470 and 2007 c 6 s 1201 are each amended to read as follows:

(1) Unless a seller has taken from the buyer a ((resale certificate)) seller's permit, the burden of proving that a sale of tangible personal property, extended warranty, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a ((resale certificate)) seller's permit at the time of the sale, have a ((resale certificate)) seller's permit on file at the time of the sale, or obtain a ((resale certificate)) seller's permit from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department ((of revenue)) that show the sale was properly made without payment of retail sales tax.
The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

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

(a) The name and address of the buyer;
(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;
(c) The type of business engaged in;
(d) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale, unless the buyer presents a blanket seller's permit; (e) The date on which the permit was provided to the seller;
(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;
(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the permit and that misuse of the resale privilege claimed on the permit subjects the buyer to revocation of the seller's permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;
(h) The name of the individual authorized to sign the permit, printed in a legible fashion;
(i) The signature of the authorized individual;
(j) The name of the seller;
(k) The date the permit was issued, renewed, or reinstated by the department;

(l) The date that the permit expires;

(m) Instructions for renewing the permit; and

(n) A statement that the department is authorized to obtain information concerning the buyer's purchase of items or services under the permit from the seller to verify whether the buyer was authorized to purchase such items or services without payment of retail sales tax.

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

(5)(a) In lieu of a seller's permit issued by the department under section 201 or 202 of this act, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030 a properly completed:

(i) Uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(ii) Uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

(b) A seller who accepts a properly completed exemption certificate as authorized in (a) of this subsection is relieved of the obligation to collect and remit retail sales tax.

(6) In lieu of a seller's permit issued by the department under section 201 or 202 of this act, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030 a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board as long as that certificate includes the seller's permit number issued by the department to the buyer.

(7) As used in this section, "seller's permit" means documentation issued by the department under section 201 or 202 of this act and provided by a buyer to a seller to substantiate a wholesale sale.

Sec. 206. RCW 82.08.050 and 2007 c 6 s 1202 are each amended to read as follows:
(1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form under RCW 82.32.730(5), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in
Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the
department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

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

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:
   (i) The storage, dissemination, or display of advertising;
   (ii) The taking of orders; or
   (iii) The processing of payments; and
(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.
For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

Sec. 207. RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of articles of tangible personal property and is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a ((resale certificate)) seller's permit or, if eligible, a uniform exemption certificate authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a ((resale certificate)) seller's permit or uniform exemption certificate authorized under RCW 82.04.470 that are used by the buyer and remit the deferred sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article or service at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction or credit on the buyer's tax return equal to, in the case of a deduction, the cost to the buyer of the property or service resold upon which retail sales tax has been paid, and in the case of a credit, the amount of state and local sales taxes paid with respect to the property or service resold. The deduction or credit is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles or services were purchased, the date of the purchase, the type of articles or services, the amount of the purchase, and the tax that was paid.

(3) The department ((shall)) must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later ((sold at wholesale)) resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a seller's permit or uniform exemption certificate as authorized in RCW 82.04.470.

(4) Nothing in this section may be construed to authorize a
deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Sec. 208.  RCW 82.14B.042 and 2002 c 341 s 10 are each amended to read as follows:

(1) The state enhanced 911 excise taxes imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line or the radio communications service company providing the radio access line, and each local exchange company and each radio communications service company shall collect from the subscriber the full amount of the taxes payable. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company are deemed to be held in trust by the local exchange company or the radio communications service company until paid to the department. Any local exchange company or radio communications service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company or radio communications service company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company or the radio communications service company is personally liable to the state for the amount of the tax, unless the local exchange company or the radio communications service company has taken from the buyer in good faith (a properly executed resale certificate under RCW 82.14B.200) documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, or to the department, constitutes a debt from the subscriber to the local exchange company or the radio communications service company. Any local exchange company or radio communications service company that
fails or refuses to collect the tax as required with intent to violate
the provisions of this chapter or to gain some advantage or benefit,
either direct or indirect, and any subscriber who refuses to pay any
tax due under this chapter is guilty of a misdemeanor. The state
enhanced 911 excise taxes required by this chapter to be collected by
the local exchange company or the radio communications service company
must be stated separately on the billing statement that is sent to the
subscriber.

(4) If a subscriber has failed to pay to the local exchange company
or the radio communications service company the state enhanced 911
excise taxes imposed by this chapter and the local exchange company or
the radio communications service company has not paid the amount of the
tax to the department, the department may, in its discretion, proceed
directly against the subscriber for collection of the tax, in which
case a penalty of ten percent may be added to the amount of the tax for
failure of the subscriber to pay the tax to the local exchange company
or the radio communications service company, regardless of when the tax
is collected by the department. Tax under this chapter is due as
provided under RCW 82.14B.061.

Sec. 209. RCW 82.14B.200 and 2002 c 341 s 12 are each amended to
read as follows:

(1) Unless a local exchange company or a radio communications
service company has taken from the buyer ((a resale certificate or
equivalent document under RCW 82.04.470)) documentation, in a form and
manner prescribed by the department, stating that the buyer is not a
subscriber or is otherwise not liable for the tax, the burden of
proving that a sale of the use of a switched access line or radio
access line was not a sale to a subscriber or was not otherwise subject
to the tax is upon the person who made the sale.

(2) If a local exchange company or a radio communications service
company does not receive ((a resale certificate)) documentation, in a
form and manner prescribed by the department, stating that the buyer is
not a subscriber or is otherwise not liable for the tax at the time of
the sale, have ((a resale certificate)) such documentation on file at
the time of the sale, or obtain ((a resale certificate)) such
documentation from the buyer within a reasonable time after the sale,
the local exchange company or the radio communications service company
remains liable for the tax as provided in RCW 82.14B.042, unless the
local exchange company or the radio communications service company can
demonstrate facts and circumstances according to rules adopted by the
department of revenue that show the sale was properly made without
payment of the state enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on
state enhanced 911 excise taxes due but not paid as a result of the
improper use of documentation stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax. This subsection does not prohibit or restrict the application of other penalties authorized by law.

Sec. 210. RCW 82.32.087 and 2001 c 188 s 2 are each amended to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if the taxpayer (i) is subject to mandatory use of electronic funds transfer under RCW 82.32.080; or (ii) makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.
(c) The director shall review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department shall approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department shall provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit shall furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, shall maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best
interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, shall return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;
(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;
(c) Purchases for which a ((resale certificate)) seller's permit or uniform exemption certificate authorized under RCW 82.04.470 may be used;
(d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (d), (f), and (g), and (5); or
(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

Sec. 211. RCW 82.32.290 and 1985 c 414 s 2 are each amended to read as follows:

(1)(a) It shall be unlawful:
(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;
(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;
(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a seller a (resale—certificate) seller’s permit or uniform exemption certificate authorized under RCW 82.04.470 without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.
Sec. 212.  RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each amended to read as follows:

Any person who uses a seller's permit to purchase items or services without payment of sales tax, or who uses a uniform exemption certificate developed by the multistate tax commission or approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the seller's permit or exemption certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the seller's permit or exemption certificate was due to circumstances beyond the taxpayer's control or if the seller's permit or exemption certificate was properly used for purchases for dual purposes. The department shall define by rule what circumstances are considered to be beyond the taxpayer's control.

Sec. 213.  RCW 82.32.330 and 2008 c 81 s 11 are each amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a
written determination, and (v) other data received by, recorded by, 
prepared by, furnished to, or collected by the department of revenue 
with respect to the determination of the existence, or possible 
existence, of liability, or the amount thereof, of a person under the 
laws of this state for a tax, penalty, interest, fine, forfeiture, or 
other imposition, or offense((:Provided, That)). However, data, 
material, or documents that do not disclose information related to a 
specific or identifiable taxpayer do not constitute tax information 
under this section. Except as provided by RCW 82.32.410, nothing in 
this chapter shall require any person possessing data, material, or 
documents made confidential and privileged by this section to delete 
information from such data, material, or documents so as to permit its 
disclosure;

(d) "State agency" means every Washington state office, department, 
division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, 
telephone number, registration number, or any combination thereof, or 
any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, 
agent, employee, or representative.

(2) Returns and tax information ((shall be)) are confidential and 
privileged, and except as authorized by this section, neither the 
department of revenue nor any other person may disclose any return or 
tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or 
criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if 
the taxpayer or its officer or other person liable under Title 82 RCW 
is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax 
information is sought and another state agency are adverse parties in 
the proceeding;

(b) Disclosing, subject to such requirements and conditions as the 
director ((shall)) prescribes by rules adopted pursuant to chapter 
34.05 RCW, such return or tax information regarding a taxpayer to such 
taxpayer or to such person or persons as that taxpayer may designate in 
a request for, or consent to, such disclosure, or to any other person,
at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. **Provided**, **that**. However, tax information not received from the taxpayer **shall** must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department **shall** is not **be** required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;
(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives within the Department of Justice, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative ((thereof)) of these federal agencies, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, seller's permit numbers and the status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection ((shall)) must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;
(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax; or

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals,
financial statements, expert's workpapers, income tax returns, state
tax returns, tax return workpapers, or other similar data, materials,
or documents.

(b) Before disclosure of any tax return or tax information under
this subsection (4), the department ((shall)) must, through written
correspondence, inform the person in possession of the data, materials,
or documents to be disclosed. The correspondence ((shall)) must
clearly identify the data, materials, or documents to be disclosed.
The department may not disclose any tax return or tax information under
this subsection (4) until the time period allowed in (c) of this
subsection has expired or until the court has ruled on any challenge
brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents
to be disclosed by the department has twenty days from the receipt of
the written request required under (b) of this subsection to petition
the superior court of the county in which the petitioner resides for
injunctive relief. The court shall limit or deny the request of the
department if the court determines that:

(i) The data, materials, or documents sought for disclosure are
cumulative or duplicative, or are obtainable from some other source
that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought
would be unduly burdensome or expensive, taking into account the needs
of the department, the amount in controversy, limitations on the
petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure
contain trade secret information that, if disclosed, could harm the
petitioner.

(d) The department ((shall)) must reimburse reasonable expenses for
the production of data, materials, or documents incurred by the person
in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may
indicate that a taxpayer is under investigation does not constitute a
disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information
in the course of his or her employment with the department of revenue
and any person acquiring knowledge of any return or tax information as
provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person (shall) must forfeit such office or employment and (shall be) is incapable of holding any public office or employment in this state for a period of two years thereafter.

**Sec. 214.** RCW 82.72.040 and 2004 c 254 s 6 are each amended to read as follows:

(1) Telephone program excise taxes must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the taxes payable. Telephone program excise taxes to be collected by the local exchange company are deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect telephone program excise taxes or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith (a properly executed resale certificate under RCW 82.72.070) documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes.

(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect telephone program excise taxes as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any
subscriber who refuses to pay any telephone excise tax is guilty of a
misdemeanor.

(4) If a subscriber has failed to pay to the local exchange company
the telephone program excise taxes and the local exchange company has
not paid the amount of the tax to the department, the department may,
in its discretion, proceed directly against the subscriber for
collection of the tax, in which case a penalty of ten percent may be
added to the amount of the tax for failure of the subscriber to pay the
tax to the local exchange company, regardless of when the tax is
collected by the department. Telephone program excise taxes are due as
provided under RCW 82.72.050.

Sec. 215. RCW 82.72.070 and 2004 c 254 s 9 are each amended to
read as follows:

(1) Unless a local exchange company has taken from the buyer ((a
resale certificate or equivalent document under RCW 82.04.470))
documentation, in a form and manner prescribed by the department,
stating that the buyer is not a subscriber or is otherwise not liable
for telephone program excise taxes, the burden of proving that a sale
of the use of a switched access line was not a sale to a subscriber or
was otherwise not subject to telephone program excise taxes is upon the
person who made the sale.

(2) If a local exchange company does not receive ((a resale
certificate)) documentation, in a form and manner prescribed by the
department, stating that the buyer is not a subscriber or is otherwise
not liable for telephone program excise taxes at the time of the sale,
have ((a resale certificate)) such documentation on file at the time of
the sale, or obtain ((a resale certificate)) such documentation from
the buyer within a reasonable time after the sale, the local exchange
company remains liable for the telephone program excise taxes as
provided in RCW 82.72.040, unless the local exchange company can
demonstrate facts and circumstances according to rules adopted by the
department that show the sale was properly made without payment of
telephone program excise taxes.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on
telephone program excise taxes that are due but not paid as a result of
the improper use of ((a resale certificate)) documentation stating that
the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes. This subsection does not prohibit or restrict the application of other penalties authorized by law.

PART III
TECHNICAL CHANGES

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

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a ((resale certificate under)) seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services
including amounts designated as interest, rents, fees, admission, and
other service emoluments however designated, received by persons
engaging in the following business activities:
(a) Amusement and recreation services including but not limited to
golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
for sightseeing purposes, and others, when provided to consumers;
(b) Abstract, title insurance, and escrow services;
(c) Credit bureau services;
(d) Automobile parking and storage garage services;
(e) Landscape maintenance and horticultural services but excluding
(i) horticultural services provided to farmers and (ii) pruning,
trimming, repairing, removing, and clearing of trees and brush near
electric transmission or distribution lines or equipment, if performed
by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional
sporting events; and
(g) The following personal services: Physical fitness services,
tanning salon services, tattoo parlor services, steam bath services,
turkish bath services, escort services, and dating services.
(4)(a) The term shall also include:
(i) The renting or leasing of tangible personal property to
consumers; and
(ii) Providing tangible personal property along with an operator
for a fixed or indeterminate period of time. A consideration of this
is that the operator is necessary for the tangible personal property to
perform as designed. For the purpose of this subsection (4)(a)(ii), an
operator must do more than maintain, inspect, or set up the tangible
personal property.
(b) The term shall not include the renting or leasing of tangible
personal property where the lease or rental is for the purpose of
sublease or subrent.
(5) The term shall also include the providing of "competitive
telephone service," "telecommunications service," or "ancillary
services," as those terms are defined in RCW 82.04.065, to consumers.
(6) The term shall also include the sale of prewritten computer
software other than a sale to a person who presents a ((resale
certificate under)) seller's permit or uniform exemption certificate in
conformity with RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

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

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

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

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

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

PART IV
MISCELLANEOUS

NEW SECTION. Sec. 401. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 402. This act must be liberally construed in order to carry out its purposes.

NEW SECTION. Sec. 403. This act takes effect January 1, 2010.
NEW SECTION. Sec. 404. The effective date in section 403 of this act may not be construed as preventing the department of revenue from accepting applications for, or issuing, seller's permits before January 1, 2010, adopting rules, or taking any other action before January 1, 2010, necessary to ensure the effective implementation of this act.

NEW SECTION. Sec. 405. By December 1, 2009, the finance committee of the house of representatives and the joint legislative task force on the underground economy in the Washington state construction industry, shall each prepare a report that reviews the issues and concerns that need to be addressed by the legislature as a result of the changes made in this act. The reports shall include any recommendations on potential modifications to the provisions of this act. The department of revenue shall provide necessary support and information.

NEW SECTION. Sec. 406. Part headings used in this act are not any part of the law.

Passed by the Senate April 25, 2009.
Passed by the House April 23, 2009.
Approved by the Governor May 19, 2009.
Filed in Office of Secretary of State May 20, 2009.