
SENATE BILL 5816

State of Washington

62nd Legislature

2011 Regular Session

By Senators Chase, Kohl-Welles, Rockefeller, Nelson, Keiser, Kline, Conway, Prentice, and Fraser

Read first time 02/16/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to terminating certain tax preferences to provide
2 funding for maintaining basic health program enrollment; amending RCW
3 82.04.4292, 82.48.010, 82.48.020, 82.48.030, 82.48.070, 82.48.080,
4 82.48.110, 47.68.230, 82.48.090, 82.12.020, and 82.12.035; reenacting
5 and amending RCW 82.04.050 and 82.12.010; adding a new section to
6 chapter 82.48 RCW; adding a new section to chapter 82.04 RCW; creating
7 a new section; repealing RCW 82.08.811 and 82.12.811; providing an
8 effective date; and declaring an emergency.

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

10 **PART I**

11 **Findings & Intent**

12 NEW SECTION. **Sec. 101.** The legislature finds that there is a need
13 to provide funding to maintain enrollment in the state basic health
14 plan in order to ensure access to affordable, quality health care
15 services for Washington residents who lack other means of acquiring or
16 maintaining such health care coverage. The legislature further finds
17 that certain tax preferences are obsolete and inefficient and that such
18 tax preferences should be ended and the funding therefrom should be

1 used to provide funding to maintain enrollment in the state basic
2 health plan. Therefore, it is the legislature's intent that the funds
3 saved by the termination of the tax preferences in this act be used for
4 the purpose of the basic health plan.

5 **PART II**

6 **Modifying and Placing a Cap on the First Mortgage Deduction**

7 **Sec. 201.** RCW 82.04.4292 and 2010 1st sp.s. c 23 s 301 are each
8 amended to read as follows:

9 (1) In computing tax there may be deducted from the measure of tax
10 by those engaged in banking, loan, security or other financial
11 businesses, interest received on investments or loans primarily secured
12 by first mortgages or trust deeds on nontransient residential
13 properties.

14 (2) Interest deductible under this section includes the portion of
15 fees charged to borrowers, including points and loan origination fees,
16 that is recognized over the life of the loan as an adjustment to yield
17 in the taxpayer's books and records according to generally accepted
18 accounting principles.

19 (3) Subsections (1) and (2) of this section notwithstanding, the
20 following is a nonexclusive list of items that are not deductible under
21 this section:

22 (a) Fees for specific services such as: Document preparation fees;
23 finder fees; brokerage fees; title examination fees; fees for credit
24 checks; notary fees; loan application fees; interest lock-in fees if
25 the loan is not made; servicing fees; and similar fees or amounts;

26 (b) Fees received in consideration for an agreement to make funds
27 available for a specific period of time at specified terms, commonly
28 referred to as commitment fees;

29 (c) Any other fees, or portion of a fee, that is not recognized
30 over the life of the loan as an adjustment to yield in the taxpayer's
31 books and records according to generally accepted accounting
32 principles;

33 (d) Gains on the sale of valuable rights such as service release
34 premiums, which are amounts received when servicing rights are sold;
35 and

1 (e) Gains on the sale of loans, except deferred loan origination
2 fees and points deductible under subsection (2) of this section, are
3 not to be considered part of the proceeds of sale of the loan.

4 (4) Notwithstanding subsection (3) of this section, in computing
5 tax there may be deducted from the measure of tax by those engaged in
6 banking, loan, security, or other financial businesses, amounts
7 received for servicing loans primarily secured by first mortgages or
8 trust deeds on nontransient residential properties, including such
9 loans that secure mortgage-backed or mortgage-related securities, but
10 only if:

11 (a)(i) The loans were originated by the person claiming a deduction
12 under this subsection (4) and that person either sold the loans on the
13 secondary market or securitized the loans and sold the securities on
14 the secondary market; or

15 (ii)(A) The person claiming a deduction under this subsection (4)
16 acquired the loans from the person that originated the loans through a
17 merger or acquisition of substantially all of the assets of the person
18 who originated the loans, or the person claiming a deduction under this
19 subsection (4) is affiliated with the person that originated the loans.
20 For purposes of this subsection, "affiliated" means under common
21 control. "Control" means the possession, directly or indirectly, of
22 more than fifty percent of the power to direct or cause the direction
23 of the management and policies of a person, whether through the
24 ownership of voting shares, by contract, or otherwise; and

25 (B) Either the person who originated the loans or the person
26 claiming a deduction under this subsection (4) sold the loans on the
27 secondary market or securitized the loans and sold the securities on
28 the secondary market; and

29 (b) The amounts received for servicing the loans are determined by
30 a percentage of the interest paid by the borrower and are only received
31 if the borrower makes interest payments.

32 (5) The total amount a person may deduct under this section for any
33 calendar year may not exceed one hundred million dollars.

34 **PART III**

35 **Airplane Excise Tax**

1 **Sec. 301.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to
2 read as follows:

3 For the purposes of this chapter, unless otherwise required by the
4 context:

5 (1) "Department" means the department of licensing.

6 (2) "Aircraft" means any weight-carrying device or structure for
7 navigation of the air which is designed to be supported by the air;

8 (~~(2) "Secretary" means the secretary of transportation;~~)

9 (3) "Person" includes a firm, partnership, limited liability
10 company, or corporation(~~(~~

11 ~~(4) "Small multi-engine fixed wing" means any piston-driven multi-~~
12 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
13 ~~manufacturer of less than seventy-five hundred pounds; and~~

14 ~~(5) "Large multi-engine fixed wing" means any piston-driven multi-~~
15 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
16 ~~manufacturer of seventy-five hundred pounds or more).~~

17 **Sec. 302.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to
18 read as follows:

19 (1) An annual excise tax is hereby imposed for the privilege of
20 using any aircraft in the state. A current certificate of air
21 worthiness with a current inspection date from the appropriate federal
22 agency and/or the purchase of aviation fuel (~~(shall)~~) constitutes the
23 necessary evidence of aircraft use or intended use. (~~(The tax shall)~~)
24 The amount of the tax is five-tenths of one percent of the taxable
25 value of the aircraft, as determined under section 303 of this act.

26 (2) The tax imposed under this section must be collected annually
27 or under a staggered collection schedule as required by the
28 (secretary) department by rule. (~~(No additional tax shall be imposed~~
29 ~~under this chapter upon any aircraft upon the transfer of ownership~~
30 ~~thereof, if the tax imposed by this chapter with respect to such~~
31 ~~aircraft has already been paid for the year in which transfer of~~
32 ~~ownership occurs. A violation of this subsection is a misdemeanor~~
33 ~~punishable as provided under chapter 9A.20 RCW.~~

34 ~~(2))~~ (3) Persons who are required to register aircraft under
35 chapter 47.68 RCW and who register aircraft in another state or foreign
36 country and avoid the (~~(Washington)~~) aircraft excise tax imposed under

1 this section are liable for (~~such~~) the unpaid excise tax. A
2 violation of this subsection is a gross misdemeanor.

3 (4) The department of revenue may, under chapter 82.32 RCW, assess
4 and collect the unpaid excise tax imposed under (~~chapter 82.32 RCW~~)
5 this section, including the penalties and interest provided in chapter
6 82.32 RCW.

7 (~~(3)~~) (5) Except as provided under subsection(~~s (1) and (2)~~)
8 (3) of this section, a violation of this chapter is a misdemeanor
9 punishable as provided in chapter 9A.20 RCW.

10 NEW SECTION. Sec. 303. A new section is added to chapter 82.48
11 RCW to read as follows:

12 (1)(a) Except as otherwise provided in this section, taxable value
13 is based on the most recent purchase price of the aircraft, depreciated
14 according to the year of the most recent purchase of the aircraft. For
15 purposes of this subsection, "purchase price" means the consideration,
16 whether money, credit, rights, or other property expressed in terms of
17 money paid or given or contracted to be paid or given by the purchaser
18 to the seller for the aircraft.

19 (b) For aircraft for which the most recent purchase price was not
20 indicative of the fair market value of the aircraft at the time of
21 purchase, the department may appraise the aircraft. If the department
22 appraises the aircraft, the taxable value is based on the department's
23 appraisal of fair market value of the aircraft at the time of the most
24 recent purchase, depreciated according to the year of the most recent
25 purchase of the aircraft.

26 (c) For aircraft acquired other than by purchase, including
27 aircraft manufactured, constructed, or assembled by the owner, the
28 department must appraise the aircraft before registration. In such
29 cases, the taxable value is the fair market value at the time of the
30 department's appraisal. For subsequent years, taxable value is based
31 on the department's appraisal of fair market value of the aircraft,
32 depreciated according to the year that the owner acquired the aircraft
33 or, in the case of aircraft manufactured, constructed, or assembled by
34 the owner, the year that the aircraft became operational.

35 (2)(a) An appraisal conducted by the department:

36 (i) Need not include a physical inspection of the aircraft; and

1 (ii) May be based on any guidebook, report, or compendium of
2 recognized standing in the aviation industry and information provided
3 to the department by the owner of the aircraft.

4 (b) Any aircraft owner disputing the department's appraised value
5 under this section may petition for a conference with the department as
6 provided under RCW 82.32.160 or for reduction of the tax due as
7 provided under RCW 82.32.170.

8 (3)(a) The department must prepare a depreciation schedule for use
9 in the determination of the taxable value for the purposes of this
10 chapter. The schedule must be based upon information available to the
11 department pertaining to the current fair market value of aircraft.

12 (b) The department must recommend a depreciation schedule to the
13 fiscal committees of the senate and house of representatives by
14 December 31, 2011, for enactment in law during the 2012 legislative
15 session for use in the determination of taxable value for taxes due
16 under this chapter during calendar year 2013 and subsequent calendar
17 years.

18 (4) The department may adopt any rules necessary to implement this
19 section, including any rules necessary to provide a reasonable method
20 or methods to determine the fair market value of an aircraft.

21 (5) For purposes of this section, "department" means the department
22 of revenue.

23 **Sec. 304.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
24 amended to read as follows:

25 (1) ~~((The amount of the tax imposed by this chapter for each~~
26 ~~calendar year shall be as follows:~~

27

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20

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1 authority of section 13, chapter 49, Laws of 1949 and section
2 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled:
3 PROVIDED, That)).

4 (2) Any aircraft, whether or not subject to the provisions of this
5 chapter, with respect to which the excise tax imposed by this chapter
6 will not be paid or has not been paid for any year (~~shall~~) must be
7 listed and assessed for ad valorem taxation in that year, and the ad
8 valorem tax liability resulting from such listing and assessment
9 (~~shall~~) must be collected in the same manner as though this chapter
10 had not been passed(~~(: PROVIDED FURTHER, That this chapter shall not~~
11 ~~be construed to affect any ad valorem tax based upon assessed~~
12 ~~valuations made in 1948 and/or any preceding year for taxes payable in~~
13 ~~1949 or any preceding year, which ad valorem tax liability tax for any~~
14 ~~such years shall remain payable and collectible in the same manner as~~
15 ~~though this chapter had not been passed))).~~

16 **Sec. 308.** RCW 47.68.230 and 2005 c 341 s 1 are each amended to
17 read as follows:

18 (1) It (~~shall be~~) is unlawful for any person to operate or cause
19 or authorize to be operated any civil aircraft within this state unless
20 such aircraft has an appropriate effective certificate, permit, or
21 license issued by the United States, if such certificate, permit, or
22 license is required by the United States, and a current registration
23 certificate issued by the (~~secretary of transportation~~) department of
24 licensing, if registration of the aircraft with the department of
25 (~~transportation~~) licensing is required by this chapter. It (~~shall~~
26 ~~be~~) is unlawful for any person to engage in aeronautics as an airman
27 or airwoman in the state unless the person has an appropriate effective
28 airman or airwoman certificate, permit, rating, or license issued by
29 the United States authorizing him or her to engage in the particular
30 class of aeronautics in which he or she is engaged, if such
31 certificate, permit, rating, or license is required by the United
32 States.

33 (2) Where a certificate, permit, rating, or license is required for
34 an airman or airwoman by the United States, it (~~shall~~) must be kept
35 in his or her personal possession when he or she is operating within
36 the state. Where a certificate, permit, or license is required by the
37 United States or by this chapter for an aircraft, it (~~shall~~) must be

1 carried in the aircraft at all times while the aircraft is operating in
2 the state and (~~shall~~) must be conspicuously posted in the aircraft
3 where it may be readily seen by passengers or inspectors. Such
4 certificates (~~shall~~) must be presented for inspection upon the demand
5 of any peace officer, or any other officer of the state or of a
6 municipality or member, official, or employee of the department of
7 transportation authorized pursuant to this chapter to enforce the
8 aeronautics laws, or any official, manager, or person in charge of any
9 airport, or upon the reasonable request of any person.

10 **Sec. 309.** RCW 82.48.090 and 1992 c 154 s 2 are each amended to
11 read as follows:

12 In case a claim is made by any person that the person has paid an
13 erroneously excessive amount of excise tax under this chapter, the
14 person may apply to the department of (~~transportation~~) licensing for
15 a refund of the claimed excessive amount together with interest at the
16 rate specified in RCW 82.32.060. The department of (~~transportation~~
17 ~~shall~~) licensing must review such application, and if it determines
18 that an excess amount of tax has actually been paid by the taxpayer,
19 such excess amount and interest at the rate specified in RCW 82.32.060
20 (~~shall~~) must be refunded to the taxpayer by means of a voucher
21 approved by the department of (~~transportation~~) licensing and by the
22 issuance of a state warrant drawn upon and payable from such funds as
23 the legislature may provide for that purpose. No refund (~~shall~~) may
24 be allowed, however, unless application for the refund is filed with
25 the department of (~~transportation~~) licensing within ninety days after
26 the claimed excessive excise tax was paid and the amount of the
27 overpayment exceeds five dollars.

28 **PART IV**

29 **Imposing Sales and Use Tax on Cosmetic Surgery**

30 **Sec. 401.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
31 2010 c 106 s 202 are each reenacted and amended to read as follows:

32 (1)(a) "Sale at retail" or "retail sale" means every sale of
33 tangible personal property (including articles produced, fabricated, or
34 imprinted) to all persons irrespective of the nature of their business
35 and including, among others, without limiting the scope hereof, persons

1 who install, repair, clean, alter, improve, construct, or decorate real
2 or personal property of or for consumers other than a sale to a person
3 who:

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

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

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

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

24 (v) Purchases for the purpose of providing the property to
25 consumers as part of competitive telephone service, as defined in RCW
26 82.04.065; or

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

32 (b) The term includes every sale of tangible personal property that
33 is used or consumed or to be used or consumed in the performance of any
34 activity defined as a "sale at retail" or "retail sale" even though
35 such property is resold or used as provided in (a)(i) through (vi) of
36 this subsection following such use.

37 (c) The term also means every sale of tangible personal property to

1 persons engaged in any business that is taxable under RCW 82.04.280
2 (1), (2), and (7), 82.04.290, and 82.04.2908.

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

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

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

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

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

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

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

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

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

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

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

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

34 (c) Credit bureau services;

35 (d) Automobile parking and storage garage services;

36 (e) Landscape maintenance and horticultural services but excluding

37 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional
5 sporting events; (~~and~~)

6 (g) The following personal services: Physical fitness services,
7 tanning salon services, tattoo parlor services, steam bath services,
8 turkish bath services, escort services, and dating services; and

9 (h) Cosmetic medical services.

10 (4)(a) The term also includes the renting or leasing of tangible
11 personal property to consumers.

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

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

18 (6)(a) The term also includes the sale of prewritten computer
19 software to a consumer, regardless of the method of delivery to the end
20 user. For purposes of this subsection (6)(a), the sale of prewritten
21 computer software includes the sale of or charge made for a key or an
22 enabling or activation code, where the key or code is required to
23 activate prewritten computer software and put the software into use.
24 There is no separate sale of the key or code from the prewritten
25 computer software, regardless of how the sale may be characterized by
26 the vendor or by the purchaser.

27 The term "retail sale" does not include the sale of or charge made
28 for:

29 (i) Custom software; or

30 (ii) The customization of prewritten computer software.

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

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

1 (B) For purposes of this subsection (6)(b)(ii), "data processing"
2 means the systematic performance of operations on data to extract the
3 required information in an appropriate form or to convert the data to
4 usable information. Data processing includes check processing, image
5 processing, form processing, survey processing, payroll processing,
6 claim processing, and similar activities.

7 (7) The term also includes the sale of or charge made for an
8 extended warranty to a consumer. For purposes of this subsection,
9 "extended warranty" means an agreement for a specified duration to
10 perform the replacement or repair of tangible personal property at no
11 additional charge or a reduced charge for tangible personal property,
12 labor, or both, or to provide indemnification for the replacement or
13 repair of tangible personal property, based on the occurrence of
14 specified events. The term "extended warranty" does not include an
15 agreement, otherwise meeting the definition of extended warranty in
16 this subsection, if no separate charge is made for the agreement and
17 the value of the agreement is included in the sales price of the
18 tangible personal property covered by the agreement. For purposes of
19 this subsection, "sales price" has the same meaning as in RCW
20 82.08.010.

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

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

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

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

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

31 (b) A retail sale of digital goods, digital codes, or digital
32 automated services under this subsection (8) includes any services
33 provided by the seller exclusively in connection with the digital
34 goods, digital codes, or digital automated services, whether or not a
35 separate charge is made for such services.

36 (c) For purposes of this subsection, "permanent" means perpetual or
37 for an indefinite or unspecified length of time. A right of permanent
38 use is presumed to have been granted unless the agreement between the

1 seller and the purchaser specifies or the circumstances surrounding the
2 transaction suggest or indicate that the right to use terminates on the
3 occurrence of a condition subsequent.

4 (9) The term also includes the charge made for providing tangible
5 personal property along with an operator for a fixed or indeterminate
6 period of time. A consideration of this is that the operator is
7 necessary for the tangible personal property to perform as designed.
8 For the purpose of this subsection (9), an operator must do more than
9 maintain, inspect, or set up the tangible personal property.

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

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

33 (12) The term does not include the sale of or charge made for labor
34 and services rendered in respect to the constructing, repairing,
35 decorating, or improving of new or existing buildings or other
36 structures under, upon, or above real property of or for the United
37 States, any instrumentality thereof, or a county or city housing
38 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 does 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 does the term include the sale of services or charges made for cleaning
8 up for the United States, or its instrumentalities, radioactive waste
9 and other by-products of weapons production and nuclear research and
10 development.

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

17 (14) The term does not include the sale for resale of any service
18 described in this section if the sale would otherwise constitute a
19 "sale at retail" and "retail sale" under this section.

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

22 (1) "Cosmetic medical service" means any medical procedure
23 performed on an individual by a person licensed or regulated in a
24 health profession as described in RCW 18.120.020, and any services
25 directly related to the performance of the medical procedure, that is
26 directed at improving the individual's appearance and that is not
27 medically necessary to promote the proper function of the body or
28 prevent or treat physical illness or disease. "Cosmetic medical
29 service" includes, but is not limited to, cosmetic surgery, hair
30 transplants, cosmetic injections, cosmetic soft tissue fillers,
31 dermabrasion and chemical peel, laser hair removal, laser skin
32 resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic
33 dentistry. Any medical procedure performed on abnormal structures
34 caused by or related to congenital defects, developmental
35 abnormalities, trauma, infection, tumors, or disease, including
36 procedures to improve function or give a more normal appearance, is
37 medically necessary. Services covered by the individual's medical or

1 dental insurance or that are deductible by the individual as medical
2 expenses for purposes of federal income tax are presumed to be
3 medically necessary services.

4 (2) "Cosmetic surgery" means the surgical reshaping of normal
5 structures on the body to improve the body image, self-esteem, or
6 appearance of an individual.

7 (3) "Services directly related to the performance of the medical
8 procedure" include occupancy at medical facilities and services
9 provided by an anesthesiologist, surgeon, or other licensed or
10 regulated health professional described in RCW 18.120.020. Services
11 required for or directly related to cosmetic medical services do not
12 include evaluation and referral by a primary care physician or
13 consultation or treatment by a counselor, psychologist, or
14 psychiatrist.

15 (4) An individual claiming that a medical procedure, otherwise
16 meeting the definition of cosmetic medical service in this section, is
17 not a cosmetic medical service must complete and provide to the seller
18 an affidavit in a form and manner prescribed by the department
19 documenting that the procedure is medically necessary to promote the
20 proper function of the body or prevent or treat physical illness or
21 disease. The seller must retain a copy of the affidavit for the
22 seller's files.

23 **Sec. 403.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each
24 amended to read as follows:

25 (1) There is levied and collected from every person in this state
26 a tax or excise for the privilege of using within this state as a
27 consumer any:

28 (a) Article of tangible personal property acquired by the user in
29 any manner, including tangible personal property acquired at a casual
30 or isolated sale, and including by-products used by the manufacturer
31 thereof, except as otherwise provided in this chapter, irrespective of
32 whether the article or similar articles are manufactured or are
33 available for purchase within this state;

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

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

4 (d) Extended warranty; or

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

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

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

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

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

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

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

25 (2) The provisions of this chapter do not apply in respect to the
26 use of any article of tangible personal property, extended warranty,
27 digital good, digital code, digital automated service, or service
28 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), if
29 the sale to, or the use by, the present user or the present user's
30 bailor or donor has already been subjected to the tax under chapter
31 82.08 RCW or this chapter and the tax has been paid by the present user
32 or by the present user's bailor or donor.

33 (3)(a) Except as provided in this section, payment of the tax
34 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
35 of tangible personal property, extended warranty, digital good, digital
36 code, digital automated service, or other service does not have the
37 effect of exempting any other purchaser or user of the same property,

1 extended warranty, digital good, digital code, digital automated
2 service, or other service from the taxes imposed by such chapters.

3 (b) The tax imposed by this chapter does not apply:

4 (i) If the sale to, or the use by, the present user or his or her
5 bailor or donor has already been subjected to the tax under chapter
6 82.08 RCW or this chapter and the tax has been paid by the present user
7 or by his or her bailor or donor;

8 (ii) In respect to the use of any article of tangible personal
9 property acquired by bailment and the tax has once been paid based on
10 reasonable rental as determined by RCW 82.12.060 measured by the value
11 of the article at time of first use multiplied by the tax rate imposed
12 by chapter 82.08 RCW or this chapter as of the time of first use;

13 (iii) In respect to the use of any article of tangible personal
14 property acquired by bailment, if the property was acquired by a
15 previous bailee from the same bailor for use in the same general
16 activity and the original bailment was prior to June 9, 1961; or

17 (iv) To the use of digital goods or digital automated services,
18 which were obtained through the use of a digital code, if the sale of
19 the digital code to, or the use of the digital code by, the present
20 user or the present user's bailor or donor has already been subjected
21 to the tax under chapter 82.08 RCW or this chapter and the tax has been
22 paid by the present user or by the present user's bailor or donor.

23 (4)(a) Except as provided in (b) of this subsection (4), the tax is
24 levied and must be collected in an amount equal to the value of the
25 article used, value of the digital good or digital code used, value of
26 the extended warranty used, or value of the service used by the
27 taxpayer, multiplied by the applicable rates in effect for the retail
28 sales tax under RCW 82.08.020.

29 (b) In the case of a seller required to collect use tax from the
30 purchaser, the tax must be collected in an amount equal to the purchase
31 price multiplied by the applicable rate in effect for the retail sales
32 tax under RCW 82.08.020.

33 (5) For purposes of the tax imposed in this section, "person"
34 includes anyone within the definition of "buyer," "purchaser," and
35 "consumer" in RCW 82.08.010.

36 **Sec. 404.** RCW 82.12.010 and 2010 c 127 s 4 are each reenacted and
37 amended to read as follows:

1 For the purposes of this chapter:

2 (1) The meaning ascribed to words and phrases in chapters 82.04 and
3 82.08 RCW, insofar as applicable, has full force and effect with
4 respect to taxes imposed under the provisions of this chapter.
5 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
6 and 82.08 RCW insofar as applicable, also means any person who
7 distributes or displays, or causes to be distributed or displayed, any
8 article of tangible personal property, except newspapers, the primary
9 purpose of which is to promote the sale of products or services. With
10 respect to property distributed to persons within this state by a
11 consumer as defined in this subsection (1), the use of the property is
12 deemed to be by such consumer.

13 (2) "Extended warranty" has the same meaning as in RCW
14 82.04.050(7).

15 (3) "Purchase price" means the same as sales price as defined in
16 RCW 82.08.010.

17 (4)(a)(i) Except as provided in (a)(ii) of this subsection (4),
18 "retailer" means every seller as defined in RCW 82.08.010 and every
19 person engaged in the business of selling tangible personal property at
20 retail and every person required to collect from purchasers the tax
21 imposed under this chapter.

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

32 (b) For the purposes of (a) of this subsection, the terms "client,"
33 "covered employee," "professional employer agreement," and
34 "professional employer organization" have the same meanings as in RCW
35 82.04.540.

36 (5) "Taxpayer" and "purchaser" include all persons included within
37 the meaning of the word "buyer" and the word "consumer" as defined in
38 chapters 82.04 and 82.08 RCW.

1 (6) "Use," "used," "using," or "put to use" have their ordinary
2 meaning, and mean:

3 (a) With respect to tangible personal property, except for natural
4 gas and manufactured gas, the first act within this state by which the
5 taxpayer takes or assumes dominion or control over the article of
6 tangible personal property (as a consumer), and include installation,
7 storage, withdrawal from storage, distribution, or any other act
8 preparatory to subsequent actual use or consumption within this state;

9 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
10 first act within this state after the service has been performed by
11 which the taxpayer takes or assumes dominion or control over the
12 article of tangible personal property upon which the service was
13 performed (as a consumer), and includes installation, storage,
14 withdrawal from storage, distribution, or any other act preparatory to
15 subsequent actual use or consumption of the article within this state;

16 (c) With respect to an extended warranty, the first act within this
17 state after the extended warranty has been acquired by which the
18 taxpayer takes or assumes dominion or control over the article of
19 tangible personal property to which the extended warranty applies, and
20 includes installation, storage, withdrawal from storage, distribution,
21 or any other act preparatory to subsequent actual use or consumption of
22 the article within this state;

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

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

30 (f) With respect to a service defined as a retail sale in RCW
31 82.04.050(6)(b), the first act within this state by which the taxpayer,
32 as a consumer, accesses the prewritten computer software;

33 (g) With respect to a service defined as a retail sale in RCW
34 82.04.050(2)(g), the first act within this state after the service has
35 been performed by which the taxpayer, as a consumer, views, accesses,
36 downloads, possesses, stores, opens, manipulates, or otherwise uses or
37 enjoys the digital good upon which the service was performed; ((and))

1 (h) With respect to natural gas or manufactured gas, the use of
2 which is taxable under RCW 82.12.022, including gas that is also
3 taxable under the authority of RCW 82.14.230, the first act within this
4 state by which the taxpayer consumes the gas by burning the gas or
5 storing the gas in the taxpayer's own facilities for later consumption
6 by the taxpayer; and

7 (i) With respect to a service described in RCW 82.04.050(3)(h), the
8 first presence within this state by the taxpayer after the service has
9 been performed upon that taxpayer.

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

21 (b) In case the articles used are acquired by bailment, the value
22 of the use of the articles so used must be in an amount representing a
23 reasonable rental for the use of the articles so bailed, determined as
24 nearly as possible according to the value of such use at the places of
25 use of similar products of like quality and character under such rules
26 as the department of revenue may prescribe. In case any such articles
27 of tangible personal property are used in respect to the construction,
28 repairing, decorating, or improving of, and which become or are to
29 become an ingredient or component of, new or existing buildings or
30 other structures under, upon, or above real property of or for the
31 United States, any instrumentality thereof, or a county or city housing
32 authority created pursuant to chapter 35.82 RCW, including the
33 installing or attaching of any such articles therein or thereto,
34 whether or not such personal property becomes a part of the realty by
35 virtue of installation, then the value of the use of such articles so
36 used is determined according to the retail selling price of such
37 articles, or in the absence of such a selling price, as nearly as
38 possible according to the retail selling price at place of use of

1 similar products of like quality and character or, in the absence of
2 either of these selling price measures, such value may be determined
3 upon a cost basis, in any event under such rules as the department of
4 revenue may prescribe.

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

14 (d) In the case of articles manufactured or produced by the user
15 and used in the manufacture or production of products sold or to be
16 sold to the department of defense of the United States, the value of
17 the articles used is determined according to the value of the
18 ingredients of such articles.

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

26 (f) In the case of an article purchased with a direct pay permit
27 under RCW 82.32.087, the value of the article used is determined by the
28 purchase price of such article if, but for the use of the direct pay
29 permit, the transaction would have been subject to sales tax.

30 (8) "Value of the digital good or digital code used" means the
31 purchase price for the digital good or digital code, the use of which
32 is taxable under this chapter. If the digital good or digital code is
33 acquired other than by purchase, the value of the digital good or
34 digital code must be determined as nearly as possible according to the
35 retail selling price at place of use of similar digital goods or
36 digital codes of like quality and character under rules the department
37 may prescribe.

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

9 (10) "Value of the service used" means the purchase price for the
10 digital automated service or other service, the use of which is taxable
11 under this chapter. If the service is received by gift or under
12 conditions wherein the purchase price does not represent the true value
13 thereof, the value of the service used is determined as nearly as
14 possible according to the retail selling price at place of use of
15 similar services of like quality and character under rules the
16 department may prescribe.

17 **Sec. 405.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to
18 read as follows:

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

31 **PART V**

32 **Repealing the Sales Tax Exemption for Coal Used at Coal-Fired Thermal**
33 **Electric Generation Facilities**

34 NEW SECTION. **Sec. 501.** The following acts or parts of acts are
35 each repealed:

1 (1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
2 electric generation facility--Application--Demonstration of progress in
3 air pollution control--Notice of emissions violations--Reapplication--
4 Payments on cessation of operation) and 1997 c 368 s 4; and

5 (2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
6 electric generation facility--Application--Demonstration of progress in
7 air pollution control--Notice of emissions violations--Reapplication--
8 Payments on cessation of operation) and 1997 c 368 s 6.

9
10

PART VI
Miscellaneous

11 NEW SECTION. **Sec. 601.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 April 1, 2011.

--- END ---