

CERTIFICATION OF ENROLLMENT

SENATE BILL 6835

Chapter 367, Laws of 2002

57th Legislature
2002 Regular Session

USE TAXATION

EFFECTIVE DATE: 6/1/02

Passed by the Senate March 13, 2002
YEAS 28 NAYS 19

BRAD OWEN

President of the Senate

Passed by the House March 14, 2002
YEAS 56 NAYS 42

FRANK CHOPP

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6835** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

Secretary

Approved April 4, 2002

FILED

April 4, 2002 - 3:12 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6835

Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By Senator Poulsen

Read first time 03/04/2002. Referred to Committee on Ways & Means.

1 AN ACT Relating to use taxation; amending RCW 82.04.060, 82.12.010,
2 82.12.020, 82.12.035, and 82.14.020; reenacting and amending RCW
3 82.04.190; providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 82.04.060 and 1998 c 332 s 5 are each amended to read
6 as follows:

7 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of
8 tangible personal property(~~(+2)~~), any sale of services defined as a
9 retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
10 services as defined in RCW 82.04.050(3)(a)(~~(+3)~~), any sale of canned
11 software(~~(+)~~), or (~~(+4)~~) any sale of telephone service as defined in
12 RCW 82.04.065, which is not a sale at retail; and (~~means~~) (2) any
13 charge made for labor and services rendered for persons who are not
14 consumers, in respect to real or personal property, if such charge is
15 expressly defined as a retail sale by RCW 82.04.050 when rendered to or
16 for consumers: PROVIDED, That the term "real or personal property" as
17 used in this (~~section~~) subsection shall not include any natural
18 products named in RCW 82.04.100.

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

3 "Consumer" means the following:

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

24 (2)(a) Any person engaged in any business activity taxable under
25 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
26 telephone service as defined in RCW 82.04.065, other than for resale in
27 the regular course of business; (c) any person who purchases, acquires,
28 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and
29 recreation service defined in RCW 82.04.050(3)(a), other than for
30 resale in the regular course of business; and (d) any person who is an
31 end user of software;

32 (3) Any person engaged in the business of contracting for the
33 building, repairing or improving of any street, place, road, highway,
34 easement, right of way, mass public transportation terminal or parking
35 facility, bridge, tunnel, or trestle which is owned by a municipal
36 corporation or political subdivision of the state of Washington or by
37 the United States and which is used or to be used primarily for foot or
38 vehicular traffic including mass transportation vehicles of any kind as
39 defined in RCW 82.04.280, in respect to tangible personal property when

1 such person incorporates such property as an ingredient or component of
2 such publicly owned street, place, road, highway, easement, right of
3 way, mass public transportation terminal or parking facility, bridge,
4 tunnel, or trestle by installing, placing or spreading the property in
5 or upon the right of way of such street, place, road, highway,
6 easement, bridge, tunnel, or trestle or in or upon the site of such
7 mass public transportation terminal or parking facility;

8 (4) Any person who is an owner, lessee or has the right of
9 possession to or an easement in real property which is being
10 constructed, repaired, decorated, improved, or otherwise altered by a
11 person engaged in business, excluding only (a) municipal corporations
12 or political subdivisions of the state in respect to labor and services
13 rendered to their real property which is used or held for public road
14 purposes, and (b) the United States, instrumentalities thereof, and
15 county and city housing authorities created pursuant to chapter 35.82
16 RCW in respect to labor and services rendered to their real property.
17 Nothing contained in this or any other subsection of this definition
18 shall be construed to modify any other definition of "consumer";

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

23 (6) Any person engaged in the business of constructing, repairing,
24 decorating, or improving new or existing buildings or other structures
25 under, upon, or above real property of or for the United States, any
26 instrumentality thereof, or a county or city housing authority created
27 pursuant to chapter 35.82 RCW, including the installing or attaching of
28 any article of tangible personal property therein or thereto, whether
29 or not such personal property becomes a part of the realty by virtue of
30 installation; also, any person engaged in the business of clearing land
31 and moving earth of or for the United States, any instrumentality
32 thereof, or a county or city housing authority created pursuant to
33 chapter 35.82 RCW. Any such person shall be a consumer within the
34 meaning of this subsection in respect to tangible personal property
35 incorporated into, installed in, or attached to such building or other
36 structure by such person;

37 (7) Any person who is a lessor of machinery and equipment, the
38 rental of which is exempt from the tax imposed by RCW 82.08.020 under
39 RCW 82.08.02565, with respect to the sale of or charge made for

1 tangible personal property consumed in respect to repairing the
2 machinery and equipment, if the tangible personal property has a useful
3 life of less than one year. Nothing contained in this or any other
4 subsection of this section shall be construed to modify any other
5 definition of "consumer";

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

10 (9) Until July 1, 2003, any person engaged in the business of
11 conducting environmental remedial action as defined in RCW
12 82.04.2635(2).

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

15 For the purposes of this chapter:

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

34 (b) In case the articles used are acquired by bailment, the value
35 of the use of the articles so used shall be in an amount representing
36 a reasonable rental for the use of the articles so bailed, determined
37 as nearly as possible according to the value of such use at the places
38 of use of similar products of like quality and character under such

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

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

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

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

1 (f) In the case of an article purchased with a direct pay permit
2 under RCW 82.32.087, the value of the article used shall be determined
3 by the retail selling price, as defined in RCW 82.08.010, of such
4 article if but for the use of the direct pay permit the transaction
5 would have been subject to sales tax;

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

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

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

24 ~~((+3))~~ (b) With respect to a service defined in RCW
25 82.04.050(2)(a), the first act within this state by which the taxpayer
26 takes or assumes dominion or control over the article of tangible
27 personal property upon which the service was performed (as a consumer),
28 and include installation, storage, withdrawal from storage,
29 distribution, or any other act preparatory to subsequent actual use or
30 consumption of the article within this state;

31 (4) "Taxpayer" and "purchaser" include all persons included within
32 the meaning of the word "buyer" and the word "consumer" as defined in
33 chapters 82.04 and 82.08 RCW;

34 ~~((+4))~~ (5) "Retailer" means every seller as defined in RCW
35 82.08.010 and every person engaged in the business of selling tangible
36 personal property at retail and every person required to collect from
37 purchasers the tax imposed under this chapter;

38 ~~((+5))~~ (6) The meaning ascribed to words and phrases in chapters
39 82.04 and 82.08 RCW, insofar as applicable, shall have full force and

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

10 **Sec. 4.** RCW 82.12.020 and 1999 c 358 s 9 are each amended to read
11 as follows:

12 (1) There is hereby levied and there shall be collected from every
13 person in this state a tax or excise for the privilege of using within
14 this state as a consumer: (a) Any article of tangible personal
15 property purchased at retail, or acquired by lease, gift, repossession,
16 or bailment, or extracted or produced or manufactured by the person so
17 using the same, or otherwise furnished to a person engaged in any
18 business taxable under RCW 82.04.280 (2) or (7); or (b) any canned
19 software, regardless of the method of delivery, but excluding canned
20 software that is either provided free of charge or is provided for
21 temporary use in viewing information, or both.

22 (2) This tax shall apply to the use of every service defined as a
23 retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every
24 article of tangible personal property, including property acquired at
25 a casual or isolated sale, and including byproducts used by the
26 manufacturer thereof, except as hereinafter provided, irrespective of
27 whether the article or similar articles are manufactured or are
28 available for purchase within this state.

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

34 (4) The tax shall be levied and collected in an amount equal to the
35 value of the article used or value of the service used by the taxpayer
36 multiplied by the rate in effect for the retail sales tax under RCW
37 82.08.020.

1 **Sec. 5.** RCW 82.12.035 and 1996 c 148 s 6 are each amended to read
2 as follows:

3 A credit shall be allowed against the taxes imposed by this chapter
4 upon the use of tangible personal property, or services taxable under
5 RCW 82.04.050 (2)(a) or (3)(a), in the state of Washington in the
6 amount that the present user thereof or his or her bailor or donor has
7 paid a retail sales or use tax with respect to such property to any
8 other state of the United States, any political subdivision thereof,
9 the District of Columbia, and any foreign country or political
10 subdivision thereof, prior to the use of such property in Washington.

11 **Sec. 6.** RCW 82.14.020 and 2001 c 186 s 3 are each amended to read
12 as follows:

13 For purposes of this chapter:

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

17 (2) A retail sale consisting essentially of the performance of
18 personal, business, or professional services shall be deemed to have
19 occurred at the place at which such services were primarily performed,
20 except that for the performance of a tow truck service, as defined in
21 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
22 place of business of the operator of the tow truck service;

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

28 (4) A retail sale within the scope of RCW 82.04.050(2), and a
29 retail sale of taxable personal property to be installed by the seller
30 shall be deemed to have occurred at the place where the labor and
31 services involved were primarily performed;

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

1 (6) A retail sale of linen and uniform supply services is deemed to
2 occur as provided in RCW 82.08.0202;

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

4 (8) The meaning ascribed to words and phrases in chapters 82.04,
5 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
6 applicable, shall have full force and effect with respect to taxes
7 imposed under authority of this chapter;

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

14 (10) "Treasurer or other legal depository" shall mean the treasurer
15 or legal depository of a county or city.

16 NEW SECTION. **Sec. 7.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 June 1, 2002.

Passed the Senate March 13, 2002.

Passed the House March 14, 2002.

Approved by the Governor April 4, 2002.

Filed in Office of Secretary of State April 4, 2002.