
SENATE BILL 5967

State of Washington 53rd Legislature 1993 Regular Session

By Senator Rinehart; by request of Governor Lowry

Read first time 03/27/93. Referred to Committee on Ways & Means.

1 AN ACT Relating to taxation; amending RCW 82.04.050, 82.04.190,
2 82.04.4282, 82.04.460, 82.04.060, 82.08.020, 82.12.020, 82.04.480,
3 82.08.090, 82.12.0252, 82.12.0255, 82.12.0259, 82.12.035, 82.12.060,
4 82.08.100, 82.14.020, 82.14.030, 82.14.045, 82.14.048, 82.14.050,
5 82.14.060, 82.32.030, 70.95E.020, 83.100.010, 83.100.020, 83.100.030,
6 83.100.040, 83.100.045, 83.100.050, 83.100.070, 83.100.080, 83.100.090,
7 83.100.130, 83.100.150, 82.03.190, 82.60.020, 82.60.050, 82.60.060,
8 82.61.010, 82.61.040, 82.61.060, 82.61.070, 82.62.010, 82.62.040,
9 48.32.145, 48.32A.090, 82.04.470, 82.08.050, 82.04.417, and 82.45.060;
10 reenacting and amending RCW 82.12.010; adding new sections to chapter
11 82.08 RCW; adding a new section to chapter 82.12 RCW; adding new
12 sections to chapter 82.32 RCW; adding a new section to chapter 82.14
13 RCW; adding new sections to chapter 82.04 RCW; adding new sections to
14 chapter 83.100 RCW; adding new sections to chapter 48.14 RCW; adding a
15 new chapter to Title 82 RCW; repealing RCW 82.04.300, 83.100.160,
16 83.100.170, 83.100.180, and 83.100.190; prescribing penalties;
17 providing effective dates; and declaring an emergency.

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

Part I.
State and Local Sales and Use Tax Imposed On
Selected Business Services

Sec. 101. RCW 82.04.050 and 1988 c 253 s 1 are each 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 as defined in 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(())i 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(())i 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(())i 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(())i or

(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) above following such use. The term also

1 means every sale of tangible personal property to persons engaged in
2 any business which is taxable under RCW 82.04.280, subsections (2) and
3 (7) and RCW 82.04.290.

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

7 (a) The installing, repairing, cleaning, altering, imprinting, or
8 improving of tangible personal property of or for consumers, including
9 charges made for the mere use of facilities in respect thereto, but
10 excluding charges made for the use of coin operated laundry facilities
11 when such facilities are situated in an apartment house, hotel, motel,
12 rooming house, trailer camp or tourist camp for the exclusive use of
13 the tenants thereof, and also excluding sales of laundry service to
14 members by nonprofit associations composed exclusively of nonprofit
15 hospitals, and excluding services rendered in respect to live animals,
16 birds and insects;

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

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

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

1 and waxing, and the cleaning in place of rugs, drapes and upholstery.
2 The term "janitorial services" does not include painting, papering,
3 repairing, furnace or septic tank cleaning, snow removal or
4 sandblasting;

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

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

16 (g) The sale of or charge made for any services provided by a
17 nursing home licensed under chapter 18.51 RCW, but not including any
18 charges made by a nursing home that is a nonprofit organization as
19 defined by Section 501(c)(3) of the Internal Revenue Code of 1986, as
20 amended;

21 (h) The sale of or charge made for tangible personal property,
22 labor and services to persons taxable under (a), (b), (c), (d), (e),
23 ((and)) (f), and (g) above when such sales or charges are for property,
24 labor and services which are used or consumed in whole or in part by
25 such persons in the performance of any activity defined as a "sale at
26 retail" or "retail sale" even though such property, labor and services
27 may be resold after such use or consumption. Nothing contained in this
28 paragraph shall be construed to modify the first paragraph of this
29 section and nothing contained in the first paragraph of this section
30 shall be construed to modify this paragraph.

31 (3) The term "sale at retail" or "retail sale" shall include the
32 sale of or charge made for personal business or professional services
33 ((including)) designated in this subsection as "retail services."
34 Retail services include amounts designated as interest, rents, fees,
35 admission, and other service emoluments however designated, received by
36 persons engaging in the following business activities, unless purchased
37 or licensed for the purpose of resale in the regular course of
38 business. The following shall be designated as retail services:

1 (a) Amusement and recreation (~~((businesses))~~) services including but
2 not limited to golf, pool, billiards, skating, bowling, ski lifts and
3 tows and others;

4 (b) Abstract, title insurance and escrow (~~((businesses))~~) services;
5 (c) Credit bureau (~~((businesses))~~) services;
6 (d) Automobile parking and storage garage (~~((businesses))~~) services;
7 (e) Collection agencies or services;
8 (f) Stenographic, secretarial, and clerical services;
9 (g) Computer services, including but not limited to computer
10 programming, software modification, software installation, software
11 and/or hardware maintenance, and/or repair and software updates;

12 (h) Data processing services including but not limited to word
13 processing, data entry, data retrieval, data search, information
14 compilation, payroll and business accounting, data production, and
15 other computerized data and information storage or manipulation. Data
16 processing services also includes the use of a computer or computer
17 time for data processing whether the processing is performed by the
18 provider of the computer or computer time or by the purchaser or other
19 beneficiary of the service;

20 (i) Information services including but not limited to electronic
21 data retrieval or research that entails furnishing financial or legal
22 information, data or research, general or specialized news, or current
23 information unless furnished to a newspaper or to a radio or television
24 station licensed by the federal communication commission;

25 (j) Legal services, arbitration and mediation services, including
26 but not limited to paralegal services, legal research services and
27 court reporting services, but does not include charges made for
28 representation regarding any federal, state, or local criminal action;
29 representation regarding any action arising under Title 26 RCW or
30 similar law in another state; representation regarding any action
31 arising due to a physical injury to a natural person, or regarding
32 emotional harm caused by either a criminal act or a physical injury;
33 or representation regarding any action enforcing the civil rights of a
34 natural person under (i) 29 U.S.C. Sec. 621, et seq., the Age
35 Discrimination in Employment Act of 1967, as amended; (ii) 29 U.S.C.
36 Sec. 206(d), the Equal Pay Act of 1963, as amended; (iii) 29 U.S.C.
37 Secs. 706(7), 791, 793, 794, 794(a), the Rehabilitation Act of 1973, as
38 amended; (iv) 42 U.S.C. Sec. 2000(e) et seq., Title VII of the Civil
39 Rights Act of 1964, as amended; (v) 42 U.S.C. Sec. 1981, the Civil

1 Rights Act of 1991, as amended; (vi) 42 U.S.C. Sec. 12101 et seq., the
2 Americans With Disabilities Act of 1990, as amended; (vii) 42 U.S.C.
3 Sec. 1985(3), Civil Rights Acts, as amended; (viii) 42 U.S.C. Sec.
4 1988, Civil Rights Attorney's Fees Awards Act of 1976, as amended; (ix)
5 chapter 49.60 RCW; (x) chapter 49.44 RCW; or (xi) similar local laws;
6 (k) Accounting, auditing, bookkeeping, tax preparation, and similar
7 services;
8 (l) Engineering, including but not limited to industrial, civil,
9 electrical, mechanical, petroleum, marine, nuclear, and design
10 engineering, as well as machine tool designing;
11 (m) Architectural services including but not limited to relating to
12 structural or landscape design or architecture;
13 (n) Business consulting services including but not limited to
14 administrative management, business management, construction
15 management, motel management, office management, human resource
16 consulting, management engineering consulting, management information
17 systems consulting, manufacturing management consulting, marketing
18 consulting, operations research consulting, personnel management
19 consulting, physical distribution consultants, site location
20 consultants, or lobbyists;
21 (o) Protective services, including but not limited to detective
22 agencies or private investigators, armored car services, guard or
23 protective services, lie detection or polygraph services, and security
24 system, burglar, or fire alarm monitoring and maintenance;
25 (p) Public relations or advertising services, including but not
26 limited to layout, art direction, graphic design, copywriting,
27 mechanical preparation or production supervision, but not including any
28 amounts paid for actual broadcast or print advertising;
29 (q) The rental of heavy equipment with an operator;
30 (r) Boat, railroad, and air services such as sightseeing excursions
31 and tours;
32 (s) Surveying;
33 (t) Miscellaneous consulting services, including but not limited to
34 geological consulting, entomological consulting, and commercial testing
35 services;
36 (u) Financial management or consulting services, but does not
37 include charges for actually trading in shares, or consulting services
38 performed for a collective investment fund such as a (i) mutual fund or
39 other regulated investment company as defined in Section 851(a) of the

1 Internal Revenue Code of 1986, as amended; (ii) an "investment company"
2 as that term is used in Section 3(a) of the Investment Company Act of
3 1940 as well as an entity that would be an investment company under
4 Section 3(a) of the Investment Company Act of 1940 except for the
5 Section 3(c)(1) or (11) exemptions, or except that it is a foreign
6 investment company organized under laws of a foreign country; (iii) an
7 "employee benefit plan," which includes any plan, trust, commingled
8 employee benefit trusts, or custodial arrangement that is subject to
9 the Employee Retirement Income Security Act of 1974, as amended, 29
10 U.S.C. Sec. 1001 et seq., or that is described in Sections 125, 401,
11 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal
12 Revenue Code of 1986, as amended, or similar plan maintained by state
13 or local governments, or plans, trusts, or custodial arrangements
14 established to self-insure benefits required by federal, state, or
15 local law; (iv) a fund maintained by a nonprofit organization as
16 defined by Section 501(c)(3) of the Internal Revenue Code of 1986, as
17 amended, for operating, quasi-endowment, or endowment purposes; or (v)
18 funds that are established for the benefit of such nonprofit
19 organization such as charitable remainder trusts, charitable lead
20 trusts, charitable annuity trusts, or other similar trusts.

21 (4) The term "retail services" does not include:

22 (a) The provision of either permanent or temporary employees;

23 (b) Charges made between affiliated corporations for the sharing of
24 overhead expenses. "Affiliated corporations" means an affiliated
25 group of corporations as defined in Section 1504(a) of the Internal
26 Revenue Code of 1986, as amended, whose members are includable under
27 Section 1504(b), (c), or (d), and are eligible to file a consolidated
28 tax return for federal corporate income tax purposes, and includes
29 foreign affiliates that would otherwise be disqualified under Section
30 1504(b)(4). "Overhead expenses" means costs for items such as taxes,
31 rents, insurance, and similar items, but does not include the provision
32 of actual services to an affiliate;

33 (c) Services provided by an employee to an employer while acting in
34 the capacity of an employee;

35 (d) Services donated to a public benefit nonprofit organization, as
36 defined by RCW 82.04.366(2);

37 (e) Services donated to the state of Washington, its political
38 subdivisions, municipal corporations, or quasi-municipal corporations;

1 (f) Services provided by a public benefit nonprofit organization,
2 as defined in RCW 82.04.366(2), to the state of Washington, its
3 political subdivisions, municipal corporations, or quasi-municipal
4 corporations;

5 (g) Nonenterprise services provided by the state of Washington, its
6 political subdivisions, municipal corporations, or quasi-municipal
7 corporations, to the state of Washington, its political subdivisions,
8 municipal corporations, or quasi-municipal corporations;

9 (h) Services related to the cleanup of hazardous wastes from sites
10 designated as hazardous waste sites under federal or state law, whether
11 on land or water.

12 ~~((+4))~~ (5) The term shall also include the renting or leasing of
13 tangible personal property to consumers.

14 ~~((+5))~~ (6) The term shall also include the providing of telephone
15 service, as defined in RCW 82.04.065, to consumers.

16 ~~((+6))~~ (7) The term shall not include the sale of or charge made
17 for labor and services rendered in respect to the building, repairing,
18 or improving of any street, place, road, highway, easement, right of
19 way, mass public transportation terminal or parking facility, bridge,
20 tunnel, or trestle which is owned by a municipal corporation or
21 political subdivision of the state or by the United States and which is
22 used or to be used primarily for foot or vehicular traffic including
23 mass transportation vehicles of any kind. The term shall also not
24 include sales of feed, seed, seedlings, fertilizer, and spray materials
25 to persons who participate in the federal conservation reserve program
26 or its successor administered by the United States department of
27 agriculture, or to persons for the purpose of producing for sale any
28 agricultural product whatsoever, including plantation Christmas trees
29 and milk, eggs, wool, fur, meat, honey, or other substances obtained
30 from animals, birds, or insects but only when such production and
31 subsequent sale are exempt from tax under RCW 82.04.330, nor shall it
32 include sales of chemical sprays or washes to persons for the purpose
33 of post-harvest treatment of fruit for the prevention of scald, fungus,
34 mold, or decay.

35 ~~((+7))~~ (8) The term shall not include the sale of or charge made
36 for labor and services rendered in respect to the constructing,
37 repairing, decorating, or improving of new or existing buildings or
38 other structures under, upon, or above real property of or for the
39 United States, any instrumentality thereof, or a county or city housing

1 authority created pursuant to chapter 35.82 RCW, including the
2 installing, or attaching of any article of tangible personal property
3 therein or thereto, whether or not such personal property becomes a
4 part of the realty by virtue of installation. Nor shall the term
5 include the sale of services or charges made for the clearing of land
6 and the moving of earth of or for the United States, any
7 instrumentality thereof, or a county or city housing authority.

8 **Sec. 102.** RCW 82.04.190 and 1986 c 231 s 2 are each amended to
9 read as follows:

10 "Consumer" means the following:

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

31 (2) Any person who purchases, acquires, uses, or receives the
32 benefit of any service included within the definition of retail sale in
33 RCW 82.04.050(3), unless the person can demonstrate with regularly kept
34 books and records, or by other methods approved by rules of the
35 department, that the service was purchased or licensed for resale in
36 the regular course of business without intervening use by the person;

37 (3) Any person engaged in any business activity taxable under RCW
38 82.04.290 and any person who purchases, acquires, or uses any telephone

1 service as defined in RCW 82.04.065, other than for resale in the
2 regular course of business;

3 ~~((+3))~~ (4) Any person engaged in the business of contracting for
4 the building, repairing or improving of any street, place, road,
5 highway, easement, right of way, mass public transportation terminal or
6 parking facility, bridge, tunnel, or trestle which is owned by a
7 municipal corporation or political subdivision of the state of
8 Washington or by the United States and which is used or to be used
9 primarily for foot or vehicular traffic including mass transportation
10 vehicles of any kind as defined in RCW 82.04.280, in respect to
11 tangible personal property or retail services, when such person
12 incorporates such property as an ingredient or component of such
13 publicly owned street, place, road, highway, easement, right of way,
14 mass public transportation terminal or parking facility, bridge,
15 tunnel, or trestle by installing, placing or spreading the property in
16 or upon the right of way of such street, place, road, highway,
17 easement, bridge, tunnel, or trestle or in or upon the site of such
18 mass public transportation terminal or parking facility;

19 ~~((+4))~~ (5) Any person who is an owner, lessee or has the right of
20 possession to or an easement in real property which is being
21 constructed, repaired, decorated, improved, or otherwise altered by a
22 person engaged in business, excluding only (a) municipal corporations
23 or political subdivisions of the state in respect to labor and services
24 rendered to their real property which is used or held for public road
25 purposes, and (b) the United States, instrumentalities thereof, and
26 county and city housing authorities created pursuant to chapter 35.82
27 RCW in respect to labor and services rendered to their real property.
28 Nothing contained in this or any other subsection of this definition
29 shall be construed to modify any other definition of "consumer";

30 ~~((+5))~~ (6) Any person who is an owner, lessee, or has the right of
31 possession to personal property which is being constructed, repaired,
32 improved, cleaned, imprinted, or otherwise altered by a person engaged
33 in business;

34 ~~((+6))~~ (7) Any person engaged in the business of constructing,
35 repairing, decorating, or improving 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
39 installing or attaching of any article of tangible personal property

1 therein or thereto, whether or not such personal property becomes a
2 part of the realty by virtue of installation; also, any person engaged
3 in the business of clearing land and moving earth of or for the United
4 States, any instrumentality thereof, or a county or city housing
5 authority created pursuant to chapter 35.82 RCW. Any such person shall
6 be a consumer within the meaning of this subsection in respect to the
7 receipt of the benefit of any retail service or to tangible personal
8 property incorporated into, installed in, or attached to such building
9 or other structure by such person.

10 **Sec. 103.** RCW 82.04.4282 and 1989 c 392 s 1 are each amended to
11 read as follows:

12 In computing tax there may be deducted from the measure of tax
13 amounts derived from (1) bona fide initiation fees, (2) dues, (3)
14 contributions, (4) donations, (5) tuition fees, (6) charges made by a
15 nonprofit trade or professional organization for attending or occupying
16 space at a trade show, convention, or educational seminar sponsored by
17 the nonprofit trade or professional organization, which trade show,
18 convention, or educational seminar is not open to the general public,
19 (7) charges made for operation of privately operated kindergartens, and
20 (8) endowment funds. This paragraph shall not be construed to exempt
21 any person, association, or society from tax liability upon selling
22 tangible personal property or retail services or upon providing
23 facilities or services for which a special charge is made to members or
24 others. If dues are in exchange for any significant amount of goods or
25 services rendered by the recipient thereof to members without any
26 additional charge to the member, or if the dues are graduated upon the
27 amount of goods or services rendered, the value of such goods or
28 services shall not be considered as a deduction hereunder.

29 **Sec. 104.** RCW 82.04.460 and 1985 c 7 s 154 are each amended to
30 read as follows:

31 (1)(a) Any person rendering services taxable under RCW 82.04.290
32 and maintaining places of business both within and without this state
33 which contribute to the rendition of such services shall, for the
34 purpose of computing tax liability under RCW 82.04.290, apportion to
35 this state that portion of his gross income which is derived from
36 services rendered within this state. Where such apportionment cannot
37 be accurately made by separate accounting methods, the taxpayer shall

1 apportion to this state that proportion of his total income which the
2 cost of doing business within the state bears to the total cost of
3 doing business both within and without the state.

4 ~~((+2))~~ (b) Notwithstanding the provision of subsection (1)(a) of
5 this section, persons doing business both within and without the state
6 who receive gross income from service charges, as defined in RCW
7 63.14.010 (relating to amounts charged for granting the right or
8 privilege to make deferred or installment payments) or who receive
9 gross income from engaging in business as financial institutions within
10 the scope of chapter 82.14A RCW (relating to city taxes on financial
11 institutions) shall apportion or allocate gross income taxable under
12 RCW 82.04.290 to this state pursuant to rules promulgated by the
13 department consistent with uniform rules for apportionment or
14 allocation developed by the states.

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

25 (2) For purposes of determining the business and occupation tax
26 liability of the seller of a retail service, the sale of a retail
27 service is made in this state when the benefit of the service is
28 received in this state. For purposes of determining where the benefit
29 is received, the following presumptions shall apply:

30 (a) If the service directly relates to real property, the benefit
31 of the service shall be presumed to be received where the real property
32 is located; or

33 (b) If the service directly relates to tangible personal property,
34 the benefit of the service shall be presumed to be received where the
35 property is listed on the tax rolls or has otherwise acquired a situs;
36 or

37 (c) If the service involves enhancing a buyer's ability to maintain
38 or establish a local market, the benefit of the service shall be
39 presumed to be received where the buyer's local market exists; or

1 (d) If the provisions of (a), (b), or (c) of this subsection are
2 not applicable, the benefit of the service shall be presumed to be
3 received in the state where the buyer resides or where the buyer is
4 exclusively doing business; or

5 (e) If (a), (b), (c), or (d) of this subsection are not applicable,
6 and the seller of the service is doing business both inside and outside
7 of this state, the service shall be presumed to be received in this
8 state to the extent that the seller is doing business in this state.
9 For purposes of determining the extent of the seller's business in this
10 state, the following apportionment formula shall be used:

11 (i) The gross income of the seller shall be apportioned by an
12 apportionment fraction composed of a sales factor representing fifty
13 percent of the fraction, a property factor representing twenty-five
14 percent of the fraction, and a payroll factor representing twenty-five
15 percent of the fraction. If the denominator for any one of the factors
16 is zero or is insignificant, the weighted percentage for the other
17 denominators shall be increased proportionately; if the denominator for
18 any two of the factors are zero or are insignificant, the weighted
19 percentage for the other denominator shall be one hundred percent;

20 (ii) The property factor is a fraction the numerator of which is
21 the average value of the seller's real and tangible personal property
22 owned or rented and used in this state during the taxable year or
23 period and the denominator of which is the average value of such
24 property owned or rented and used everywhere;

25 (A) Real and tangible personal property owned by the seller shall
26 be valued at original cost. Real and tangible personal property rented
27 by the taxpayer shall be valued at eight times the net annual rental
28 rate paid by the taxpayer less any annual rental rate received from
29 subrentals;

30 (B) The average value of real and tangible personal property shall
31 be determined by averaging the value at the beginning and the end of
32 the taxable year or period, unless the department determines that an
33 averaging of monthly values during the taxable year or period is
34 reasonably required to properly reflect the average value of the
35 taxpayer's real and tangible personal property;

36 (iii) The payroll factor is a fraction the numerator of which is
37 the total amount paid in this state during the taxable year or period
38 by the taxpayer for compensation and the denominator of which is the
39 total compensation paid everywhere during the taxable year or period;

1 (A) As used in this subsection, the term "compensation" means
2 wages, salaries, commissions, and any other form of remuneration paid
3 to employees for personal services;

4 (B) Compensation is paid in this state if:

5 (I) The employee's service is performed entirely within this state;
6 or

7 (II) The employee's service is performed both within and without
8 the state, but the service performed without the state is incidental to
9 the employee's service within the state; or

10 (III) Some of the employee's service is performed in the state and
11 the base of operations or the place from which the service is directed
12 or controlled is within this state, or the base of operations or the
13 place from which the service is directed or controlled is not in any
14 state in which some part of the service is performed and the employee's
15 residence is in any state;

16 (iv) The sales factor is a fraction the numerator of which is the
17 total sales of the taxpayer in this state during the taxable year or
18 period and the denominator of which is the total sales of the taxpayer
19 everywhere during the taxable year or period.

20 **Sec. 105.** RCW 82.04.060 and 1983 2nd ex.s. c 3 s 26 are each
21 amended to read as follows:

22 "Sale at wholesale" or "wholesale sale" means any sale of tangible
23 personal property(~~(, or any sale of telephone service as defined in RCW~~
24 ~~82.04.065, which)) that is not a sale at retail and means any sale of~~
25 ~~or charge made for labor and services, including retail services,~~
26 ~~rendered for persons who are not consumers, ((in respect to real or~~
27 ~~personal property,)) if such sale or charge is expressly defined as a~~
28 ~~retail sale by RCW 82.04.050 when rendered to or for consumers((+~~
29 ~~PROVIDED, That)). The term ("real or personal property" as used in~~
30 ~~this section)) "sale at wholesale" or "wholesale sale" shall not~~
31 ~~include any sale of or charge made for services in respect to any~~
32 ~~natural products named in RCW 82.04.100.~~

33 **Sec. 106.** RCW 82.08.020 and 1992 c 194 s 9 are each amended to
34 read as follows:

35 (1) There is levied and there shall be collected a tax on each
36 retail sale in this state equal to six and five-tenths percent of the
37 selling price.

1 (2) There is levied and there shall be collected an additional tax
2 on each retail car rental, regardless of whether the vehicle is
3 licensed in this state, equal to five and nine-tenths percent of the
4 selling price. Ninety-one percent of the revenue collected under this
5 subsection shall be deposited and distributed in the same manner as
6 motor vehicle excise tax revenue collected under RCW 82.44.020(1).
7 Nine percent of the revenue collected under this subsection shall be
8 deposited in the transportation fund and distributed in the same manner
9 as motor vehicle excise tax revenue collected under RCW 82.44.020(2).

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

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

14 (5) There is levied and there shall be collected an additional tax
15 on each retail sale of a retail service equal to one and five-tenths
16 percent of the selling price, against which the taxes allowed by
17 section 124 of this act shall be credited.

18 NEW SECTION. Sec. 107. A new section is added to chapter 82.08
19 RCW to read as follows:

20 (1) A seller of a retail service shall collect the retail sales tax
21 on the sale of a retail service if the sale is made in this state. The
22 sale is made in this state for purposes of this chapter:

23 (a) If the service directly relates to real property, the benefit
24 of the service shall be presumed to be received where the real property
25 is located; or

26 (b) If the service directly relates to tangible personal property,
27 the benefit of the service shall be presumed to be received where the
28 property is listed on the tax rolls or has otherwise acquired a situs;
29 or

30 (c) If the service involves enhancing a buyer's ability to maintain
31 or establish a local market, the benefit of the service shall be
32 presumed to be received where the buyer's local market exists; or

33 (d) If the provisions of (a), (b), or (c) of this subsection are
34 not applicable, the benefit of the service shall be presumed to be
35 received in the state where the buyer resides or is exclusively doing
36 business.

37 (2) When none of the provisions of subsection (1) of this section
38 apply, and the buyer is doing business both inside and outside of this

1 state, the buyer may elect to pay deferred sales tax on the portion of
2 the retail service that will be taxable in Washington under the formula
3 provided by section 110 of this act. If the buyer makes this election,
4 it must provide the seller with a certificate stating that it has made
5 this election. The department shall adopt rules providing the form and
6 information required to be on the certificates.

7 (3) Notwithstanding the provisions of subsection (1) or (2) of this
8 section, if the buyer can demonstrate to the satisfaction of the
9 department that the benefit of the service was received outside of this
10 state, the service shall be deemed to have been received outside of
11 this state.

12 (4) If a transaction involves both the sale of a retail service
13 taxable under this chapter and the provision of a service not taxable
14 under this chapter, the charges shall be separately identified and
15 stated with respect to the taxable and nontaxable portions of the
16 transaction. Failure to separately state the charges shall create a
17 presumption that the entire transaction is subject to the retail sales
18 tax.

19 **Sec. 108.** RCW 82.12.010 and 1985 c 222 s 1 and 1985 c 132 s 1 are
20 each reenacted and amended to read as follows:

21 For the purposes of this chapter:

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

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

23 In the case of articles owned by a user engaged in business outside
24 the state which are brought into the state for no more than ninety days
25 in any period of three hundred sixty-five consecutive days and which
26 are temporarily used for business purposes by the person in this state,
27 the value of the article used shall be an amount representing a
28 reasonable rental for the use of the articles, unless the person has
29 paid tax under this chapter or chapter 82.08 RCW upon the full value of
30 the article used, as defined in the first paragraph of this subsection.

31 In the case of articles manufactured or produced by the user and
32 used in the manufacture or production of products sold or to be sold to
33 the department of defense of the United States, the value of the
34 articles used shall be determined according to the value of the
35 ingredients of such articles.

36 In the case of an article manufactured or produced for purposes of
37 serving as a prototype for the development of a new or improved
38 product, the value of the article used shall be determined by: (a) The
39 retail selling price of such new or improved product when first offered

1 for sale; or (b) the value of materials incorporated into the prototype
2 in cases in which the new or improved product is not offered for sale.

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

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

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

22 (b) With respect to a retail service, the receipt in this state by
23 the taxpayer of any part of the benefit afforded by the retail service
24 as defined by RCW 82.04.050(3);

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

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

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

1 newspapers, the primary purpose of which is to promote the sale of
2 products or services.

3 **Sec. 109.** RCW 82.12.020 and 1983 c 7 s 7 are each amended to read
4 as follows:

5 (1) There is hereby levied and there shall be collected from every
6 person in this state a tax or excise for the privilege of receiving the
7 benefit of any retail service or of using within this state as a
8 consumer any article of tangible personal property purchased at retail,
9 or acquired by lease, gift, repossession, or bailment, or extracted or
10 produced or manufactured by the person so using the same, or otherwise
11 furnished to a person engaged in any business taxable under RCW
12 82.04.280, subsections (2) or (7). ~~((This tax will not apply with~~
13 ~~respect to the use of any article of tangible personal property~~
14 ~~purchased, extracted, produced or manufactured outside this state until~~
15 ~~the transportation of such article has finally ended or until such~~
16 ~~article has become commingled with the general mass of property in this~~
17 ~~state.))~~

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

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

29 (4) The tax shall be levied and collected in an amount equal to the
30 value of the article or retail service used by the taxpayer multiplied
31 by the rate in effect for the retail sales tax under RCW 82.08.020(~~(~~
32 ~~as now or hereafter amended, in the county in which the article is~~
33 ~~used))~~.

34 (5) The tax imposed by RCW 82.08.020(5) shall be applied to the
35 receipt of retail services in this state upon which the retail sales
36 tax has not been paid. The tax imposed under section 124 of this act
37 shall be credited against the additional tax imposed under this
38 subsection.

1 NEW SECTION. **Sec. 110.** A new section is added to chapter 82.12
2 RCW to read as follows:

3 The receipt of any part of the benefit in this state occurs:

4 (1) If the retail service directly relates to real property, the
5 benefit of the retail service shall be presumed to be received in this
6 state when the real property is located in this state; or

7 (2) If the retail service directly relates to tangible personal
8 property, the benefit of the retail service shall be presumed to be
9 received in this state when the tangible personal property is listed
10 on the property tax rolls or has otherwise acquired a situs in this
11 state; or

12 (3) If the retail service directly involves sales to a buyer's
13 local market, the benefit of the retail service shall be presumed to be
14 received in this state when the buyer's local market is in this state;
15 or

16 (4) If the provisions of subsection (1), (2), or (3) of this
17 section are not applicable, the benefit of the retail service shall be
18 presumed to be received in the state where the buyer resides or is
19 exclusively doing business; or

20 (5) If subsection (1), (2), (3), or (4) of this section are not
21 applicable, and the buyer of the retail service is doing business both
22 inside and outside of this state, the retail service shall be presumed
23 to be received in this state to the extent that the buyer is doing
24 business in this state. The amount of the retail service that is
25 taxable in this state shall be determined by multiplying the price of
26 the retail service by a percentage that represents the extent of the
27 buyer's business in this state. For purposes of determining the extent
28 of the buyer's business in this state, the following apportionment
29 formula shall be used:

30 (a) The value of the retail service shall be apportioned by an
31 apportionment fraction composed of a sales factor representing fifty
32 percent of the fraction, a property factor representing twenty-five
33 percent of the fraction, and a payroll factor representing twenty-five
34 percent of the fraction. If the denominator for any one of the factors
35 is zero or are insignificant, the weighted percentage for the other
36 denominators shall be increased proportionately; if the denominator for
37 any two of the factors are zero or are insignificant, the weighted
38 percentage for the other denominator shall be one hundred percent;

1 (b) The property factor is a fraction the numerator of which is the
2 average value of the buyer's real and tangible personal property owned
3 or rented and used in this state during the taxable year or period and
4 the denominator of which is the average value of such property owned or
5 rented and used everywhere;

6 (i) Real and tangible personal property owned by the seller shall
7 be valued at original cost. Real and tangible personal property rented
8 by the taxpayer shall be valued at eight times the net annual rental
9 rate paid by the taxpayer less any annual rental rate received from
10 subrentals;

11 (ii) The average value of real and tangible personal property shall
12 be determined by averaging the value at the beginning and the end of
13 the taxable year or period, unless the department determines that an
14 averaging of monthly values during the taxable year or period is
15 reasonably required to properly reflect the average value of the
16 taxpayer's real and tangible personal property;

17 (c) The payroll factor is a fraction the numerator of which is the
18 total amount paid in this state during the taxable year or period by
19 the taxpayer for compensation and the denominator of which is the total
20 compensation paid everywhere during the taxable year or period;

21 (i) As used in this subsection, the term "compensation" means
22 wages, salaries, commissions, and any other form of remuneration paid
23 to employees for personal services;

24 (ii) Compensation is paid in this state if:

25 (A) The employee's service is performed entirely within this state;

26 or

27 (B) The employee's service is performed both within and without the
28 state, but the service performed without the state is incidental to the
29 employee's service within the state; or

30 (C) Some of the employee's service is performed in the state and
31 the base of operations or the place from which the service is directed
32 or controlled is within this state, or the base of operations or the
33 place from which the service is directed or controlled is not in any
34 state in which some part of the service is performed and the employee's
35 residence is in any state;

36 (d) The sales factor is a fraction the numerator of which is the
37 total sales of the taxpayer in this state during the taxable year or
38 period and the denominator of which is the total sales of the taxpayer
39 everywhere during the taxable year; or

1 (6) Notwithstanding the provisions of subsection (1), (2), (3),
2 (4), or (5) of this section, if the buyer can demonstrate to the
3 satisfaction of the department that the benefit of the service was
4 received outside of this state, the service shall be deemed to have
5 been received outside of this state.

6 NEW SECTION. **Sec. 111.** A new section is added to chapter 82.32
7 RCW to read as follows:

8 If a retail service is taxable as of the effective date of this
9 section, and the retail service is received prior to that date, it is
10 not subject to tax under chapter 82.08, 82.12, or 82.14 RCW,
11 notwithstanding that compensation for the service is paid or payable on
12 or after that date. If a retail service is received on or after the
13 effective date of this section, the retail service shall be taxed
14 unless it was paid in full before April 1, 1993. If a retail service
15 is received over a period of time beginning prior to the effective date
16 of this section and ending after that date, and full payment for the
17 service has not been made before April 1, 1993, the service shall be
18 taxed only upon that portion of the service received on or after the
19 effective date of this section. If a retail service is performed under
20 a contract signed prior to the effective date of this section, and such
21 contract does not allow the seller to add the retail sales taxes
22 imposed under chapter 82.08, 82.12, or 82.14 RCW to the contract price,
23 the retail sales taxes imposed on retail services may not be imposed on
24 that contract.

25 **Sec. 112.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each
26 amended to read as follows:

27 Every consignee, bailee, factor, or auctioneer having either actual
28 or constructive possession of tangible personal property, or having
29 possession of the documents of title thereto, with power to sell such
30 tangible personal property in his or its own name and actually so
31 selling, and every agent with power to sell retail services in the
32 agent's own name and actually so selling, shall be deemed the seller of
33 such tangible personal property or retail services within the meaning
34 of this chapter; and further, the consignor, bailor, principal, or
35 owner shall be deemed a seller of such property or retail services to
36 the consignee, bailee, factor, (~~(or)~~) auctioneer, or agent.

1 The burden shall be upon the taxpayer in every case to establish
2 the fact that he or she is not engaged in the business of selling
3 tangible personal property or retail services but is acting merely as
4 broker or agent in promoting sales for a principal. Such claim will be
5 allowed only when the taxpayer's accounting records are kept in such
6 manner as the department of revenue shall by general regulation
7 provide.

8 **Sec. 113.** RCW 82.08.090 and 1975 1st ex.s. c 278 s 49 are each
9 amended to read as follows:

10 In the case of installment sales and leases of personal property or
11 retail services, the department of revenue, by regulation, may provide
12 for the collection of taxes upon the installments of the purchase
13 price, or amount of rental, as of the time the same fall due.

14 **Sec. 114.** RCW 82.12.0252 and 1980 c 37 s 52 are each amended to
15 read as follows:

16 The provisions of this chapter shall not apply in respect to the
17 use of any article of tangible personal property or retail service
18 purchased at retail or acquired by lease, gift or bailment if the sale
19 thereof to, or the use thereof by, the present user or ((his)) the
20 user's bailor or donor has already been subjected to the tax under
21 chapter 82.08 or 82.12 RCW and such tax has been paid by the present
22 user or by his bailor or donor; or in respect to the use of property
23 acquired by bailment and such tax has once been paid based on
24 reasonable rental as determined by RCW 82.12.060 measured by the value
25 of the article or retail service at time of first use multiplied by the
26 tax rate imposed by chapter 82.08 or 82.12 RCW as of the time of first
27 use; or in respect to the use of any article of tangible personal
28 property acquired by bailment, if the property was acquired by a
29 previous bailee from the same bailor for use in the same general
30 activity and such original bailment was prior to June 9, 1961.

31 **Sec. 115.** RCW 82.12.0255 and 1980 c 37 s 55 are each amended to
32 read as follows:

33 The provisions of this chapter shall not apply in respect to the
34 use of any article of tangible personal property or any retail service
35 which the state is prohibited from taxing under the Constitution of the
36 state or under the Constitution or laws of the United States.

1 **Sec. 116.** RCW 82.12.0259 and 1980 c 37 s 59 are each amended to
2 read as follows:

3 The provisions of this chapter shall not apply in respect to the
4 use of tangible personal property or retail services by corporations
5 which have been incorporated under any act of the congress of the
6 United States and whose principal purposes are to furnish volunteer aid
7 to members of the armed forces of the United States and also to carry
8 on a system of national and international relief and to apply the same
9 in mitigating the sufferings caused by pestilence, famine, fire, flood,
10 and other national calamities and to devise and carry on measures for
11 preventing the same.

12 **Sec. 117.** RCW 82.12.035 and 1987 c 27 s 2 are each amended to read
13 as follows:

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

22 **Sec. 118.** RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each
23 amended to read as follows:

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

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

32 **Sec. 119.** RCW 82.08.100 and 1982 1st ex.s. c 35 s 37 are each
33 amended to read as follows:

34 (1) The department of revenue, by general regulation, shall provide
35 that a taxpayer whose regular books of account are kept on a cash
36 receipts basis may file returns based upon his or her cash receipts for

1 each reporting period and pay the tax herein provided upon such basis
2 in lieu of reporting and paying the tax on all sales made during such
3 period. A taxpayer filing returns on a cash receipts basis is not
4 required to pay such tax on debts which are deductible as worthless for
5 federal income tax purposes. Absent regular books and records to
6 substantiate the accounting method chosen, returns shall be reported in
7 the same manner as reported for federal income tax purposes.

8 (2) The accounting method for taxes administered under this section
9 shall be uniform for all excise taxes unless a combined method is first
10 approved by the department.

11 (3) A taxpayer may convert its reporting method to a different
12 method that has prior approval by the department if the conversion
13 satisfies the requirement in the rules adopted by the department
14 pertaining to adjustments necessary to account for all income. The
15 department may not withhold its approval unless the taxpayer cannot,
16 for whatever reason, make the necessary adjustments to account for all
17 income. The department may permit adjustments that cause an increase
18 in the income to be amortized over a period not to exceed twelve
19 consecutive months.

20 **Sec. 120.** RCW 82.14.020 and 1983 2nd ex.s. c 3 s 31 are each
21 amended to read as follows:

22 For purposes of this chapter:

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

26 (2) A retail sale consisting essentially of the performance of
27 personal business or professional services shall be deemed to have
28 occurred at the place at which such services were primarily performed.
29 A retail sale of a retail service shall be considered to have occurred
30 at the place where the benefit is received;

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

36 (4) A retail sale within the scope of the second paragraph of RCW
37 82.04.050, and a retail sale of taxable personal property to be

1 installed by the seller shall be deemed to have occurred at the place
2 where the labor and services involved were primarily performed;

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

9 (6) "City" means a city or town;

10 (7) The meaning ascribed to words and phrases in chapters 82.04,
11 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
12 applicable, shall have full force and effect with respect to taxes
13 imposed under authority of this chapter;

14 (8) "Taxable event" shall mean any retail sale, or any use of an
15 article of tangible personal property, upon which a state tax is
16 imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or
17 may hereafter be amended: PROVIDED, HOWEVER, That the term shall not
18 include a retail sale taxable pursuant to RCW 82.08.150, as now or
19 hereafter amended;

20 (9) "Treasurer or other legal depository" shall mean the treasurer
21 or legal depository of a county or city.

22 **Sec. 121.** RCW 82.14.030 and 1989 c 384 s 6 are each amended to
23 read as follows:

24 (1) The governing body of any county or city while not required by
25 legislative mandate to do so, may, by resolution or ordinance for the
26 purposes authorized by this chapter, fix and impose a sales and use tax
27 in accordance with the terms of this chapter. Such tax shall be
28 collected from those persons who are taxable by the state pursuant to
29 chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event
30 within the county or city as the case may be(~~(:—PROVIDED, That)~~).
31 Except as provided in RCW 82.14.230, this sales and use tax shall not
32 apply to natural or manufactured gas. This sales and use tax shall not
33 apply to the sales of retail services as defined in RCW 82.04.050(3).
34 The rate of such tax imposed by a county shall be five-tenths of one
35 percent of the selling price (in the case of a sales tax) or value of
36 the article used (in the case of a use tax). The rate of such tax
37 imposed by a city shall not exceed five-tenths of one percent of the
38 selling price (in the case of a sales tax) or value of the article used

1 (in the case of a use tax)(~~(:—PROVIDED, HOWEVER, That)~~). In the event
2 a county shall impose a sales and use tax under this subsection, the
3 rate of such tax imposed under this subsection by any city therein
4 shall not exceed four hundred and twenty-five one-thousandths of one
5 percent.

6 (2) Subject to the enactment into law of the 1982 amendment to RCW
7 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in
8 addition to the tax authorized in subsection (1) of this section, the
9 governing body of any county or city may by resolution or ordinance
10 impose an additional sales and use tax in accordance with the terms of
11 this chapter. Such additional tax shall be collected upon the same
12 taxable events upon which the tax imposed under subsection (1) of this
13 section is levied. The rate of such additional tax imposed by a county
14 shall be up to five-tenths of one percent of the selling price (in the
15 case of a sales tax) or value of the article used (in the case of a use
16 tax). The rate of such additional tax imposed by a city shall be up to
17 five-tenths of one percent of the selling price (in the case of a sales
18 tax) or value of the article used (in the case of a use tax)(~~(:—~~
19 ~~PROVIDED—HOWEVER, That)~~). In the event a county shall impose a sales
20 and use tax under this subsection at a rate equal to or greater than
21 the rate imposed under this subsection by a city within the county, the
22 county shall receive fifteen percent of the city tax(~~(:—PROVIDED~~
23 ~~FURTHER, That)~~). In the event that the county shall impose a sales and
24 use tax under this subsection at a rate which is less than the rate
25 imposed under this subsection by a city within the county, the county
26 shall receive that amount of revenues from the city tax equal to
27 fifteen percent of the rate of tax imposed by the county under this
28 subsection. The authority to impose a tax under this subsection is
29 intended in part to compensate local government for any losses from the
30 phase-out of the property tax on business inventories.

31 **Sec. 122.** RCW 82.14.045 and 1991 c 363 s 158 are each amended to
32 read as follows:

33 (1) The legislative body of any city pursuant to RCW 35.92.060, of
34 any county which has created an unincorporated transportation benefit
35 area pursuant to RCW 36.57.100 and 36.57.110, of any public
36 transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090,
37 of any county transportation authority established pursuant to chapter
38 36.57 RCW, and of any metropolitan municipal corporation within a

1 county with a population of one million or more pursuant to chapter
2 35.58 RCW, may, by resolution or ordinance for the sole purpose of
3 providing funds for the operation, maintenance, or capital needs of
4 public transportation systems and in lieu of the excise taxes
5 authorized by RCW 35.95.040, submit an authorizing proposition to the
6 voters or include such authorization in a proposition to perform the
7 function of public transportation and if approved by a majority of
8 persons voting thereon, fix and impose a sales and use tax in
9 accordance with the terms of this chapter: PROVIDED, That no such
10 legislative body shall impose such a sales and use tax without
11 submitting such an authorizing proposition to the voters and obtaining
12 the approval of a majority of persons voting thereon: PROVIDED
13 FURTHER, That where such a proposition is submitted by a county on
14 behalf of an unincorporated transportation benefit area, it shall be
15 voted upon by the voters residing within the boundaries of such
16 unincorporated transportation benefit area and, if approved, the sales
17 and use tax shall be imposed only within such area. Notwithstanding
18 any provisions of this section to the contrary, any county in which a
19 county public transportation plan has been adopted pursuant to RCW
20 36.57.070 and the voters of such county have authorized the imposition
21 of a sales and use tax pursuant to the provisions of section 10,
22 chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be
23 authorized to fix and impose a sales and use tax as provided in this
24 section at not to exceed the rate so authorized without additional
25 approval of the voters of such county as otherwise required by this
26 section.

27 The tax authorized pursuant to this section shall be in addition to
28 the tax authorized by RCW 82.14.030 and shall be collected from those
29 persons who are taxable by the state pursuant to chapters 82.08 and
30 82.12 RCW upon the occurrence of any taxable event within such city,
31 public transportation benefit area, county, or metropolitan municipal
32 corporation as the case may be, except that no tax on retail services,
33 as the term is defined in RCW 82.04.050(3), may be imposed under this
34 section. The rate of such tax shall be one-tenth, two-tenths, three-
35 tenths, four-tenths, five-tenths, or six-tenths of one percent of the
36 selling price (in the case of a sales tax) or value of the article used
37 (in the case of a use tax). The rate of such tax shall not exceed the
38 rate authorized by the voters unless such increase shall be similarly
39 approved.

1 (2)(a) In the event a metropolitan municipal corporation shall
2 impose a sales and use tax pursuant to this chapter no city, county
3 which has created an unincorporated transportation benefit area, public
4 transportation benefit area authority, or county transportation
5 authority wholly within such metropolitan municipal corporation shall
6 be empowered to levy and/or collect taxes pursuant to RCW 35.58.273,
7 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city
8 or county from imposing sales and use taxes pursuant to any other
9 authorization.

10 (b) In the event a county transportation authority shall impose a
11 sales and use tax pursuant to this section, no city, county which has
12 created an unincorporated transportation benefit area, public
13 transportation benefit area, or metropolitan municipal corporation,
14 located within the territory of the authority, shall be empowered to
15 levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or
16 82.14.045.

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

23 (3) Any local sales and use tax revenue collected pursuant to this
24 section by any city or by any county for transportation purposes
25 pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally
26 generated tax revenues for the purposes of apportionment and
27 distribution, in the manner prescribed by chapter 82.44 RCW, of the
28 proceeds of the motor vehicle excise tax authorized pursuant to RCW
29 35.58.273.

30 **Sec. 123.** RCW 82.14.048 and 1991 c 207 s 1 are each amended to
31 read as follows:

32 The governing board of a public facilities district under chapter
33 36.100 RCW may submit an authorizing proposition to the voters of the
34 district, and if the proposition is approved by a majority of persons
35 voting, fix and impose a sales and use tax in accordance with the terms
36 of this chapter.

37 The tax authorized in this section shall be in addition to any
38 other taxes authorized by law and shall be collected from those persons

1 who are taxable by the state under chapters 82.08 and 82.12 RCW upon
2 the occurrence of any taxable event within the public facilities
3 district. This sales and use tax may not be imposed on any retail
4 service as defined in RCW 82.04.050(3). The rate of tax shall equal
5 one-tenth of one percent of the selling price in the case of a sales
6 tax, or value of the article used, in the case of a use tax.

7 Moneys received from any tax imposed under this section shall be
8 used for the purpose of providing funds for the costs associated with
9 the financing, design, acquisition, construction, equipping, operating,
10 maintaining, and reequipping of sports or entertainment facilities and
11 contiguous parking.

12 NEW SECTION. **Sec. 124.** A new section is added to chapter 82.14
13 RCW to read as follows:

14 (1) The governing body of any county or city, while not required by
15 legislative mandate to do so, may, by resolution or ordinance for the
16 purposes authorized by this chapter, fix and impose a sales and use tax
17 on retail services, as the term is defined in RCW 82.04.050(3). The
18 tax shall be collected from those persons taxable by the state pursuant
19 to chapters 82.08 and 82.12 RCW upon retail services. The rate of such
20 tax imposed by a county or city shall be one and five-tenths percent of
21 the selling price in the case of a retail sale, or value in the case of
22 a use tax. The tax imposed by this section shall be credited against
23 the tax imposed by RCW 82.08.020(5) and 82.12.020.

24 (2) Any county ordinance adopted under subsection (1) of this
25 section shall contain a provision allowing a credit against the county
26 tax imposed under subsection (1) of this section for the full amount of
27 any city sales or use tax imposed under subsection (1) of this section.

28 (3) There is created in the state treasury a special account to be
29 known as the "local government fund." Any county or city resolution or
30 ordinance shall provide that the proceeds from the tax imposed under
31 this section on those services authorized to be taxed pursuant to
32 chapter . . ., Laws of 1993 (this act) shall be placed in the local
33 government fund and distributed to the counties and cities according to
34 the formulas provided in this section. Distributions shall be made
35 under this section at such times as distributions are made under RCW
36 82.44.150.

37 (4) The local government fund shall be divided into three parts:
38 The portion intended for criminal justice will be called "Part A"; the

1 portion intended for counties for the provision of regional services
2 will be called "Part B"; and the portion intended for general purposes
3 will be called "Part C."

4 (5) The amount estimated by the department of licensing for the
5 amount that would have been distributed in fiscal year 1994 under the
6 criminal justice motor vehicle excise tax accounts authorized by RCW
7 82.44.110(1) (i), (j), and (k) shall be apportioned to Part A of the
8 local government fund. An additional amount of two hundred fifty
9 thousand dollars per fiscal year shall be distributed to Part A of the
10 local government fund for distribution for expenses incurred by agents
11 of the governor in making demands upon the executive authority of any
12 state or territory for the surrender of any fugitive from justice, or
13 any other person charged with a felony or any other crime in this
14 state, and for expenses incurred in accepting the voluntary surrender
15 of any such person who has waived extradition.

16 (6) Moneys distributed under this subsection shall be expended
17 exclusively for criminal justice purposes. Part A will be distributed
18 in fiscal year 1994 to the counties and cities according to the formula
19 in place in 1993 for the distribution of the criminal justice motor
20 vehicle excise tax, as follows:

21 (a)(i) A county's funding factor is the sum of:

22 (A) The population of the county, divided by one thousand, and
23 multiplied by two-tenths;

24 (B) The crime rate of the county, multiplied by three-tenths; and

25 (C) The annual number of criminal cases filed in the county
26 superior court, for each one thousand in population, multiplied by
27 five-tenths.

28 (ii) Under this section:

29 (A) The population of the county or city shall be as last
30 determined by the office of financial management;

31 (B) The crime rate of the county or city is the annual occurrence
32 of specified criminal offenses, as calculated in the most recent annual
33 report on crime in Washington state as published by the Washington
34 association of sheriffs and police chiefs, for each one thousand in
35 population;

36 (C) The annual number of criminal cases filed in the county
37 superior court shall be determined by the most recent annual report of
38 the courts of Washington, as published by the office of the
39 administrator for the courts.

1 (b) The municipal criminal justice assistance funding formula for
2 distributions based on crime rates is as follows:

3 (i) No city may receive a distribution under this section from the
4 municipal criminal justice assistance account unless:

5 (A) The city has a crime rate in excess of one hundred twenty-five
6 percent of the state-wide average as calculated in the most recent
7 annual report on crime in Washington state as published by the
8 Washington association of sheriffs and police chiefs;

9 (B) The city has levied the tax authorized in RCW 82.14.030(2) at
10 the maximum rate or the tax authorized in RCW 82.46.010(3) at the
11 maximum rate; and

12 (C) The city has a per capita yield from the tax imposed under RCW
13 82.14.030(1) at the maximum rate of less than one hundred fifty percent
14 of the state-wide average per capita yield for all cities from such
15 local sales and use tax.

16 (ii) Unless reduced by this subsection, thirty percent of the
17 moneys shall be distributed ratably based on population as last
18 determined by the office of financial management to those cities
19 eligible under (b)(i) of this subsection that have a crime rate
20 determined under (b)(i)(A) of this subsection which is greater than one
21 hundred seventy-five percent of the state-wide average crime rate. No
22 city may receive more than fifty percent of any moneys distributed
23 under this subsection (6)(b)(ii) but, if a city distribution is reduced
24 as a result of exceeding the fifty percent limitation, the amount not
25 distributed shall be distributed under (b)(iii) of this subsection.

26 (iii) The remainder of the moneys, including any moneys not
27 distributed in (b)(i) of this subsection, shall be distributed to all
28 cities eligible under (b) of this subsection ratably based on
29 population as last determined by the office of financial management.

30 (iv) No city may receive more than thirty percent of all moneys
31 distributed under (b)(iii) of this subsection.

32 (c) The municipal funding for criminal justice based on population
33 shall be distributed as follows: For fiscal year 1994 and thereafter,
34 each city with a population of under ten thousand shall receive a
35 distribution of two thousand seven hundred fifty dollars. Any
36 remaining moneys shall be distributed to all cities ratably on the
37 basis of population as last determined by the office of financial
38 management.

1 (7) For years beginning after the 1994 fiscal year, the portion of
2 the local government fund to be apportioned to Part A will be
3 determined according to the ratio of Part A in fiscal year 1994 to the
4 total local government fund in fiscal year 1994.

5 (8) No funds from Part B or Part C may be expended until interlocal
6 agreements are reached between the county and the cities within each
7 county. Consensus will be determined according to a written agreement
8 between the county and at least one-half of the cities and towns
9 representing at least seventy-five percent of the incorporated
10 population within the county. The interlocal agreements must include
11 a discussion of regional services and related revenue requirements.
12 The interlocal agreements shall be filed with the county auditor. The
13 office of the state treasurer shall make distributions under this
14 section to the counties at such times as distributions are made under
15 RCW 82.44.150. Interest accruing on such funds shall be distributed
16 proportionately to the parties to the interlocal agreement.

17 (9) In fiscal year 1994, Part B shall equal forty percent of the
18 amount of the local government fund remaining after the distribution of
19 Part A, except that Part B shall not be more than twenty-four million
20 dollars in fiscal year 1994.

21 (10) For years beginning after the 1994 fiscal year, the portion of
22 the local government fund to be apportioned to Part B shall be forty
23 percent of the local government fund, after distribution of Part A.

24 (11) The local government fund, after distribution of Part A, will
25 be distributed among all counties according to their proportional share
26 of the state population.

27 (12) Part C of the local government fund will consist of the
28 balance of the fund after the distribution of Parts A and B.

29 (13) Within each county, Part C will be distributed between cities
30 and the county government according to the interlocal agreements
31 described in subsection (8) of this section.

32 **Sec. 125.** RCW 82.14.050 and 1991 sp.s. c 13 s 34 are each amended
33 to read as follows:

34 The counties, cities, and transportation authorities under RCW
35 82.14.045 and public facilities districts under chapter 36.100 RCW
36 shall contract, prior to the effective date of a resolution or
37 ordinance imposing a sales and use tax, the administration and
38 collection to the state department of revenue, which shall deduct a

1 percentage amount, as provided by contract, not to exceed two percent
2 of the taxes collected for administration and collection expenses
3 incurred by the department. The remainder of any portion of any tax
4 authorized by this chapter which is collected by the department of
5 revenue shall be deposited by the state department of revenue in either
6 the local sales and use tax account hereby created in the state
7 treasury or in the local government fund created in section 124 of this
8 act. Moneys in the local sales and use tax account may be spent only
9 for distribution to counties, cities, transportation authorities, and
10 public facilities districts imposing a sales and use tax or the local
11 government fund. All administrative provisions in chapters 82.03,
12 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be
13 amended, shall, insofar as they are applicable to state sales and use
14 taxes, be applicable to taxes imposed pursuant to this chapter. Except
15 as provided in RCW 43.08.190, all earnings of investments of balances
16 in the local sales and use tax account shall be credited to the local
17 sales and use tax account and distributed to the counties, cities,
18 transportation authorities, and public facilities districts monthly.
19 Except as provided in RCW 43.08.190, all earnings of investments of
20 balances in the local government fund shall be credited to the local
21 sales and use tax account and distributed to the counties and cities as
22 part of that fund.

23 **Sec. 126.** RCW 82.14.060 and 1991 c 207 s 3 are each amended to
24 read as follows:

25 Monthly the state treasurer shall make distribution from the local
26 sales and use tax account to the counties, cities, transportation
27 authorities, and public facilities districts the amount of tax
28 collected on behalf of each taxing authority, less the deduction
29 provided for in RCW 82.14.050. Distributions from the local government
30 fund shall be made as provided in section 124 of this act. The state
31 treasurer shall make the distribution under this section without
32 appropriation.

33 In the event that any ordinance or resolution imposes a sales and
34 use tax at a rate in excess of the applicable limits contained herein,
35 such ordinance or resolution shall not be considered void in toto, but
36 only with respect to that portion of the rate which is in excess of the
37 applicable limits contained herein.

1 NEW SECTION. Sec. 127. Sections 101 through 126 of this act are
2 necessary for the immediate preservation of the public peace, health,
3 or safety, or support of the state government and its existing public
4 institutions, and shall take effect July 1, 1993.

5 **Part II.**

6 **Business and Occupation Tax Deduction Based On**
7 **Threshold Amounts**

8 NEW SECTION. Sec. 201. A new section is added to chapter 82.04
9 RCW to read as follows:

10 (1) As used in this section:

11 (a) "Combined measure of tax" means the total of the value of
12 products, gross proceeds of sales, and gross income of the business for
13 all activities upon which business and occupation taxes are imposed
14 under this chapter.

15 (b) "New taxpayer" means a person who did not engage in taxable
16 business activities during the calendar year preceding the reporting
17 period, but does not include a person who has succeeded by merger,
18 consolidation, incorporation, or any other form or change of identity
19 to the business of a person engaged in business activities during the
20 calendar year preceding the reporting period.

21 (c) "Threshold amount" means:

22 (i) Twelve thousand dollars for a new taxpayer.

23 (ii) Twelve thousand dollars for taxpayers for whom at least eighty
24 percent of the combined measure of tax for the calendar year preceding
25 the reporting period is attributable to the business of making sales at
26 retail.

27 (iii) Four thousand dollars for taxpayers for whom at least eighty
28 percent of the combined measure of tax for the calendar year preceding
29 the reporting period is attributable to the business of rendering any
30 type of service that does not constitute a sale at retail.

31 (iv) Seven thousand dollars for all other taxpayers.

32 (2) In computing the tax imposed under this chapter, there may be
33 deducted from the combined measure of tax an amount equal to the
34 product of the threshold amount multiplied by the number of months in
35 the reporting period, as determined under RCW 82.32.045, reduced by the
36 amount computed under subsection (3) of this section.

1 (3) For each taxpayer the amount under subsection (2) of this
2 section shall be reduced, but not below zero, by the amount by which
3 the combined measure of tax for a reporting period exceeds the product
4 of the threshold amount multiplied by the number of months in the
5 reporting period.

6 (4) If a taxpayer engages in more than one business activity only
7 a single deduction using a single threshold amount applied against the
8 combined measures of tax is allowed under this section. The taxpayer
9 may specify how the deduction is to be divided among the measures of
10 tax.

11 **Sec. 202.** RCW 82.32.030 and 1992 c 206 s 8 are each amended to
12 read as follows:

13 (1) Except as provided in subsection (2) of this section, if any
14 person engages in any business or performs any act upon which a tax is
15 imposed by the preceding chapters, he or she shall, under such rules as
16 the department of revenue shall prescribe, apply for and obtain from
17 the department a registration certificate (~~upon payment of fifteen~~
18 ~~dollars~~). Such registration certificate shall be personal and
19 nontransferable and shall be valid as long as the taxpayer continues in
20 business and pays the tax accrued to the state. In case business is
21 transacted at two or more separate places by one taxpayer, a separate
22 registration certificate for each place at which business is transacted
23 with the public shall be required(~~(, but, for such additional~~
24 ~~certificates no additional payment shall be required)~~). Each
25 certificate shall be numbered and shall show the name, residence, and
26 place and character of business of the taxpayer and such other
27 information as the department of revenue deems necessary and shall be
28 posted in a conspicuous place at the place of business for which it is
29 issued. Where a place of business of the taxpayer is changed, the
30 taxpayer must return to the department the existing certificate, and a
31 new certificate will be issued for the new place of business (~~free of~~
32 ~~charge~~). No person required to be registered under this section shall
33 engage in any business taxable hereunder without first being so
34 registered. The department, by rule, may provide for the issuance of
35 certificates of registration(~~(, without requiring payment,)~~) to
36 temporary places of business (~~or to persons who are exempt from tax~~
37 ~~under RCW 82.04.300~~)).

1 (2) Registration under this section is not required if the
2 following conditions are met:

3 (a) A person's value of products, gross proceeds of sales, or gross
4 income of the business (~~is below the tax reporting threshold provided~~
5 ~~in RCW 82.04.300~~), from all business activities, is less than one
6 thousand dollars per month;

7 (b) The person is not required to collect or pay to the department
8 of revenue any other tax which the department is authorized to collect;
9 and

10 (c) The person is not otherwise required to obtain a license
11 subject to the master application procedure provided in chapter 19.02
12 RCW.

13 **Sec. 203.** RCW 70.95E.020 and 1990 c 114 s 12 are each amended to
14 read as follows:

15 A fee is imposed for the privilege of generating or potentially
16 generating hazardous waste in the state. The annual amount of the fee
17 shall be thirty-five dollars upon every known generator or potential
18 generator doing business in Washington in the current calendar year or
19 any part thereof. This fee shall be collected by the department of
20 revenue. A potential generator shall be exempt from the fee imposed
21 under this section if the (~~potential generator is entitled to the~~
22 ~~exemption in RCW 82.04.300~~) value of products, gross proceeds of
23 sales, or gross income of the business, from all business activities of
24 the potential generator, is less than twelve thousand dollars in the
25 current calendar year. The department shall, subject to appropriation,
26 use the funds collected from the fees assessed in this subsection to
27 support the activities of the office of waste reduction as specified in
28 RCW 70.95C.030. The fee imposed pursuant to this section shall be
29 first due on July 31, 1990, for any generator or potential generator
30 operating in Washington from March 21, 1990, to December 31, 1990, or
31 any part thereof.

32 NEW SECTION. **Sec. 204.** RCW 82.04.300 and 1992 c 206 s 7, 1983 c
33 3 s 213, 1979 ex.s. c 196 s 4, 1975 1st ex.s. c 278 s 41, 1961 c 293 s
34 3, & 1961 c 15 s 82.04.300 are each repealed.

35 NEW SECTION. **Sec. 205.** Sections 201 through 204 of this act are
36 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and shall take effect July 1, 1993.

3 **Part III.**

4 **Washington Estate and Transfer Tax**

5 **Sec. 301.** RCW 83.100.010 and 1988 c 64 s 1 are each amended to
6 read as follows:

7 This chapter may be cited as the "Estate and Transfer Tax Act of
8 ((1988)) 1993."

9 **Sec. 302.** RCW 83.100.020 and 1990 c 224 s 1 are each amended to
10 read as follows:

11 As used in this chapter:

12 (1) "Decedent" means a deceased individual;

13 (2) "Department" means the department of revenue, the director of
14 that department, or any employee of the department exercising authority
15 lawfully delegated to him or her by the director;

16 (3) (~~"Federal credit" means (a) for a transfer, the maximum amount~~
17 ~~of the credit for state taxes allowed by section 2011 of the United~~
18 ~~States Internal Revenue Code of 1986, as amended or renumbered; and (b)~~
19 ~~for a generation skipping transfer, the maximum amount of the credit~~
20 ~~for state taxes allowed by section 2604 of the United States Internal~~
21 ~~Revenue Code of 1986, as amended or renumbered;~~

22 ~~(4))~~ "Federal return" means any tax return required by chapter 11
23 or 13 of the United States Internal Revenue Code of 1986, as amended or
24 renumbered, and any regulations thereunder;

25 ~~((5))~~ (4) "Federal tax" means (a) for a transfer, a tax under
26 chapter 11 of the United States Internal Revenue Code of 1986, as
27 amended or renumbered; and (b) for a generation-skipping transfer, the
28 tax under chapter 13 of the United States Internal Revenue Code of
29 1986, as amended or renumbered;

30 ~~((6))~~ (5) "Generation-skipping transfer" means a
31 "generation-skipping transfer" as defined and used in section 2611 of
32 the United States Internal Revenue Code of 1986, as amended or
33 renumbered;

34 ~~((7))~~ (6) "Gross estate" means "gross estate" as defined and used
35 in section 2031 of the United States Internal Revenue Code of 1986, as
36 amended or renumbered;

1 ~~((8))~~ (7) "Nonresident" means a decedent who was domiciled
2 outside Washington at his or her death;

3 ~~((9))~~ (8) "Person" means any individual, estate, trust, receiver,
4 cooperative association, club, corporation, company, firm, partnership,
5 joint venture, syndicate, or other entity and, to the extent permitted
6 by law, any federal, state, or other governmental unit or subdivision
7 or agency, department, or instrumentality thereof;

8 ~~((10))~~ (9) "Person required to file the federal return" or
9 "taxpayer" means any person required to file a return required by
10 chapter 11 or 13 of the Internal Revenue Code of 1986, as amended or
11 renumbered, such as the personal representative of an estate; or a
12 transferor, trustee, or beneficiary of a generation-skipping transfer;
13 or a qualified heir with respect to qualified real property, as defined
14 and used in section 2032A(c) of the United States Internal Revenue Code
15 of 1986, as amended or renumbered;

16 ~~((11))~~ (10) "Property" means (a) for a transfer, property
17 included in the gross estate; and (b) for a generation-skipping
18 transfer, all real and personal property subject to the federal tax;

19 ~~((12))~~ (11) "Resident" means a decedent who was domiciled in
20 Washington at time of death;

21 ~~((13))~~ (12) "Transfer" means "transfer" as used in section 2001
22 of the United States Internal Revenue Code of 1986, as amended or
23 renumbered, or a disposition or cessation of qualified use as defined
24 and used in section 2032A(c) of the United States Internal Revenue Code
25 of 1986, as amended or renumbered; ~~((and~~

26 ~~(14))~~ (13) "Trust" means "trust" under Washington law and any
27 arrangement described in section 2652 of the Internal Revenue Code of
28 1986, as amended or renumbered~~((-))~~;

29 (14) "Washington estate and transfer tax" means (a) for a transfer,
30 the maximum amount of tax as provided in section 306(1) of this act;
31 and (b) for a generation-skipping transfer, the maximum amount of tax
32 as provided in section 306(2) of this act; and

33 (15) References in this chapter to the United States internal
34 revenue code of 1986, to a chapter of the code, and to regulations
35 under the code are to the code, chapters, and regulations in effect on
36 ~~((June 7, 1990))~~ the effective date of this section.

37 **Sec. 303.** RCW 83.100.030 and 1988 c 64 s 3 are each amended to
38 read as follows:

1 (1) A tax in an amount equal to the (~~federal credit~~) Washington
2 estate and transfer tax is imposed on every transfer of property of a
3 resident.

4 (2) If the transfer is subject to a similar tax imposed by another
5 state (~~for which the federal credit is allowed~~), and if the tax
6 imposed by the other state is not qualified by a reciprocal provision
7 allowing the transfer to be taxed only in this state, the amount of the
8 tax due under this section shall be credited with the lesser of:

9 (a) The amount of the death tax paid the other state (~~and credited~~
10 ~~against the federal tax~~); or

11 (b) An amount computed by multiplying the (~~federal credit~~)
12 Washington estate and transfer tax by a fraction, the numerator of
13 which is the value of the property subject to the tax imposed by the
14 other state, and the denominator of which is the value of the
15 decedent's gross estate.

16 **Sec. 304.** RCW 83.100.040 and 1988 c 64 s 4 are each amended to
17 read as follows:

18 (1) A tax in an amount computed as provided in this section is
19 imposed on every transfer of property located in Washington of every
20 nonresident.

21 (2) The tax shall be computed by multiplying the (~~federal credit~~)
22 Washington estate and transfer tax by a fraction, the numerator of
23 which is the value of the property located in Washington, and the
24 denominator of which is the value of the decedent's gross estate.

25 (3) The transfer of the property of a nonresident is exempt from
26 the tax imposed by this section to the extent that the property of
27 residents is exempt from taxation under the laws of the state in which
28 the nonresident is domiciled.

29 **Sec. 305.** RCW 83.100.045 and 1988 c 64 s 5 are each amended to
30 read as follows:

31 (1) A tax in an amount equal to the (~~federal credit~~) Washington
32 estate and transfer tax is imposed on every generation-skipping
33 transfer, if real or tangible personal property subject to the federal
34 tax is located in this state or if the trust has its principal place of
35 administration in this state at the time of the generation-skipping
36 transfer.

1 (2) If the generation-skipping transfer is subject to a similar tax
2 imposed by another state (~~for which the federal credit is allowed~~),
3 the amount of the tax due under this section shall be credited with the
4 lesser of:

5 (a) The amount of the tax paid to the other state (~~and credited~~
6 ~~against the federal tax~~); or

7 (b) An amount computed by multiplying the (~~federal credit~~)
8 Washington estate and transfer tax by a fraction, the numerator of
9 which is the value of the property subject to the generation-skipping
10 transfer tax imposed by the other state, and the denominator of which
11 is the value of all property subject to the federal tax.

12 NEW SECTION. Sec. 306. A new section is added to chapter 83.100
13 RCW to read as follows:

14 (1) The Washington estate and transfer tax for an estate shall be
15 the corresponding amount of the rate schedule contained in subsection
16 (3) of this section applied to the amount upon which the tentative tax
17 for federal estate tax purposes is computed as provided in section
18 2001(b) of the Internal Revenue Code of 1986, as amended or renumbered.
19 No tax may be imposed when the credits, except the credit allowed by
20 section 2011 of the Internal Revenue Code of 1986, as amended or
21 renumbered, but including the credit allowed by section 2010 of the
22 Internal Revenue Code of 1986, as amended or renumbered, allowable to
23 the decedent, equals or exceeds the tentative tax as provided in
24 section 2001(b) of the Internal Revenue Code of 1986, as amended or
25 renumbered for federal estate tax purposes. The tax imposed by this
26 section shall not exceed the amount of the taxable estate, as defined
27 in section 2051 of the Internal Revenue Code of 1986, as amended or
28 renumbered, reduced by the net federal estate tax payable.

29 (2) The Washington estate and transfer tax for a generation-
30 skipping transfer shall be the greater of (a) ten percent, or (b) the
31 corresponding amount of the rate schedule contained in subsection (3)
32 of this section applied to taxable amount as provided in section
33 2602(1) of the Internal Revenue Code of 1986, as amended or renumbered.

34 (3) Rate schedule:

35 If the tentative taxable	The Washington estate and
36 amount or generation-skipping	transfer tax is:
37 taxable amount is:	

1	Not over \$90,000	1.6% of the excess
2		over \$40,000.
3	Over \$90,000 but	\$800 plus 3.2% of the
4	not over \$140,000	excess over \$90,000.
5	Over \$140,000 but	\$2,400 plus 4.8%
6	not over \$240,000	of the excess
7		over \$140,000.
8	Over \$240,000 but	\$7,200 plus 6.4%
9	not over \$440,000	of the excess
10		over \$240,000.
11	Over \$440,000 but	\$20,000 plus 8%
12	not over \$640,000	of the excess
13		over \$440,000.
14	Over \$640,000 but	\$36,000 plus 9.6%
15	not over \$840,000	of the excess
16		over \$640,000.
17	Over \$840,000 but	\$55,200 plus 11.2%
18	not over \$1,040,000	of the excess
19		over \$840,000.
20	Over \$1,040,000 but	\$77,600 plus 12.8%
21	not over \$1,540,000	of the excess
22		over \$1,040,000.
23	Over \$1,540,000 but	\$141,600 plus 14.4%
24	not over \$2,040,000	of the excess
25		over \$1,540,000.
26	Over \$2,040,000 but	\$213,600 plus 16%
27	not over \$2,540,000	of the excess
28		over \$2,040,000.

1	Over \$2,540,000 but	\$293,600 plus 17.6%
2	not over \$3,040,000	of the excess
3		over \$2,540,000.
4	Over \$3,040,000 but	\$381,600 plus 19.2%
5	not over \$3,540,000	of the excess
6		over \$3,040,000.
7	Over \$3,540,000 but	\$477,600 plus 20.8%
8	not over \$4,040,000	of the excess
9		over \$3,540,000.
10	Over \$4,040,000 but	\$581,600 plus 22.4%
11	not over \$5,040,000	of the excess
12		over \$4,040,000.
13	Over \$5,040,000 but	\$805,600 plus 24%
14	not over \$6,040,000	of the excess
15		over \$5,040,000.
16	Over \$6,040,000 but	\$1,045,600 plus 25.6%
17	not over \$7,040,000	of the excess
18		over \$6,040,000.
19	Over \$7,040,000 but	\$1,301,600 plus 27.2%
20	not over \$8,040,000	of the excess
21		over \$7,040,000.
22	Over \$8,040,000 but	\$1,573,600 plus 28.8%
23	not over \$9,040,000	of the excess
24		over \$8,040,000.
25	Over \$9,040,000 but	\$1,861,600 plus 30.4%
26	not over \$10,040,000	of the excess
27		over \$9,040,000.
28	Over \$10,040,000	\$2,165,600 plus 32%
29		of the excess
30		over \$10,040,000.

1 **Sec. 307.** RCW 83.100.050 and 1988 c 64 s 6 are each amended to
2 read as follows:

3 (1) The person required to file the federal return shall file with
4 the department on or before the date the federal return is required to
5 be filed, including any extension of time for filing the federal
6 return:

7 (a) A Washington return for the tax due under this chapter upon
8 such forms and with such attachments as the department may prescribe;
9 and

10 (b) A copy of the federal return, complete with attachments and
11 accompanying documents.

12 (2) No Washington return need be filed if no federal return is
13 required. A Washington return delivered to the department by United
14 States mail shall be considered to have been received by the department
15 on the date of the United States postmark stamped on the cover in which
16 the return is mailed, if the postmark date is within the time allowed
17 for filing the Washington return, including extensions.

18 (~~(2)~~) (3) If the person required to file the federal return has
19 obtained an extension of time for filing the federal return, the person
20 shall file the Washington return within the same time period and in the
21 same manner as provided for the federal return. A copy of the federal
22 extension shall be filed with the department on or before the date the
23 Washington return is due, not including any extension of time for
24 filing, or within thirty days of issuance, whichever is later.

25 **Sec. 308.** RCW 83.100.070 and 1988 c 64 s 8 are each amended to
26 read as follows:

27 (1) Any tax due under this chapter which is not paid by the due
28 date under RCW 83.100.060(1) shall bear interest at the rate (~~of~~
29 ~~twelve percent per annum~~) as provided in RCW 82.32.050(2) from the
30 date the tax is due until paid.

31 (~~((2) If the Washington return is not filed when due under RCW~~
32 ~~83.100.050, then the person required to file the federal return shall~~
33 ~~pay, in addition to interest, a penalty equal to five percent of the~~
34 ~~tax due for each month after the date the return is due until filed.~~
35 ~~No penalty may exceed twenty five percent of the tax.))~~

36 (2) If payment of any tax due on a return to be filed by a taxpayer
37 is not received by the department of revenue by the due date, including
38 extensions, if any, the department shall assess a penalty of five

1 percent of the amount of the tax; and if the tax is not received within
2 thirty days after the due date, including extensions, if any, the
3 department shall assess a total penalty of ten percent of the amount of
4 the tax; and if the tax is not received within sixty days after the due
5 date, including extensions, if any, the department shall assess a total
6 penalty of twenty percent of the amount of the tax.

7 (3) If payment of any tax assessed by the department of revenue is
8 not received by the department by the due date specified in the notice,
9 or any extension, the department shall add a penalty of ten percent of
10 the amount of the additional tax found due.

11 (4) If a warrant is issued by the department of revenue for the
12 collection of taxes, increases, and penalties, the department shall add
13 a penalty of five percent of the amount of the tax, but not less than
14 ten dollars.

15 (5) If the department finds that all or part of the deficiency
16 resulted from an intent to evade the tax payable under this chapter,
17 the department shall add a further penalty of fifty percent of the
18 additional tax found to be due.

19 (6) The aggregate penalties imposed under subsections (2) through
20 (4) of this section may not exceed twenty-five percent of the tax due,
21 or twenty dollars, whichever is greater.

22 (7) If the department of revenue finds that the payment by a
23 taxpayer of a tax less than that properly due, and the failure of a
24 taxpayer to pay any tax by the due date was the result of circumstances
25 beyond the control of the taxpayer, the department of revenue shall
26 waive or cancel interest or penalties imposed under this chapter with
27 respect to the tax. The department of revenue shall prescribe rules
28 for the waiver or cancellation of interest or penalties imposed by
29 this chapter.

30 **Sec. 309.** RCW 83.100.080 and 1988 c 64 s 9 are each amended to
31 read as follows:

32 Upon request of the person who has filed a Washington return, the
33 department shall issue a release when the tax due under this chapter
34 has been paid. Upon issuance of a release, all property subject to the
35 tax shall be free of any claim for the tax by the state.

36 **Sec. 310.** RCW 83.100.090 and 1988 c 64 s 10 are each amended to
37 read as follows:

1 (1) If upon examination of any return or from other information
2 obtained by the department it appears that a tax or penalty has been
3 paid less than that properly due, or that the return is not correct,
4 the department shall assess against the taxpayer the additional amount
5 found to be due, or correct the return, and shall add to the amount
6 found to be due interest at the rate provided in RCW 82.32.050(2).

7 (a) The department shall notify the taxpayer by mail of the
8 additional amount and the additional amount shall become due and must
9 be paid within thirty days from the date of the notice, or within such
10 further time as the department may provide.

11 (b) The department, in its examination of returns under this
12 chapter, shall coordinate its activities with the United States
13 internal revenue service and shall avoid a duplication of effort
14 whenever possible. The department shall cooperate with the United
15 States internal revenue service and provide valuation or other
16 assistance if such assistance is requested and may be efficiently
17 provided. The department shall enter into information sharing
18 agreements with the United States internal revenue service as are
19 necessary to efficiently implement this chapter.

20 (2) No assessment or correction of an assessment for additional
21 taxes due may be made by the department more than three years after the
22 date the return was due, including extensions, if any, except:

23 (a) Against a taxpayer who has not filed a return as required by
24 this chapter;

25 (b) Upon a showing of fraud or of misrepresentation of a material
26 fact by the taxpayer;

27 (c) Where a taxpayer has executed a written waiver of such
28 limitation; or

29 (d) Where an adjustment in, or final determination of, the amount
30 of federal tax is made more than three years after the date the return
31 was due, including extensions, if any, then no assessment or correction
32 of assessment may be made more three years after the date of the
33 adjustment in, or final determination of, the amount of federal tax.

34 (3) If the person required to file the federal return files an
35 amended federal return, that person shall ((immediately)), at the time
36 the federal amended return is filed, file with the department an
37 amended Washington return with a copy of the amended federal return and
38 all accompanying documents. If the amended Washington return requires
39 payment of an additional tax under this chapter, the tax shall be paid

1 in accordance with RCW 83.100.060 and interest and penalties, if any,
2 shall be paid in accordance with RCW 83.100.070.

3 ~~((+2))~~ (4) Upon any adjustment in, or final determination of, the
4 amount of federal tax due, the person required to file the federal
5 return shall notify the department in writing within sixty days after
6 the adjustment or final determination. If the adjustment or final
7 determination requires payment of an additional tax under this chapter,
8 the tax shall be paid in accordance with RCW 83.100.060 and interest
9 and penalties, if any, shall be paid in accordance with RCW 83.100.070.

10 NEW SECTION. **Sec. 311.** A new section is added to chapter 83.100
11 RCW to read as follows:

12 If the value of a transfer has been determined under this chapter
13 and the same transfer is examined and valued for federal tax purposes
14 with the new value becoming fixed under federal law either by agreement
15 with the taxpayer or through final determination in the federal court,
16 then the value as fixed under this chapter shall be increased or
17 decreased to the federal tax value.

18 NEW SECTION. **Sec. 312.** A new section is added to chapter 83.100
19 RCW to read as follows:

20 (1) If a person fails or refuses to make a return or to make
21 available for examination the records required by this chapter, the
22 department shall proceed, in such manner as it may deem best, to obtain
23 facts and information on which to base its estimate of the tax. To
24 this end, the department may examine the books, records, and papers of
25 the person and may take evidence, on oath, of the person, relating to
26 the subject of inquiry.

27 (2) As soon as the department procures such facts and information
28 as it is able to obtain upon which to base the assessment of a tax
29 payable by a person who has failed or refused to make a return, it
30 shall proceed to determine and assess against the person the tax and
31 penalties due, but such action may not deprive the person from
32 appealing the assessment as provided in this chapter. The department
33 shall add to the assessment the interest and penalties provided in this
34 chapter. The department shall notify the taxpayer by mail of the total
35 amount of the tax, penalties, and interest, and the total amount shall
36 become due and shall be paid within thirty days from the date of the
37 notice.

1 NEW SECTION. **Sec. 313.** A new section is added to chapter 83.100
2 RCW to read as follows:

3 (1) A person having paid a tax, original assessment, or corrected
4 assessment, or having been issued a notice of additional taxes,
5 correction of a return, delinquent taxes, interest, or penalties
6 assessed by the department, may petition the department in writing for
7 a correction of the amount of the assessment or a review of the tax
8 liability, and a conference for examination and review of the
9 assessment or tax liability. The petition shall set forth the reasons
10 why the correction should be granted and the amount of the tax,
11 interest, or penalties that the petitioner believes is due. The
12 department shall promptly consider the petition and may grant or deny
13 it. If denied, the petitioner shall be notified by mail of the denial
14 forthwith. If a conference is granted, the department shall fix the
15 time and place for the conference and notify the petitioner by mail.
16 After the conference, the department may make a determination as may
17 appear to it to be just and lawful and shall mail a copy of its
18 determination to the petitioner.

19 (2) A petition for correction of assessment shall be made within
20 thirty days after the issuance of the original notice of the assessment
21 amount or within the period covered by an extension of the due date
22 granted by the department. If no such petition is filed within the
23 thirty-day period, the assessment covered by the notice shall become
24 final.

25 (3) A petition for a review of a tax liability that has been paid
26 may be made any time within the period for payment of refunds.

27 NEW SECTION. **Sec. 314.** A new section is added to chapter 83.100
28 RCW to read as follows:

29 (1) Any person having paid any tax as required by this chapter and
30 feeling aggrieved by the amount of the tax may appeal to the superior
31 court of Thurston county, within the time limitation for a refund
32 provided in this chapter or, if an application for refund has been made
33 to the department within that time limitation, then within thirty days
34 after rejection of the application, whichever time limitation is later.
35 In the appeal the taxpayer shall set forth the amount of the tax
36 imposed upon the taxpayer that the taxpayer concedes to be the correct
37 tax and the reason why the tax should be reduced or abated. The appeal
38 shall be perfected by serving a copy of the notice of appeal upon the

1 department within the time specified in this section and by filing the
2 original thereof with proof of service with the clerk of the superior
3 court of Thurston county.

4 (2) The trial in the superior court on appeal is de novo and
5 without the necessity of pleadings other than the notice of appeal. The
6 burden rests upon the taxpayer to prove that the tax as paid by the
7 taxpayer is incorrect, either in whole or in part, and to establish the
8 correct amount of the tax. In the proceeding the taxpayer is deemed
9 the plaintiff, and the state, the defendant, and both parties are
10 entitled to subpoena the attendance of witnesses as in other civil
11 actions and to produce evidence that is competent, relevant, and
12 material to determine the correct amount of the tax that should be paid
13 by the taxpayer. Either party may seek appellate review in the same
14 manner as other civil actions are appealed to the appellate courts.

15 (3) It is not necessary for the taxpayer to protest against the
16 payment of a tax or to make a demand to have the tax refunded or to
17 petition the department or the director for a hearing in order to
18 appeal to the superior court, but no court action or proceeding of any
19 kind may be maintained by the taxpayer to recover a tax or a part of a
20 tax paid, except as provided in this section.

21 (4) The provisions of this section do not apply to a tax payment
22 that has been the subject of an appeal to the board of tax appeals with
23 respect to which appeal a formal hearing has been elected.

24 **Sec. 315.** RCW 83.100.130 and 1988 c 64 s 12 are each amended to
25 read as follows:

26 ~~((Whenever the department determines that a person required to file
27 the federal return has overpaid the tax due under this chapter, the
28 department shall refund the amount of the overpayment, together with
29 interest at the then existing rate under RCW 83.100.070(1). If the
30 application for refund, with supporting documents, is filed within four
31 months after an adjustment or final determination of federal tax
32 liability, the department shall pay interest until the date the refund
33 is mailed. If the application for refund, with supporting documents,
34 is filed after four months after the adjustment or final determination,
35 the department shall pay interest only until the end of the four month
36 period.))~~

37 (1) If, upon receipt of an application by a taxpayer for a refund
38 or for an audit of the taxpayer's return, or upon an examination of the

1 return of a taxpayer, it is determined by the department that within
2 the statutory period for assessment of taxes prescribed by RCW
3 83.100.090 a tax has been paid in excess of that properly due, the
4 excess amount paid within such period shall be refunded to the
5 taxpayer. No refund may be made for taxes paid more than three years
6 prior to the date that the refund application is made or examination of
7 records is completed, except taxes may be refunded after an adjustment
8 in, or final determination of, the federal tax liability has been made,
9 but such refund may not be made for taxes paid more than three years
10 prior to the date the refund application is made or the adjustment, or
11 final determination of, the federal tax liability is made.

12 (2) A judgment for which a recovery is granted by a court of
13 competent jurisdiction, not appealed from, for tax, penalties, and
14 interest that were paid by the taxpayer, and costs, in a suit by a
15 taxpayer shall be paid in like manner, upon the filing with the
16 department of a certified copy of the order or judgment of the court.

17 (3) Interest at the rate provided in RCW 82.32.060 shall be allowed
18 by the department and by a court on the amount of a refund or recovery
19 allowed to a taxpayer for taxes, penalties, or interest paid by the
20 taxpayer.

21 **Sec. 316.** RCW 83.100.150 and 1988 c 64 s 14 are each amended to
22 read as follows:

23 ~~((1))~~ The department may collect the ~~((estate tax))~~ taxes imposed
24 under ~~((RCW 83.100.030 and 83.100.040))~~ this chapter, including
25 interest and penalties, and shall represent this state in all matters
26 pertaining to the same, either before courts or in any other manner.
27 ~~((At any time after the Washington return is due, the department may~~
28 ~~file its findings regarding the amount of the tax, the federal credit,~~
29 ~~the person required to file the federal return, and all persons having~~
30 ~~an interest in property subject to the tax with the clerk of the~~
31 ~~superior court in the matter of the estate of the decedent or, if no~~
32 ~~probate or administration proceedings have been commenced in any court~~
33 ~~of this state, of the superior court for the county in which the~~
34 ~~decedent was a resident, if the resident was a domiciliary, or, if the~~
35 ~~decedent was a nondomiciliary, of any superior court which has~~
36 ~~jurisdiction over the property. Such a court first acquiring~~
37 ~~jurisdiction shall retain jurisdiction to the exclusion of every other~~
38 ~~court.~~

1 ~~(2) The department may collect the generation skipping transfer tax~~
2 ~~under RCW 83.100.045, including interest and penalties, and shall~~
3 ~~represent this state in all matters pertaining to the same, either~~
4 ~~before courts or in any other manner. At any time after the Washington~~
5 ~~return is due, the department may file its findings regarding the~~
6 ~~amount of the tax, the federal credit, the person required to file the~~
7 ~~federal return, and all persons having an interest in property subject~~
8 ~~to the tax with the clerk of the superior court in the matter of the~~
9 ~~trust or the estate of the decedent, if any, or, if no trust, probate~~
10 ~~or administration proceedings have been commenced in any court of this~~
11 ~~state, of any superior court which has jurisdiction over the property.~~
12 ~~Such a court first acquiring jurisdiction shall retain jurisdiction to~~
13 ~~the exclusion of every other court.))~~ The provisions, methods, and
14 processes provided in chapter 82.32 RCW relating to the collection of
15 taxes apply to the collection of taxes imposed by this chapter.

16 **Sec. 317.** RCW 82.03.190 and 1989 c 378 s 5 are each amended to
17 read as follows:

18 Any person having received notice of a denial of a petition or a
19 notice of determination made under RCW 82.32.160, 82.32.170, 82.34.110,
20 ~~((or))~~ 82.49.060, or section 313 of this act may appeal, within thirty
21 days after the mailing of the notice of such denial or determination,
22 to the board of tax appeals. In the notice of appeal the taxpayer
23 shall set forth the amount of the tax which the taxpayer contends
24 should be reduced or refunded and the reasons for such reduction or
25 refund, in accordance with rules of practice and procedure prescribed
26 by the board. A copy of the notice of appeal shall be provided to the
27 department within the time specified in the rules of practice and
28 procedure prescribed by the board. However, if the notice of appeal
29 relates to an application made to the department under chapter 82.34
30 RCW, the taxpayer shall set forth the amount to which the taxpayer
31 claims the credit or exemption should apply, and the grounds for such
32 contention, in accordance with rules of practice and procedure
33 prescribed by the board. If the taxpayer intends that the hearing
34 before the board be held pursuant to the administrative procedure act
35 (chapter 34.05 RCW), the notice of appeal shall also so state. In the
36 event that the notice of appeal does not so state, the department may,
37 within thirty days from the date of its receipt of the notice of

1 appeal, file with the board notice of its intention that the hearing be
2 held pursuant to the administrative procedure act.

3 NEW SECTION. **Sec. 318.** The following acts or parts of acts are
4 each repealed:

- 5 (1) RCW 83.100.160 and 1988 c 64 s 15;
- 6 (2) RCW 83.100.170 and 1988 c 64 s 16;
- 7 (3) RCW 83.100.180 and 1988 c 64 s 17; and
- 8 (4) RCW 83.100.190 and 1988 c 64 s 18.

9 NEW SECTION. **Sec. 319.** A new section is added to chapter 83.100
10 RCW to read as follows:

11 Sections 301 through 318, chapter ..., Laws of 1993 (this act)
12 shall apply to all returns required to be filed on or after the
13 effective date of this section, including amended or adjusted returns,
14 regardless, in the case of a decedent, if the date of death of the
15 decedent occurred prior to the effective date of this section.

16 NEW SECTION. **Sec. 320.** Sections 301 through 319 of this act are
17 necessary for the immediate preservation of the public peace, health,
18 or safety, or support of the state government and its existing public
19 institutions, and shall take effect July 1, 1993.

20 **Part IV.**

21 **Extension of Sales and Use Tax Deferral** 22 **and Business and Occupation Tax Credit Programs**

23 **Sec. 401.** RCW 82.60.020 and 1988 c 42 s 16 are each amended to
24 read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Applicant" means a person applying for a tax deferral under
28 this chapter.

29 (2) "Department" means the department of revenue.

30 (3) "Eligible area" means: (a) A county in which the average level
31 of unemployment for the three years before the year in which an
32 application is filed under this chapter exceeds the average state
33 unemployment for those years by twenty percent; ((or)) (b) a
34 metropolitan statistical area, as defined by the office of federal

1 statistical policy and standards, United States department of commerce,
2 in which the average level of unemployment for the calendar year
3 immediately preceding the year in which an application is filed under
4 this chapter exceeds the average state unemployment for such calendar
5 year by twenty percent(~~(. Applications under this subsection (3)(b)~~
6 ~~shall be filed by April 30, 1989)); or (c) a designated neighborhood~~
7 reinvestment area as defined in subsection (14) of this section.

8 (4)(a) "Eligible investment project" means that portion of an
9 investment project which:

10 (i) Is directly utilized to create at least one new full-time
11 qualified employment position for each three hundred thousand dollars
12 of investment on which a deferral is requested; and

13 (ii) Either initiates a new operation, or expands or diversifies a
14 current operation by expanding or renovating an existing building with
15 costs in excess of twenty-five percent of the true and fair value of
16 the plant complex prior to improvement; or

17 (iii) Acquires machinery and equipment to be used for either
18 manufacturing or research and development if the machinery and
19 equipment is housed in a new leased structure: PROVIDED, That the
20 lessor/owner of the structure is not eligible for a deferral unless the
21 underlying ownership of the buildings, machinery, and equipment vests
22 exclusively in the same person.

23 (b) "Eligible investment project" does not include any portion of
24 an investment project undertaken by a light and power business as
25 defined in RCW 82.16.010(5) or investment projects which have already
26 received deferrals under this chapter.

27 (5) "Investment project" means an investment in qualified buildings
28 and qualified machinery and equipment, including labor and services
29 rendered in the planning, installation, and construction of the
30 project.

31 (6) "Manufacturing" means all activities of a commercial or
32 industrial nature wherein labor or skill is applied, by hand or
33 machinery, to materials so that as a result thereof a new, different,
34 or useful substance or article of tangible personal property is
35 produced for sale or commercial or industrial use and shall include the
36 production or fabrication of specially made or custom made articles.
37 "Manufacturing" also includes computer programming, the production of
38 computer software, and other computer-related services, and the

1 activities performed by research and development laboratories and
2 commercial testing laboratories.

3 (7) "Person" has the meaning given in RCW 82.04.030.

4 (8) "Qualified buildings" means new structures used for
5 manufacturing and research and development activities, including plant
6 offices and warehouses or other facilities for the storage of raw
7 material or finished goods if such facilities are an essential or an
8 integral part of a factory, mill, plant, or laboratory used for
9 manufacturing or research and development. If a building is used
10 partly for manufacturing or research and development and partly for
11 other purposes, the applicable tax deferral shall be determined by
12 apportionment of the costs of construction under rules adopted by the
13 department.

14 (9) "Qualified employment position" means a permanent full-time
15 employee employed in the eligible investment project during the entire
16 tax year.

17 (10) "Qualified machinery and equipment" means all new industrial
18 and research fixtures, equipment, and support facilities that are an
19 integral and necessary part of a manufacturing or research and
20 development operation. "Qualified machinery and equipment" includes:
21 Computers; software; data processing equipment; laboratory equipment;
22 manufacturing components such as belts, pulleys, shafts, and moving
23 parts; molds, tools, and dies; operating structures; and all equipment
24 used to control or operate the machinery.

25 (11) "Recipient" means a person receiving a tax deferral under this
26 chapter.

27 (12) "Research and development" means the development, refinement,
28 testing, marketing, and commercialization of a product, service, or
29 process before commercial sales have begun. As used in this
30 subsection, "commercial sales" excludes sales of prototypes or sales
31 for market testing if the total gross receipts from such sales of the
32 product, service, or process do not exceed one million dollars.

33 (13) "Biotechnology firm" means a person primarily engaged in
34 manufacturing or research and development that involves the application
35 of modern technologies, such as recombinant DNA techniques, cell fusion
36 techniques, and new bio-processes, using living organisms, or parts of
37 organisms, to produce or modify products, to improve plants or animals,
38 or to develop micro-organisms for specific uses.

39 (14) "Designated neighborhood reinvestment area" means an area:

1 (a) Designated by the legislative authority of the local government
2 as an area to receive federal, state, and local assistance designed to
3 increase economic, physical, or social activity in the area;

4 (b) Having at least fifty-one percent of the households with
5 incomes at or below eighty percent of the county's median income,
6 adjusted for household size; and

7 (c) Having an unemployment rate, for the most recent twelve-month
8 period for which data is available, of at least one hundred twenty
9 percent of the average unemployment rate for the county.

10 **Sec. 402.** RCW 82.60.050 and 1988 c 41 s 5 are each amended to read
11 as follows:

12 RCW 82.60.030 (~~(and 82.60.040)~~) shall expire July 1, (~~(1994)~~) 2004.

13 **Sec. 403.** RCW 82.60.060 and 1985 c 232 s 5 are each amended to
14 read as follows:

15 (1) The recipient shall begin paying the deferred taxes in the
16 third or fifth year after the date certified by the department as the
17 date on which the construction project has been operationally
18 completed. The first payment by a recipient other than a biotechnology
19 firm will be due on December 31st of the third calendar year after such
20 certified date, with subsequent annual payments due on December 31st of
21 the following four years with amounts of payment scheduled as follows:

22	Repayment Year	% of Deferred Tax Repaid
23	1	10%
24	2	15%
25	3	20%
26	4	25%
27	5	30%

28 A biotechnology firm shall pay annual payments according to the same
29 schedule and in the same amounts, except the first payment shall be due
30 on December 31st of the fifth calendar year after the certified date.
31 A biotechnology firm certified as having been operationally completed
32 prior to January 1, 1990, that has paid one or more annual payments
33 prior to the effective date of this section may make any remaining
34 payments two years after they would otherwise be due.

35 (2) The department may authorize an accelerated repayment schedule
36 upon request of the recipient.

1 (3) Interest shall not be charged on any taxes deferred under this
2 chapter for the period of deferral, although all other penalties and
3 interest applicable to delinquent excise taxes may be assessed and
4 imposed for delinquent payments under this chapter. The debt for
5 deferred taxes will not be extinguished by insolvency or other failure
6 of the recipient.

7 **Sec. 404.** RCW 82.61.010 and 1988 c 41 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Applicant" means a person applying for a tax deferral under
12 this chapter.

13 (2) "Person" has the meaning given in RCW 82.04.030.

14 (3) "Department" means the department of revenue.

15 (4) "Eligible investment project" means:

16 (a) Construction of new buildings and the acquisition of new
17 related machinery and equipment when the buildings, machinery, and
18 equipment are to be used for either manufacturing or research and
19 development activities, which construction is commenced prior to
20 December 31, (~~(1994)~~) 2004; or

21 (b) Acquisition prior to December 31, (~~(1994)~~) 2004, of new
22 machinery and equipment to be used for either manufacturing or research
23 and development if the machinery and equipment is housed in a new
24 leased structure: PROVIDED, That the lessor/owner of the structure is
25 not eligible for a deferral unless the underlying ownership of the
26 buildings, machinery, and equipment vests exclusively in the same
27 person; or

28 (c) Acquisition of all new or used machinery, equipment, or other
29 personal property for use in the production or casting of aluminum at
30 an aluminum smelter or at facilities related to an aluminum smelter, if
31 the plant was in operation prior to 1975 and has ceased operations or
32 is in imminent danger of ceasing operations for economic reasons, as
33 determined by the department, and if the person applying for a deferral
34 (i) has consulted with any collective bargaining unit that represented
35 employees of the plant pursuant to a collective bargaining agreement
36 that was in effect either immediately prior to the time the plant
37 ceased operations or during the period when the plant was in imminent
38 danger of ceasing operations, on the proposed operation of the plant

1 and on the terms and conditions of employment for wage and salaried
2 employees and (ii) has obtained a written concurrence from the
3 bargaining unit on the decision to apply for a deferral under this
4 chapter; or

5 (d) Modernization projects involving construction, acquisition, or
6 upgrading of equipment or machinery, including services and labor,
7 which are commenced after May 19, 1987, and are intended to increase
8 the operating efficiency of existing plants which are either aluminum
9 smelters or aluminum rolling mills or of facilities related to such
10 plants, if the plant was in operation prior to 1975, and if the person
11 applying for a deferral (i) has consulted with any collective
12 bargaining unit that represents employees of the plant on the proposed
13 operation of the plant and the terms and conditions of employment for
14 wage and salaried employees and (ii) has obtained a written concurrence
15 from the bargaining unit on the decision to apply for a deferral under
16 this chapter.

17 (5) "Manufacturing" means all activities of a commercial or
18 industrial nature wherein labor or skill is applied, by hand or
19 machinery, to materials so that as a result thereof a new, different,
20 or useful substance or article of tangible personal property is
21 produced for sale or commercial or industrial use and includes the
22 production or fabrication of specially made or custom-made articles.

23 (6) "Research and development" means the development, refinement,
24 testing, marketing, and commercialization of a product, service, or
25 process before commercial sales have begun.

26 (7) "Buildings" means only those new structures used for either
27 manufacturing or research and development activities, including plant
28 offices and warehouses or other facilities for the storage of raw
29 materials or finished goods if such facilities are an essential or an
30 integral part of a factory, mill, plant, or laboratory used for
31 manufacturing or research and development purposes. If a building is
32 used partly for manufacturing or research and development and partly
33 for other purposes, the applicable tax deferral shall be determined by
34 apportionment of the costs of construction under rules adopted by the
35 department.

36 (8) "Machinery and equipment" means all industrial and research
37 fixtures, equipment, and support facilities that are an integral and
38 necessary part of a manufacturing or research and development
39 operation. "Qualified machinery and equipment" includes computers;

1 software; data processing equipment; laboratory equipment;
2 manufacturing components such as belts, pulleys, shafts, and moving
3 parts; molds, tools, and dies; operating structures; and all equipment
4 used to control or operate the machinery. For purposes of this
5 chapter, new machinery and equipment means either new to the taxing
6 jurisdiction of the state or new to the certificate holder. Used
7 machinery and equipment may be treated as new equipment and machinery
8 if the certificate holder either brings the machinery and equipment
9 into Washington or makes a retail purchase of the machinery and
10 equipment in Washington or elsewhere.

11 (9) "Qualified employment position" means a permanent full-time
12 employee employed in the eligible investment project during the entire
13 tax year.

14 (10) "Recipient" means a person receiving a tax deferral under this
15 chapter.

16 (11) "Certificate holder" means an applicant to whom a tax deferral
17 certificate has been issued.

18 (12) "Operationally complete" means constructed or improved to the
19 point of being functionally useable for the intended purpose.

20 (13) "Initiation of construction" means that date upon which on-
21 site construction commences.

22 (14) "Biotechnology firm" means a person primarily engaged in
23 manufacturing or research and development that involves the application
24 of modern technologies, such as recombinant DNA techniques, cell fusion
25 techniques, and new bio-processes, using living organisms, or parts of
26 organisms, to produce or modify products, to improve plants or animals,
27 or to develop micro-organisms for specific uses.

28 **Sec. 405.** RCW 82.61.040 and 1988 c 41 s 2 are each amended to read
29 as follows:

30 RCW 82.61.020 and 82.61.030 shall expire July 1, (~~1994~~) 2004.

31 **Sec. 406.** RCW 82.61.060 and 1987 c 497 s 4 are each amended to
32 read as follows:

33 (1) The recipient shall begin paying the deferred taxes in the
34 third or fifth year after the date certified by the department as the
35 date on which the construction project is operationally complete or the
36 plant resumes operation, as appropriate. The first payment by a
37 recipient other than a biotechnology firm will be due on December 31st

1 of the third calendar year after such certified date, with subsequent
2 annual payments due on December 31st of the following four years with
3 amounts of payment scheduled as follows:

4	Repayment Year	% of Deferred Tax Repaid
5	1	10%
6	2	15%
7	3	20%
8	4	25%
9	5	30%

10 A biotechnology firm shall pay annual payments according to the same
11 schedule and in the same amounts, except the first payment shall be due
12 on December 31st of the fifth calendar year after the certified date.
13 A biotechnology firm certified as having been operationally completed
14 prior to January 1, 1990, that has paid one or more annual payments
15 prior to the effective date of this section may make any remaining
16 payments two years after they would otherwise be due.

17 (2) The department may authorize an accelerated repayment schedule
18 upon request of the recipient.

19 (3) Interest shall not be charged on any taxes deferred under this
20 chapter for the period of deferral, although all other penalties and
21 interest applicable to delinquent excise taxes may be assessed and
22 imposed for delinquent payments under this chapter. The debt for
23 deferred taxes is not extinguished by insolvency or other failure of
24 the recipient.

25 **Sec. 407.** RCW 82.61.070 and 1988 c 41 s 3 are each amended to read
26 as follows:

27 The department and the department of trade and economic development
28 shall jointly report to the legislature about the effects of this
29 chapter on new manufacturing and research and development activities in
30 this state. The report shall contain information concerning the number
31 of deferral certificates granted, the amount of sales tax deferred, the
32 number of jobs created and other information useful in measuring such
33 effects. Reports shall be submitted by January 1, 1986, and by January
34 1 of each year through ((1995)) 2005.

35 **Sec. 408.** RCW 82.62.010 and 1988 c 42 s 17 are each amended to
36 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Applicant" means a person applying for a tax credit under this
4 chapter.

5 (2) "Department" means the department of revenue.

6 (3) "Eligible area" means: (a) A county in which the average level
7 of unemployment for the three years before the year in which an
8 application is filed under this chapter exceeds the average state
9 unemployment for those years by twenty percent; ~~((or))~~ (b) a
10 metropolitan statistical area, as defined by the office of federal
11 statistical policy and standards, United States department of commerce,
12 in which the average level of unemployment for the calendar year
13 immediately preceding the year in which an application is filed under
14 this chapter exceeds the average state unemployment for such calendar
15 year by twenty percent ~~((. Applications under this subsection (3)(b)~~
16 ~~shall be filed by April 30, 1989));~~ or (c) a designated neighborhood
17 reinvestment area as defined in subsection (11) of this section.

18 (4)(a) "Eligible business project" means manufacturing or research
19 and development activities which are conducted by an applicant in an
20 eligible area at a specific facility: PROVIDED, That the applicant's
21 average full-time qualified employment positions at the specific
22 facility will be at least fifteen percent greater in the year for which
23 the credit is being sought than the applicant's average full-time
24 qualified employment positions at the same facility in the immediately
25 preceding year.

26 (b) "Eligible business project" does not include any portion of a
27 business project undertaken by a light and power business as defined in
28 RCW 82.16.010(5) or that portion of a business project creating
29 qualified full-time employment positions outside an eligible area or
30 those recipients of a sales tax deferral under chapter 82.61 RCW.

31 (5) "Manufacturing" means all activities of a commercial or
32 industrial nature wherein labor or skill is applied, by hand or
33 machinery, to materials so that as a result thereof a new, different,
34 or useful substance or article of tangible personal property is
35 produced for sale or commercial or industrial use and shall include the
36 production or fabrication of specially made or custom made articles.
37 "Manufacturing" also includes computer programming, the production of
38 computer software, and other computer-related services, and the

1 activities performed by research and development laboratories and
2 commercial testing laboratories.

3 (6) "Person" has the meaning given in RCW 82.04.030.

4 (7) "Qualified employment position" means a permanent full-time
5 employee employed in the eligible business project during the entire
6 tax year.

7 (8) "Tax year" means the calendar year in which taxes are due.

8 (9) "Recipient" means a person receiving tax credits under this
9 chapter.

10 (10) "Research and development" means the development, refinement,
11 testing, marketing, and commercialization of a product, service, or
12 process before commercial sales have begun. As used in this
13 subsection, "commercial sales" excludes sales of prototypes or sales
14 for market testing if the total gross receipts from such sales of the
15 product, service, or process do not exceed one million dollars.

16 (11) "Designated neighborhood reinvestment area" means an area:

17 (a) Designated by the legislative authority of the local government
18 as an area to receive federal, state, and local assistance designed to
19 increase economic, physical, or social activity in the area;

20 (b) Having at least fifty-one percent of the households with
21 incomes at or below eighty percent of the county's median income,
22 adjusted for household size; and

23 (c) Having an unemployment rate, for the most recent twelve-month
24 period for which data is available, of at least one hundred twenty
25 percent of the average unemployment rate for the county.

26 **Sec. 409.** RCW 82.62.040 and 1988 c 41 s 4 are each amended to read
27 as follows:

28 RCW 82.62.020 (~~(and 82.62.030)~~) shall expire July 1, (~~(1994)~~) 2004.

29 NEW SECTION. **Sec. 410.** Unless the context clearly requires
30 otherwise, the definitions in this section apply throughout this
31 chapter.

32 (1) "Applicant" means a person applying for a tax deferral under
33 this chapter.

34 (2) "Department" means the department of revenue.

35 (3) "Person" has the meaning given in RCW 82.04.030.

36 (4) "Recipient" means a person receiving a tax deferral under this
37 chapter.

1 (5) "Certificate" means a tax deferral certificate issued by the
2 department under this chapter.

3 (6) "Certificate holder" means an applicant to whom a tax deferral
4 certificate has been issued.

5 (7) "Biotechnology" means the application of modern technologies,
6 such as recombinant DNA techniques, cell fusion techniques, and new
7 bio-processes, using living organisms, or parts of organisms, to
8 produce or modify products, to improve plants or animals, or to develop
9 micro-organisms for specific uses.

10 (8) "Manufacturing" means all activities of a commercial or
11 industrial nature wherein labor or skill is applied, by hand or
12 machinery, to materials so that as a result of the activities a new,
13 different, or useful substance or article of tangible personal property
14 is produced for sale or commercial or industrial use and includes the
15 production or fabrication of specially made or custom-made articles.

16 (9) "Research and development" means the development, refinement,
17 testing, marketing, and commercialization of a product, service, or
18 process before commercial sales have begun.

19 (10) "Investment project" means construction or improvement of a
20 qualified building, or the purchase of qualified research equipment.

21 (11) "Qualified buildings" means a structure used in biotechnology
22 manufacturing or biotechnology research and development activities,
23 including plant offices and warehouses or other facilities for the
24 storage of raw material or finished goods if such facilities are an
25 essential or an integral part of the manufacturing or research and
26 development facility. If a building is used partly for biotechnology
27 manufacturing or biotechnology research and development and partly for
28 other purposes, the applicable tax deferral shall be determined by
29 apportionment of the costs of construction under rules adopted by the
30 department.

31 (12) "Qualified research equipment" means equipment, including
32 computers, machinery, instrumentation, and other devices, used in a
33 process of biotechnology experimentation to develop a new or improved
34 pilot model, plant, process, product, formula, invention, or similar
35 property.

36 NEW SECTION. **Sec. 411.** (1) The applicant shall apply to the
37 department for a certificate for deferral of taxes under this chapter
38 prior to initiating an investment project. The application shall be in

1 a form and manner prescribed by the department, and shall contain a
2 description of any investment project projected within the next twenty-
3 four months, estimated or actual costs of the investment project, and
4 additional information required by the department.

5 (2) The department shall rule on the application within sixty days
6 and, if approved, issue a tax deferral certificate to the applicant.

7 (3) The certificate shall entitle the recipient to defer state and
8 local sales and use taxes due under chapters 82.08, 82.12, and 82.14
9 RCW on construction or improvement of qualified buildings completed
10 prior to July 1, 2004, and purchases of qualified research equipment
11 delivered prior to July 1, 2004.

12 NEW SECTION. Sec. 412. (1) The department shall keep a running
13 total of all deferrals granted under this chapter during each fiscal
14 biennium.

15 (2) On an annual basis, the department and the department of trade
16 and economic development shall jointly report to the legislature about
17 the effects of this chapter on new biotechnology activities in this
18 state.

19 (3) The report shall contain information concerning the number of
20 deferral certificates granted, the amount of sales tax deferred, the
21 number of jobs created, and other information useful in measuring such
22 effects.

23 (4) The report shall be submitted by January 1, 1996, and by
24 January 1 of each year thereafter.

25 NEW SECTION. Sec. 413. (1) The recipient shall begin paying the
26 deferred taxes in the fifth year after the date of purchase of
27 qualified research equipment, or the date of completion of construction
28 or improvement of a qualified building, as appropriate.

29 (2) The first payment will be due on December 31st of the fifth
30 calendar year after the date specified in subsection (1) of this
31 section. Subsequent annual payments will be due on December 31st of
32 the following four years. Amounts of payment are to be scheduled as
33 follows:

34	Repayment Year	% of Deferred Tax Repaid
35	1	10%
36	2	15%
37	3	20%

1 4 25%
2 5 30%

3 (3) The department may authorize an accelerated repayment schedule
4 upon request of the recipient.

5 (4) Interest may not be charged on any taxes deferred under this
6 chapter for the period of deferral. However, any other penalties and
7 interest applicable to delinquent excise taxes may be assessed and
8 imposed for payments delinquent under this chapter.

9 (5) The debt for deferred taxes will not be extinguished by
10 insolvency or other failure of the recipient.

11 NEW SECTION. **Sec. 414.** (1) Each recipient shall submit an annual
12 report to the department for each year during the deferral period until
13 the tax deferral is repaid. The report shall be due on January 31 of
14 the year following the calendar year covered in the report and shall
15 contain a description of any investment project on which taxes were
16 deferred during the period covered in the report, including the costs
17 of any investment project, the amount of tax deferred, and any
18 additional information required by the department.

19 (2) If the recipient fails to submit a report or submits an
20 inadequate report, the department may revoke the certificate and
21 declare the amount of deferred taxes outstanding to be immediately
22 assessed and payable.

23 (3) If, on the basis of a report under this section or other
24 information, the department finds that an investment project is not
25 eligible for tax deferral under this chapter, the amount of deferred
26 taxes outstanding for the project shall be immediately due. The
27 department shall assess interest, but not penalties, retroactively to
28 the date of deferral until the deferred taxes are repaid.

29 NEW SECTION. **Sec. 415.** Chapter 82.32 RCW applies to the
30 administration of this chapter.

31 NEW SECTION. **Sec. 416.** Applications, reports, and other
32 information received by the department under this chapter is not
33 confidential and is subject to disclosure.

1 obligation for calculating the health maintenance organization's
2 prepayment obligations for the current tax year.

3 NEW SECTION. **Sec. 502.** A new section is added to chapter 48.14
4 RCW to read as follows:

5 (1) Each health care service contractor, as defined in RCW
6 48.44.010(3), shall on or before March 1, 1995, and the first day of
7 March of each year thereafter, pay to the state treasurer through the
8 commissioner's office a tax on copayments and prepayments for health
9 care services.

10 (2) The amount of the tax shall be equal to the total amount of
11 copayments and prepayments for health care services received by the
12 health care service contractor during the calendar year multiplied by
13 the rate of two percent.

14 (3) Health care service contractors shall prepay the tax due under
15 this section. The minimum amount of the prepayments shall be
16 percentages of the health care service contractor's tax obligation for
17 the preceding calendar year. The tax prepayments shall be paid to the
18 state treasurer through the commissioner's office by the due dates and
19 in the following amounts:

20 (a) On or before June 15, forty-five percent;

21 (b) On or before September 15, twenty-five percent;

22 (c) On or before December 15, twenty-five percent.

23 For prepayment of taxes due during calendar year 1994, the minimum
24 amount of the prepayments shall be percentages of the health care
25 service contractor's tax obligation that would have been due had the
26 tax been in effect during calendar year 1993.

27 For good cause demonstrated in writing, the commissioner may
28 approve an amount smaller than the preceding calendar year's tax
29 obligation for calculating the health care service contractor's
30 prepayment obligations for the current tax year.

31 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.04
32 RCW to read as follows:

33 This chapter does not apply to any health maintenance organization
34 in respect to copayments or prepayments for health care services that
35 are taxable under section 501 of this act, or to any health care
36 service contractor in respect to copayments or prepayments for health
37 care services that are taxable under section 502 of this act.

1 80% for the first calendar year after the year of issuance;
2 60% for the second calendar year after the year of issuance;
3 40% for the third calendar year after the year of issuance;
4 20% for the fourth calendar year after the year of issuance; and
5 0% for the fifth and subsequent calendar years after the year of
6 issuance.

7 Notwithstanding the foregoing, if the value of a certificate of
8 contribution is or becomes less than one thousand dollars, the entire
9 amount may be written off by the insurer in that year.

10 (3) The insurer shall offset the amount written off by it in a
11 calendar year under subsection (2) of this section against its premium
12 tax liability to this state accrued with respect to business transacted
13 in such year.

14 (4) Any sums recovered by the association representing sums which
15 have theretofore been written off by contributing insurers and offset
16 against premium taxes as provided in subsection (3) of this section,
17 shall be paid by the association to the commissioner and (~~by him~~)
18 then deposited with the state treasurer for credit to the general fund
19 of the state of Washington.

20 (5) No distribution to stockholders, if any, of a liquidating
21 insurer shall be made unless and until the total amount of assessments
22 levied by the association with respect to such insurer have been fully
23 recovered by the association.

24 (6) This section shall expire on January 1, 1999.

25 NEW SECTION. **Sec. 603.** Sections 601 and 602 of this act are
26 necessary for the immediate preservation of the public peace, health,
27 or safety, or support of the state government and its existing public
28 institutions, and shall take effect July 1, 1993.

29 **Part VII.**

30 **Exemption Certificates**

31 **Sec. 701.** RCW 82.04.470 and 1983 2nd ex.s. c 3 s 29 are each
32 amended to read as follows:

33 Unless a seller has taken from the purchaser a resale certificate
34 (~~signed by, and bearing the name and address and registration number~~
35 ~~of the purchaser to the effect that the property or service was~~
36 ~~purchased for resale, or unless the nature of the transaction is~~

1 ~~clearly shown as a sale at wholesale by the books and records of the~~
2 ~~taxpayer in such other manner as the department of revenue shall by~~
3 ~~regulation provide,~~) as described in subsection (1) of this section,
4 the burden of proving that a sale of tangible personal property or
5 retail services, or of telephone service as defined in RCW 82.04.065,
6 was not a sale at retail shall be upon the person who made it.

7 (1) A resale certificate is a document provided by a buyer to a
8 seller at the time of sale providing that the purchase is for resale
9 in the regular course of business or that the buyer is exempt of
10 retail sales tax.

11 (2) A resale certificate must contain the following information:

12 (a) The name and address of the buyer;

13 (b) The uniform business identifier or revenue registration number
14 of the buyer;

15 (c) The type of business engaged in;

16 (d) The categories of items to be purchased for resale or that are
17 exempt, unless the buyer is in a business classification that the
18 department has provided by rule may present a blanket resale
19 certificate;

20 (e) The date on which the certificate was provided;

21 (f) A statement that the items purchased are purchased either (i)
22 for resale in the regular course of business, or (ii) exempt from tax
23 pursuant to statute;

24 (g) A statement that the buyer acknowledges that misuse of the
25 certificate subjects him or her to a penalty of fifty percent of the
26 tax due, in addition to the tax, interest, and any other penalties
27 imposed;

28 (h) The name of the individual authorized to sign the certificate,
29 printed in a legible fashion;

30 (i) The signature of the authorized individual; and

31 (j) The name of the seller.

32 (3) A resale certificate shall be presented to the seller either at
33 the time of sale or be on file with the seller before a purchase can be
34 made without payment of sales tax. If the seller does not have a
35 resale certificate on file, the seller shall be required to obtain one
36 from the buyer to be relieved of liability for the tax.

37 (4) Resale certificates shall be valid from the date the
38 certificate is provided to the seller for a period of four years.

1 (5) The department may provide by rule for suggested forms for
2 resale certificates and the other documents containing the same
3 information that will be accepted as resale certificates.

4 (6) The department shall provide by rule the categories of items
5 that must be specified on resale certificates and the business
6 classifications that may use a blanket resale certificate.

7 NEW SECTION. Sec. 702. A new section is added to chapter 82.08
8 RCW to read as follows:

9 If a buyer normally is engaged in both consuming and reselling
10 certain types of articles of tangible personal property and is not able
11 to determine at the time of purchase whether the particular property
12 acquired will be consumed or resold, the buyer should purchase
13 according to the general nature of its business; that is, if
14 principally it consumes the articles in question, it shall not give a
15 resale certificate for any portion thereof, but if, on the other hand,
16 it principally resells such articles, it may sign a resale certificate
17 for the whole amount of its purchases.

18 If the buyer gives a resale certificate for all purchases and
19 thereafter consumes some of the articles purchased, it must set up in
20 its books of account the value thereof and remit to the department of
21 revenue the deferred sales tax payable thereon.

22 A buyer who has paid tax on all purchases and subsequently resells
23 at retail, without intervening use, some of the items, must collect the
24 tax from the purchaser and report such sales in making its tax returns.
25 In such case, the buyer may take a deduction on its return representing
26 its cost paid for the property thus resold on which sales tax was paid.
27 Such deduction shall be designated as "resale purchases on which tax
28 was paid" and listed under sales tax deductions on the tax return form.
29 Claim for deduction will be allowed only if the taxpayer keeps and
30 preserves records that show the names of the persons from whom such
31 articles were purchased, the date of the purchase, the type of
32 articles, the amount of the purchase and the tax that was paid. The
33 department shall provide by rule for the refund or credit of retail
34 sales tax paid by a buyer for purchases that are later sold at
35 wholesale without intervening use.

36 NEW SECTION. Sec. 703. A new section is added to chapter 82.32
37 RCW to read as follows:

1 Any person who uses a resale certificate to purchase items without
2 payment of sales tax who was not entitled to use such a certificate for
3 the purchase shall be assessed a penalty of fifty percent of the tax
4 due, in addition to all other taxes, penalties, and interest due, on
5 the improperly purchased item. The department may waive the penalty
6 imposed under this section if it finds that the use of the certificate
7 was due to circumstances beyond the taxpayer's control or if the
8 certificate was used for purchases for dual purposes. The department
9 shall adopt rules defining what circumstances shall be considered to be
10 beyond the taxpayer's control.

11 **Sec. 704.** RCW 82.08.050 and 1992 c 206 s 2 are each amended to
12 read as follows:

13 The tax hereby imposed shall be paid by the buyer to the seller,
14 and each seller shall collect from the buyer the full amount of the tax
15 payable in respect to each taxable sale in accordance with the schedule
16 of collections adopted by the department pursuant to the provisions of
17 RCW 82.08.060. The tax required by this chapter, to be collected by
18 the seller, shall be deemed to be held in trust by the seller until
19 paid to the department, and any seller who appropriates or converts the
20 tax collected to his or her own use or to any use other than the
21 payment of the tax to the extent that the money required to be
22 collected is not available for payment on the due date as prescribed in
23 this chapter shall be guilty of a gross misdemeanor.

24 In case any seller fails to collect the tax herein imposed or
25 having collected the tax, fails to pay it to the department in the
26 manner prescribed by this chapter, whether such failure is the result
27 of his or her own acts or the result of acts or conditions beyond his
28 or her control, he or she shall, nevertheless, be personally liable to
29 the state for the amount of the tax, unless the seller has taken from
30 the buyer in good faith a properly executed resale certificate as
31 provided in section 702 of this act.

32 The amount of tax, until paid by the buyer to the seller or to the
33 department, shall constitute a debt from the buyer to the seller and
34 any seller who fails or refuses to collect the tax as required with
35 intent to violate the provisions of this chapter or to gain some
36 advantage or benefit, either direct or indirect, and any buyer who
37 refuses to pay any tax due under this chapter shall be guilty of a
38 misdemeanor. The tax required by this chapter to be collected by the

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

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

24 NEW SECTION. **Sec. 705.** Sections 701 through 704 of this act shall
25 take effect July 1, 1994.

26 **Part VIII.**

27 **Repeal of Business and Occupation Tax and Public Utility Tax**
28 **Deductions for Contributions in Aid of Construction**

29 **Sec. 801.** RCW 82.04.417 and 1969 ex.s. c 156 s 1 are each amended
30 to read as follows:

31 The tax imposed by chapters 82.04 and 82.16 RCW shall not apply or
32 be deemed to apply to amounts or value paid or contributed to any
33 county, city, town, political subdivision, or municipal or quasi
34 municipal corporation of the state of Washington representing payments
35 of special assessments or installments thereof and interest((s)) and
36 penalties thereon, charges in lieu of assessments, or any other

1 charges, payments or contributions representing a share of the cost of
2 capital facilities constructed or to be constructed for utility
3 services or for the retirement of obligations and payment of interest
4 thereon issued for capital purposes for the provision of utility
5 services.

6 ~~((Service charges shall not be included in this exemption even~~
7 ~~though used wholly or in part for capital purposes.))~~

8 This exemption shall not apply to income used to pay costs
9 deductible under RCW 82.16.055.

10 NEW SECTION. Sec. 802. Section 801 of this act is necessary for
11 the immediate preservation of the public peace, health, or safety, or
12 support of the state government and its existing public institutions,
13 and shall take effect July 1, 1993.

14 **Part IX.**

15 **Increasing Real Estate Excise Tax On Sales Over**
16 **Five Hundred Thousand Dollars**

17 **Sec. 901.** RCW 82.45.060 and 1987 c 472 s 14 are each amended to
18 read as follows:

19 ~~((1))~~ There is imposed an excise tax upon each sale of real
20 property at the rate of one and twenty-eight one-hundredths percent of
21 the selling price if the selling price is not over five hundred
22 thousand dollars. If the selling price is over five hundred thousand
23 dollars, the tax shall be equal to six thousand four hundred dollars,
24 plus one and forty-eight one-hundredths percent of the excess over five
25 hundred thousand dollars. An amount equal to seven and seven-tenths
26 percent of the proceeds of this tax remitted to the state treasurer
27 shall be deposited in the public works assistance account created in
28 RCW 43.155.050.

29 ~~((2) There is imposed an additional excise tax through June 30,~~
30 ~~1989, upon each sale of real property at the rate of six one-hundredths~~
31 ~~of one percent of the selling price. The tax imposed under this~~
32 ~~subsection shall be deposited in the conservation area account under~~
33 ~~RCW 79.71.110.))~~

34 NEW SECTION. Sec. 902. Section 901 of this act is necessary for
35 the immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public institutions,
2 and shall take effect July 1, 1993.

3
4

Part X.
Miscellaneous

5 NEW SECTION. **Sec. 1001.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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